

Table of Contents

Volume I

Officers and Members of the Montana Senate
Officers and Members of the Montana House of Representatives
Title Contents of Bills and Resolutions
Chapters 1 - 219

Volume II

Chapters 220 - 451

Volume III

Chapters 452 - 521
House Joint Resolutions
House Resolutions
Senate Joint Resolutions
Senate Resolutions
2006 Ballot Issues
Index to Appropriations
General Index
Tables
 Code Sections Affected
 Session Laws Affected
 Senate Bill to Chapter Number
 House Bill to Chapter Number
 Chapter Number to Bill Number
 Effective Dates By Chapter Number
 Effective Dates By Date
 Session Law to Code
 2006 Ballot Issues
June 2007 Special Session Material
December 2005 Special Session Material

Volume II

Chapters 220 - 4511017

CHAPTER NO. 220

[SB 367]

AN ACT INSTRUCTING THE CODE COMMISSIONER TO RENUMBER TITLE 69, CHAPTER 8, PART 10, MCA, AS AN INTEGRAL PART OF TITLE 69, CHAPTER 3, MCA.

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

Section 1. Directions to code commissioner. The code commissioner shall renumber Title 69, chapter 8, part 10, as an integral part of Title 69, chapter 3.

Approved April 17, 2007

CHAPTER NO. 221

[SB 374]

AN ACT AUTHORIZING A PERSON WHO HOLDS A POWER OF ATTORNEY FROM A MEMBER OF THE UNITED STATES ARMED FORCES TO APPLY FOR AN ABSENTEE BALLOT ON BEHALF OF THE MEMBER OF THE ARMED FORCES; AMENDING SECTIONS 13-13-212 AND 13-21-210, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 13-13-212, MCA, is amended to read:

“13-13-212. Application for absentee ballot — special provisions. (1)

(a) ~~An~~ *Except as provided in subsection (1)(b), an elector may apply for an absentee ballot by using a standardized form provided by rule by the secretary of state or by making a written request, which must include the applicant’s birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant’s county of residence within the time period specified in 13-13-211.*

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the 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 (2) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) 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.

(4) (a) When applying for an absentee ballot under this section, an elector may also request to be mailed an absentee ballot, as soon as the ballot becomes available, for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application.

(b) The election administrator shall mail an address confirmation form at least 75 days before the election to each elector who has requested an absentee ballot for subsequent elections. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for each subsequent election.

(c) An elector who has been removed from the register may subsequently request to be mailed an absentee ballot for each subsequent election.”

Section 2. Section 13-21-210, MCA, is amended to read:

“13-21-210. Application for absentee ballots. (1) (a) A United States elector may apply for regular absentee ballots as follows:

(a)(i) by making a written request, which must include the elector’s birth date and signature;

(a)(ii) by properly completing, signing, and returning to the election administrator the federal post card application; or

(a)(iii) by properly completing, signing, and returning to the appropriate county election administrator the federal write-in absentee ballot transmission envelope.

(b) *A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.*

(2) An application for a federal write-in absentee ballot must be received by the appropriate county election administrator not less than 30 days before the date of an election. An application received less than 30 days before the date of an election must be processed for the next election.

(3) An application under this section is valid for all state and local elections in the calendar year in which the application is made and the next two regularly scheduled federal general elections. The elector’s county election administrator shall provide the elector with a regular absentee ballot for the elections described in this subsection as soon as the ballots become available.”

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved April 17, 2007

CHAPTER NO. 222

[SB 378]

AN ACT PROVIDING THAT, FOR INDIVIDUAL INCOME TAXES AND CORPORATE LICENSE AND INCOME TAXES, IF A TERM IS NOT DEFINED, THEN THE DEFINITION IN THE INTERNAL REVENUE CODE APPLIES; AMENDING SECTIONS 15-30-305 AND 15-31-501, 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 15-30-305, MCA, is amended to read:

“15-30-305. Department rules — conformance with Internal Revenue Code. (1) The department is hereby authorized to make such *may adopt* rules and to *may* require such facts and information to be reported as it *may deem* considers necessary to enforce the provisions of this chapter.

(2) *If a term is not defined in this chapter, the term has the same meaning as it does when used in a comparable context in the Internal Revenue Code.*”

Section 2. Section 15-31-501, MCA, is amended to read:

“15-31-501. Department rules — conformance with Internal Revenue Code. (1) The department of revenue shall ~~have power to~~ prescribe forms for returns and notices and ~~such~~ other regulations as may ~~from time to time~~ be found necessary for the purpose of carrying into effect the provisions of this chapter.

(2) *If a term is not defined in this chapter, the term has the same meaning as it does when used in a comparable context in the Internal Revenue Code.*”

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, 2006.

Approved April 17, 2007

CHAPTER NO. 223

[SB 414]

AN ACT CLARIFYING THAT THE LAWS GOVERNING MOTOR CARRIERS DO NOT APPLY TO THE TRANSPORTATION OF HOUSEHOLD GOODS AND GARBAGE IN THE COMMERCIAL AREAS OF A CITY, TOWN, OR VILLAGE WITH A POPULATION OF LESS THAN 500 PERSONS; AND AMENDING SECTION 69-12-102, MCA.

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

Section 1. Section 69-12-102, MCA, is amended to read:

“69-12-102. Scope of chapter — exemptions. (1) This chapter does not affect:

(a) the operation of school buses that are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities that are sponsored or supervised by school authorities;

(b) the transportation by means of motor vehicles in the regular course of business of employees by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees in construction and production is concerned;

(c) the transportation of household goods and garbage by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas of a city, town, or village *with a population of less than 500 persons*, as determined by the commission;

(d) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

(e) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(f) ambulances;

(g) the transportation by motor vehicle of not more than 15 passengers between their places of residence or termini near their residences and their places of employment in a single daily round trip if the driver is also going to or from the driver's place of employment;

(h) the operation of:

(i) a transportation system by a municipality or transportation district as provided in Title 7, chapter 14, part 2;

(ii) a municipal bus service pursuant to Title 7, chapter 14, part 44; or

(iii) any public transportation system recognized by the Montana department of transportation as a federal transit administration provider pursuant to 49 U.S.C. 5311;

(i) armored motor vehicles used for the transportation of valuable paintings and other items of unusual value requiring special handling and security;

(j) the transportation of household goods or garbage under an agreement between a motor carrier and an office or agency of the United States government; or

(k) the transportation of persons provided by private, nonprofit organizations, including those recognized by the Montana department of transportation as federal transit administration providers pursuant to 49 U.S.C. 5310. As used in this subsection, "private, nonprofit organization" means an organization recognized as nonprofit under section 501(c) of the Internal Revenue Code.

(2) Except for the identification of ownership requirements provided in 69-12-408, this chapter does not affect commercial tow trucks designed and exclusively used in towing wrecked, disabled, or abandoned vehicles or while these tow trucks are rendering assistance to wrecked, disabled, or abandoned vehicles. However, commercial tow truck firms shall file policies of insurance showing coverage required by 61-8-906.

(3) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

Approved April 17, 2007

CHAPTER NO. 224

[SB 440]

AN ACT REQUIRING A MILITARY VETERAN IN THE MEMBERSHIP OF THE STATE WORKFORCE INVESTMENT BOARD; AMENDING SECTION 53-2-1203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 53-2-1203, MCA, is amended to read:

“53-2-1203. State workforce investment board — membership — duties. (1) There is a state workforce investment board.

(2) The state board consists of:

(a) the governor or a person designated by the governor to act on behalf of the governor;

(b) two members of the house of representatives, each from a different political party, and two members of the senate, each from a different political party, appointed by the presiding officer of each respective chamber; and

(c) individuals appointed by the governor, including:

(i) representatives of businesses located in Montana who:

(A) are owners of businesses, chief executive or operating officers, and other business executives or employers with optimum policymaking or hiring authority, including business members of local boards; and

(B) represent businesses with employment opportunities that reflect the employment opportunities in Montana;

(ii) chief elected officials of local government;

(iii) representatives of labor organizations;

(iv) representatives of individuals and organizations who have experience with respect to youth activities;

(v) representatives of individuals and organizations who have experience and expertise in the delivery of workforce investment activities;

(vi) representatives of the state agencies who are responsible for the programs and activities that are carried out by the one-stop centers, including but not limited to:

(A) the department of labor and industry;

(B) the department of public health and human services;

(C) the office of the commissioner of higher education; and

(D) the office of public instruction; and

(vii) *at least one representative of military veterans; and*

~~(vii)~~(viii) other representatives ~~that~~ *who* the governor may designate.

(3) The selection and appointment of members of the state board must follow the nominating provisions of section 111 of the Act, (29 U.S.C. 2821).

(4) The governor shall appoint enough individuals described in subsection (2)(c)(i) so that those persons compose a majority of the membership of the state board.

(5) The governor shall consider the special needs of Montana's hard-to-serve Indian population and the state's relationship with tribal governments when making appointments to the state board.

(6) The state board shall perform the functions described in section 111 of the Act, (29 U.S.C. 2821)."

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, 2007

CHAPTER NO. 225

[SB 453]

AN ACT CREATING A UNIFORM FRAMEWORK TO INFORM THE PUBLIC OF MATTERS BEFORE THE BOARDS AND PROGRAMS OF THE DEPARTMENT OF LABOR AND INDUSTRY WITH RESPECT TO DISCIPLINARY PROCEEDINGS; AMENDING SECTIONS 37-1-101, 37-1-131, 37-1-136, 37-1-311, AND 37-1-405, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 37-1-101, MCA, is amended to read:

"37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department of labor and industry shall:

(1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;

(2) standardize policies and procedures and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) contract for or administer and grade examinations required by each board;

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;

(6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;

(7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307~~(1)(e)~~(1)(d);

(9) provide notice to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;

(10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary; ~~and~~

(11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided.

(12) adopt uniform rules for all boards and department programs to comply with the public notice requirements of 37-1-311 and 37-1-405. The rules may require the posting of only the licensee's name and the fact that a hearing is being held when the information is being posted on a publicly available website prior to a decision leading to a suspension or revocation of a license or other final decision of a board or the department."

Section 2. Section 37-1-131, MCA, is amended to read:

"37-1-131. Duties of boards — quorum required. (1) A quorum of each board within the department shall:

~~(1)~~(a) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

~~(2)~~(b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

~~(3)~~(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection ~~(2)~~ (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

~~(4)~~(d) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

~~(5)~~(e) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

~~(6)~~(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

~~(7)~~(3) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of

performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure as provided in 37-1-306. If the board or department requires continuing education for continued licensure, the board or department may not audit or verify continuing education requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement after the renewal period closes.

(8)(4) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

(5) *A board shall adopt rules governing the provision of public notice as required by 37-1-311.*

Section 3. Section 37-1-136, MCA, is amended to read:

“37-1-136. Disciplinary authority of boards — injunctions. (1) Subject to 37-1-138, each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

- (a) revocation of a license;
- (b) suspension of its judgment of revocation on terms and conditions determined by the board;
- (c) suspension of the right to practice for a period not exceeding 1 year;
- (d) placing a licensee on probation;
- (e) reprimand or censure of a licensee; or
- (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

(4) An action may not be taken against a person who is in compliance with Title 50, chapter 46.

(5) *Rules adopted under subsection (1) must provide for the provision of public notice as required by 37-1-311.*

Section 4. Section 37-1-311, MCA, is amended to read:

“37-1-311. Findings of fact — order — report. (1) If the board decides by a preponderance of the evidence, following a hearing or on default, that a violation of this part occurred, the department shall prepare and serve the board's findings of fact and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the

department shall prepare and serve the board's findings of fact and an order of dismissal of the charges.

~~(2) The department may report the issuance of a notice and final order to:~~

~~(a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;~~

~~(b) appropriate public and private organizations that serve the profession or occupation; and~~

~~(c) the public.~~

(2) (a) The department shall within a reasonable amount of time report to the public the issuance of a summary suspension, a notice under 37-1-309, an accepted stipulation, a hearing examiner's proposed decision, and a final order.

(b) In addition to any other means of notice, the department shall post the required information on a publicly available website.

(c) This subsection (2) may not be construed to require a meeting to be open or records to be disseminated when the demands of individual privacy clearly exceed the merits of public disclosure."

Section 5. Section 37-1-405, MCA, is amended to read:

"37-1-405. Findings of fact — order — report. (1) If the department finds by a preponderance of the evidence, following a hearing or on default, that a violation of this part has occurred, the department shall prepare and serve findings of fact, conclusions of law, and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve an order of dismissal of the charges.

~~(2) The department may report the issuance of a notice and final order to:~~

~~(a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;~~

~~(b) appropriate public and private organizations that serve the profession or occupation; and~~

~~(c) the public.~~

(2) (a) The department shall within a reasonable amount of time report to the public the issuance of a summary suspension, a notice under 37-1-403, an accepted stipulation, a hearing examiner's proposed decision, and a final order.

(b) In addition to any other means of notice, the department shall post the required information on a publicly available website.

(c) This subsection (2) may not be construed to require a meeting to be open or records to be disseminated when the demands of individual privacy clearly exceed the merits of public disclosure."

Section 6. 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 7. Effective date. [This act] is effective January 1, 2009.

Approved April 17, 2007

CHAPTER NO. 226

[SB 459]

AN ACT GIVING PREFERENCE TO PRODUCTS MADE IN THE UNITED STATES WHEN EQUAL CHOICES EXIST; AND AMENDING SECTIONS 18-4-301 AND 18-4-303, MCA.

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

Section 1. Section 18-4-301, MCA, is amended to read:

“18-4-301. Definitions. As used in this part, the following definitions apply:

(1) “Alternative procurement method” means a method of procuring supplies or services in a manner not specifically described in this chapter, but instead authorized by the department under 18-4-302.

(2) “*American-made*” means either a product made exclusively within the United States or a value-added product consisting of a product that contains 50% or more of materials from the United States.

(2)(3) “Cost-reimbursement contract” means a contract under which a contractor is reimbursed for costs that are allowable and allocable in accordance with the contract terms and the provisions of this chapter and a fee, if any.

(3)(4) (a) “Displacement” means the layoff, demotion, or involuntary transfer of a state employee.

(b) Displacement does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

(4)(5) “Established catalog price” means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(5)(6) “Invitation for bids” means all documents, whether attached or incorporated by reference, used for soliciting bids.

(6)(7) “Office supply” means an item included under the office supply commodity class codes maintained by the department.

(7)(8) “Purchase description” means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

(8)(9) “Request for proposals” means all documents, whether attached or incorporated by reference, used for soliciting proposals.

(9)(10) “Responsible” means the capability in all respects to perform fully the contract requirements and the integrity and reliability that will ensure good faith performance.

(10)(11) “Responsive” means conforms in all material respects to the invitation for bids or request for proposals.

(11)(12) "Term contract" means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time."

Section 2. Section 18-4-303, MCA, is amended to read:

"18-4-303. Competitive sealed bidding. (1) An invitation for bids must be issued and must include a purchase description and conditions applicable to the procurement.

(2) Adequate public notice of the invitation for bids must be given a reasonable time before the date set forth in the invitation for the opening of bids, in accordance with rules adopted by the department. Notice may include publication in a newspaper of general circulation at a reasonable time before the bid opening.

(3) Bids must be opened publicly at the time and place designated in the invitation for bids. Each bidder and any member of the public has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids after they are opened and reviewed by the procurement officer for release, subject to the same limitations specified in 18-4-304(4) for competitive sealed proposals.

(4) The amount of each bid and other relevant information as may be specified by rule, together with the name of each bidder, must be recorded. The record must be open to public inspection.

(5) After the time of award, all bids and bid documents must be open to public inspection in accordance with the provisions of 18-4-126.

(6) Bids must be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs. The invitation for bids must set forth the evaluation criteria to be used. Only criteria set forth in the invitation for bids may be used in bid evaluation.

(7) Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on bid mistakes may be permitted in accordance with rules adopted by the department. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the state or fair competition may not be permitted. Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes must be supported by a written determination made by the department.

(8) If an award is made, it must be made with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, including the preferences established by Title 18, chapter 1, part 1. If all bids exceed available funds as certified by the appropriate fiscal officer and the lowest responsible and responsive bid does not exceed the funds by more than 5%, the director or the head of a purchasing agency may, in situations in which time or economic considerations preclude resolicitation of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the lowest responsible and responsive bidder in order to bring the bid within the amount of available funds.

(9) When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

(10) In case of a tie bid, preference must be given to the bidder, if any, offering American-made products or supplies.”

Approved April 17, 2007

CHAPTER NO. 227

[SB 480]

AN ACT REQUIRING DISCLOSURE OF THE COLLECTION AND USE OF CERTAIN DATA GATHERED BY RENTAL VEHICLE ENTITIES.

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

Section 1. Disclosure of data from rental vehicle — definitions. (1)

(a) Except as provided in subsection (1)(b), a rental vehicle entity that rents a rental vehicle equipped with a global positioning system or a satellite navigation system to a person in this state shall disclose in the rental agreement or a written addendum to the rental agreement the presence and purpose of the system.

(b) A rental vehicle entity that uses a global positioning system or a satellite navigation system only to track lost or stolen vehicles or provide navigational services is not required to provide the disclosure in subsection (1)(a).

(2) As used in this section:

(a) “rental agreement” means a written agreement setting forth the terms and conditions governing the use of a rental vehicle that is provided by a rental vehicle entity for the rental of a rental vehicle for a period of not more than 90 days;

(b) “rental vehicle” means a light vehicle, a motorcycle, a motor-driven cycle, a quadricycle, or an off-highway vehicle that is used under a rental agreement by a person other than the owner of the rental vehicle;

(c) “rental vehicle entity” means a business entity that provides rental vehicles to the public without a driver, pilot, or operator under a rental agreement for a fee.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 12, and the provisions of Title 61, chapter 12, apply to [section 1].

Approved April 17, 2007

CHAPTER NO. 228

[SB 502]

AN ACT CLARIFYING CURRENT EXEMPTIONS TO THE ACCESSIBILITY STANDARDS FOR POLLING PLACES; AMENDING SECTIONS 13-3-202, 13-3-205, 13-3-206, 13-3-207, 13-3-212, AND 13-3-213, MCA; AND REPEALING SECTIONS 13-3-203 AND 13-3-204, MCA.

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

Section 1. Section 13-3-202, MCA, is amended to read:

“13-3-202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) “Accessible” means accessible to individuals with disabilities and elderly individuals for purposes of voting as determined in accordance with standards established by the secretary of state under 13-3-205.

(2) “Disability” means a temporary or permanent physical impairment such as:

(a) impaired vision;

(b) impaired hearing; or

(c) impaired mobility. Individuals having impaired mobility include those who require use of a wheelchair and those who are ambulatory but are physically impaired because of age, disability, or disease.

(3) “Elderly” means 65 years of age or older.

(4) “Election” means a general, special, or primary election held in an even-numbered year, as provided for in 13-1-104(1) and 13-1-107(1).

(5) “Inaccessible” means not accessible under standards adopted pursuant to 13-3-205.

(6) “Rural polling place” means a location that is expected to serve less than 200 registered electors.”

Section 2. Section 13-3-205, MCA, is amended to read:

“13-3-205. Adoption of standards for polling place accessibility — rulemaking authority. (1) ~~(a)~~ The secretary of state, with advice from election administrators and individuals with disabilities and elderly individuals, shall establish standards for accessibility of polling places.

~~(b)(2)~~ (a) ~~For~~ Standards for polling places approved pursuant to this subsection (1) prior to October 1, 2005, the standards, whenever possible, must be consistent with the standards for accessibility established by the American national standards institute and the uniform federal accessibility standards.

(2)(b) ~~Polling~~ Standards for polling places approved on or after October 1, 2005, must comply with the accessibility standards in the Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq.

(3) *The secretary of state:*

(a) *may adopt rules to implement the provisions of this part; and*

(b) *shall adopt rules to implement the exemption provisions of 13-3-212.”*

Section 3. Section 13-3-206, MCA, is amended to read:

“13-3-206. Survey of polling places to determine accessibility — procedures. (1) ~~Except as provided in 13-3-207 and 13-3-211, the~~ *The* election administrator in each county shall conduct an onsite survey of each polling place used in an election to determine whether ~~such polling place~~ *it* meets the standards for accessibility established under 13-3-205.

(2) Each election administrator shall conduct the survey in a manner that represents the path of travel *that* an elector would reasonably be expected to take in order to reach the polling place on election day.

(3) A polling place that has been surveyed and designated as accessible pursuant to this section need not be surveyed again so long as unless the conditions of accessibility remain unchanged change.”

Section 4. Section 13-3-207, MCA, is amended to read:

“13-3-207. Polling place classifications. (1) As a result of the survey provided in 13-3-206, each polling place must be classified as:

- (a)(1) accessible; or
- (b)(2) inaccessible;
- (c) technically inaccessible but usable; or
- (d) rural.

(2) An accessible polling place is one that meets the standards for accessibility established by the secretary of state under 13-3-205.

(3) An inaccessible polling place is one that does not meet the standards for accessibility and cannot be made accessible through safe, practical, and cost-effective methods.

(4) A technically inaccessible but usable polling place is one that does not meet all the standards for accessibility but has been surveyed, evaluated, and certified as being adequate for use as a polling place. The certification is cause for the secretary of state to grant the polling place an exemption from the standards for accessibility. However, in a future election, the secretary of state may issue an objection to the criteria used for determining that the facility is usable as a polling place.

(5) A rural polling place is one that serves less than 200 registered electors and is:

- (a) granted an exemption from the standards for accessibility established under 13-3-205; and
- (b) subject to review and redesignation 45 days prior to an election.

(6) A rural designation may not be construed as cause for denying electors with disabilities or elderly electors at a polling place the right to choose an alternative means for casting a ballot on election day as provided in 13-3-213.”

Section 5. Section 13-3-212, MCA, is amended to read:

“13-3-212. Exemption if no accessible polling place is reasonably available. (1) If an existing polling place has been surveyed and designated as being inaccessible, the election administrator shall make a reasonable effort to locate and survey all potential sites with comparable utility as a polling place.

(2)(1) The If an election administrator desires to designate as a polling place a location that is inaccessible, the election administrator shall shall make a request in writing to the secretary of state asking that an inaccessible polling place be exempt from the standards for accessibility.

(2) The secretary of state may grant an exemption pursuant to rules adopted under 13-3-205 if:

- (a) all potential polling places have been surveyed and it is determined that:
 - (a) no an accessible polling place is not available; and
 - (b) the county cannot safely or reasonably make a polling place temporarily accessible in the area involved.; or
- (3) Nothing in this section may require an election administrator to select

(b) the location is a rural polling place and designation of an accessible facility as a polling place if its location requires will require excessive travel or imposes other hardships for the majority of qualified electors in the precinct.”

Section 6. Section 13-3-213, MCA, is amended to read:

“13-3-213. Alternative means for casting ballot. (1) The election administrator shall provide individuals with disabilities and elderly individuals an alternative means for casting a ballot on election day if they are assigned to an inaccessible polling place. These alternative means for casting a ballot include:

- (a) delivery of a ballot to the elector as provided in 13-13-118;
- (b) voting by absentee ballot as provided in 13-13-222; and
- (c) prearranged assignment to an accessible polling place within the county.

(2) An elector with a disability or an elderly elector assigned to an inaccessible polling place who desires to vote at an accessible polling place:

(a) shall request assignment to an accessible polling place by notifying the election administrator in writing at least 7 days preceding the election;

(b) must be assigned to the nearest accessible polling place ~~or technically inaccessible polling place~~ for the purpose of voting in the election;

(c) shall sign the elector’s name on a special addendum to the official precinct register as required in 13-2-601; and

(d) must receive the same ballot to which the elector is otherwise entitled.

(3) For the purpose of subsection (2), the ballot cast at an alternative polling place must be processed and counted in the same manner as an absentee ballot.”

Section 7. Repealer. Sections 13-3-203 and 13-3-204, MCA, are repealed.

Approved April 17, 2007

CHAPTER NO. 229

[SB 527]

AN ACT REVISING WHEN CONDOMINIUM CONSTRUCTION IS EXEMPT FROM REVIEW UNDER CERTAIN PROVISIONS OF THE MONTANA SUBDIVISION AND PLATTING ACT; AMENDING SECTION 76-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 76-3-203, MCA, is amended to read:

“76-3-203. Exemption for certain condominiums. Condominiums constructed on land ~~divided~~ *subdivided* in compliance with *parts 5 and 6* of this chapter *or on lots within incorporated cities and towns* are exempt from the provisions of this chapter if:

(1) the approval of the original ~~division~~ *subdivision* of land expressly contemplated the construction of the condominiums and any applicable park dedication requirements in 76-3-621 are complied with; or

(2) the condominium proposal is in conformance with applicable local zoning regulations ~~where~~ *when* local zoning regulations are in effect.”

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

Approved April 17, 2007

CHAPTER NO. 230

[HB 12]

AN ACT GENERALLY REVISING LAWS RELATED TO PROSECUTION SERVICES; PROVIDING LEGISLATIVE FINDINGS; REVISING THE FUNDING OF AND BUDGETING FOR COUNTY ATTORNEY SALARIES; CLARIFYING CERTAIN PROVISIONS ON COUNTY POPULATION AND FULL-TIME OR PART-TIME COUNTY ATTORNEY POSITIONS; PROVIDING FOR THE STATUTORY APPROPRIATION OF STATE CONTRIBUTIONS FOR COUNTY ATTORNEY SALARIES; AMENDING SECTIONS 7-4-2502, 7-4-2503, 7-4-2704, 7-4-2706, 17-7-112, AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Legislative findings — county attorney workload and salaries. The legislature finds that:

(1) a significant portion of the work done by county attorneys is for the prosecution of criminal cases under state law and for the enforcement of state civil law concerning child abuse and neglect pursuant to Title 41, chapter 3;

(2) the county attorney workloads vary greatly from county to county;

(3) it is in the state's best interest to promote consistent statewide prosecution services and to support the office of county attorney as a career position that will attract experienced and well-qualified attorneys, especially considering the enactment of a statewide public defender system in 2005;

(4) because a county attorney is an elected county official and has a vital role in providing civil legal services to the county and because each county has unique needs to consider, the county attorney's salary should be set by the county;

(5) because county attorneys provide both state and county services, the responsibility for funding county attorney salaries should be a responsibility shared by the state and the counties; and

(6) the state's funding responsibility should be met through a predictable and ongoing appropriation, thus through a statutory appropriation.

Section 2. Section 7-4-2502, MCA, is amended to read:

“7-4-2502. Payment of salaries of county officials and assistants — state share for county attorney — statutory appropriation. (1) The salaries of the county officers and their assistants may be paid monthly, twice monthly, or every 2 weeks out of the general fund of the county and upon the order of the board of county commissioners.

(2) ~~(a) The funding for the salary of and health insurance benefits for the county attorney is payable one-half from the general fund of the county and, if the county has supplied the information to the department of justice for inclusion in its budget, the other one-half from the state treasury upon the warrant of the state treasurer. If the county has not supplied information concerning any scheduled or proposed increase in salary for the county attorney~~

to the department of justice for inclusion in material submitted to the budget director under Title 17, chapter 7, part 1, the county is responsible for any increased salary. The state's share of the county attorney's salary is payable every 2 weeks.

~~(b) The county commissioners of each county shall, within 30 days after the election or appointment to fill a vacancy for any cause in the office of county attorney, certify the election or appointment to the department of justice. The department shall notify the state treasurer of the salary of the county attorney. The state treasurer shall draw warrants for the county attorney salaries in the same manner as for state officers. In case of a vacancy, the county commissioners shall immediately notify the department of justice, and the department shall compute the salary due on the basis of the notification a shared responsibility of the state and the county. The state's share is payable as provided in subsection (3).~~

~~(3) (a) For each fiscal year, the department of justice shall pay to each county and consolidated government the amount calculated under subsection (3)(b). Payments must be made quarterly.~~

~~(b) (i) For each county and consolidated government with a full-time county attorney, the amount paid each fiscal year must be equal to 50% of 85% of a district court judge's salary most recently set under 3-5-211 plus an amount equal to 50% of the employer contribution for group benefits under 2-18-703(2) for an employee as defined in 2-18-701.~~

~~(ii) For each county and consolidated government with a part-time county attorney, the total amount paid each fiscal year must be equal to the amount calculated under subsection (3)(b)(i) prorated according to the position's regular work hours.~~

~~(c) For the purpose of this subsection (3), the following definitions apply:~~

~~(i) "Full-time county attorney" means that as of July 1 immediately preceding the regular legislative session, the county attorney position has been established as a full-time position pursuant to 7-4-2706.~~

~~(ii) "Part-time county attorney" means that as of July 1 immediately preceding the regular legislative session, the county attorney position has been established as a part-time position pursuant to 7-4-2706.~~

~~(iii) "Salary" means wage plus the employer contributions required for retirement, workers' compensation insurance, and the Federal Insurance Contributions Act as determined for a district court judge.~~

~~(4) The amount to be paid to each county pursuant to subsection (3) is statutorily appropriated, as provided in 17-7-502, from the general fund to the department of justice.~~

~~(3)(5) The board may, under limitations and restrictions prescribed by law, fix the compensation of all county officers not otherwise fixed by law and provide for the payment of the compensation and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504, set their salaries at the prior fiscal year level."~~

Section 3. 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 office, 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.

(d) If the clerk and recorder is also the county election administrator, the clerk and recorder may receive, in addition to the base salary provided in subsection (1)(a), up to \$2,000 a year. The additional salary provided for in this subsection (2)(d) may not be included as salary for the purposes of computing the compensation of any other county officers or employees.

(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 Subject to subsection (3)(b), the salary for the county attorney must be set as provided in subsection (4).~~

~~(b) If the uniform base salary set for county officials pursuant to subsection (1) is increased, then the county attorney is entitled to an at least the same increase in salary based upon the schedule developed and approved by the county compensation board as provided in subsection (4), unless the increase would cause the county attorney's salary to exceed the salary of a district court judge.~~

~~(d)(c) (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 to four resident taxpayers appointed initially by the board of county commissioners to staggered terms of 3 years, with the initial appointments of one or two taxpayer members for a 2-year term and one or two taxpayer 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.”

Section 4. Section 7-4-2704, MCA, is amended to read:

“7-4-2704. Limitations on activities of county attorneys and deputy county attorneys. (1) The county attorney, except for ~~his~~ *the county attorney’s* own services, ~~must~~ *may* not present ~~any~~ a claim, account, or other demand for allowance against the county or in any way advocate the relief asked on the claim or demand made by another.

(2) ~~In~~ *Except as provided in subsection (4), in each county with a population in excess of 30,000, in which the office of county attorney is a full-time position pursuant to 7-4-2706,* the county attorney is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law, except that ~~he~~ *the county attorney may engage in self-representation and may represent the county attorney’s* ~~represent himself and his immediate family and except as provided in subsection (4).~~

(3) ~~Any~~ *Except as provided in subsection (4), a deputy county attorney in a county with a population in excess of 30,000 in which the office of county attorney is a full-time position pursuant to 7-4-2706 and who is paid 70% or more of the county attorney’s salary is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law,*

except as to those matters in which ~~he~~ *the deputy county attorney* has a direct interest ~~and except as provided in subsection (4).~~

(4) Any elected or appointed county attorney and any deputy county attorney ~~shall~~ *must*, upon demonstration of need to the board of county commissioners, be granted a period of time, not to exceed 3 months from the date ~~he~~ *that the person* takes office, to complete any pending matters remaining from ~~any~~ *a* previous private practice of law. During ~~such~~ *that* time, the county attorney and any appointed deputy are bound by the customary rules of ethics applicable to attorneys at law.”

Section 5. Section 7-4-2706, MCA, is amended to read:

“7-4-2706. County attorney to be full or part time — resolution — salary. (1) (a) In ~~any~~ *a* county with a population of less than 30,000, the county commissioners may, ~~upon~~ *with* the consent of the county attorney, ~~on July 1 of any year~~ by resolution *effective July 1 of any year* establish the office of county attorney as a full-time *or part-time* position subject to the provisions of 7-4-2701 and 7-4-2704. The salary for this position is the salary established pursuant to 7-4-2503.

(2) In any county in which the office of county attorney has been established as a full-time position under subsection (1), the county commissioners may, by resolution and upon the consent of the county attorney, establish the office as a part-time position on July 1 of any year.

(b) *A copy of a resolution adopted under subsection (1)(a) must be provided to the department of justice.*

(2) *In a county with a population of 30,000 or more, the office of county attorney must be a full-time position.”*

Section 6. Section 17-7-112, MCA, is amended to read:

“17-7-112. Submission deadlines — budgeting schedule. The following is the schedule for the preparation of a state budget for submission to the legislature convening in the following year:

(1) By August 1, forms necessary for preparation of budget estimates must be distributed pursuant to 17-7-111(2).

(2) ~~(a)~~ By September 1, each agency shall submit the information required under 17-7-111 to the budget director. ~~The department of justice shall submit information received from counties concerning the state’s share of county attorney salaries.~~

~~(b) As provided in 7-4-2502(2)(a), the department of justice is not obligated to provide more than one-half of the salary of a county attorney based on the amount included in the department’s budget and appropriated for that purpose.~~

(3) By September 1, the budget director shall submit each state agency’s budget request required under 17-7-111(3) to the legislative fiscal analyst. The transfer of budget information must be done on a schedule mutually agreed to by the budget director and the legislative fiscal analyst in a manner that facilitates an even transfer of budget information that allows each office to maintain a reasonable staff workflow.

(4) By October 10, the budget director shall furnish the legislative fiscal analyst with a preliminary budget reflecting the base budget in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst.

(5) By October 30, a budget request must be prepared by the budget director and submitted to the legislative fiscal analyst on behalf of any agency that did not present the information required by this section. The budget request must be based upon the budget director's studies of the operations, plans, and needs of the institution, university unit, or agency.

(6) By November 1, the budget director shall furnish the legislative fiscal analyst with a present law base for each agency and a copy of the documents that reflect the anticipated receipts and other means of financing the base budget and present law base for each fiscal year of the ensuing biennium. The material must be in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst.

(7) By November 12, the budget director shall furnish the legislative fiscal analyst with the documents, in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst, that reflect expenditures to the second level, as provided in 17-1-102(3), by funding source and detailed by accounting entity.

(8) By November 15, the proposed pay plan schedule and the information technology summary required by 17-7-111(4), a preliminary budget that meets the statutory requirements for submission of the budget to the legislature, and a summary of the preliminary budget designed for distribution to members and members-elect of the legislature must be submitted to the legislative fiscal analyst.

(9) By December 15, the budget director shall submit a preliminary budget to the governor and to the governor-elect, if there is one, as provided in 17-7-121, and shall furnish the legislative fiscal analyst with all amendments to the preliminary budget.

(10) By January 7, recommended changes proposed by a governor-elect must be transmitted to the legislative fiscal analyst and the legislature as provided in 17-7-121."

Section 7. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 7-4-2502; 10-2-603; 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; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204;

23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; 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, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 8. Effective date. [This act] is effective July 1, 2007.

Approved April 23, 2007

CHAPTER NO. 231

[HB 526]

AN ACT REVISING THE TERRITORIAL INTEGRITY ACT LAWS TO AVOID WASTEFUL DUPLICATION OF FACILITIES; CLARIFYING AND DEFINING CERTAIN TERMS; ELIMINATING THE REBUTTABLE PRESUMPTION THAT THE NEAREST LINE IS THE LEAST-COST ELECTRIC SERVICE FACILITY FOR A NEW CUSTOMER; CLARIFYING ELECTRIC SERVICE FACILITIES PROVIDED TO LARGE CUSTOMERS; PROVIDING A PROCESS FOR SERVICING NEW SUBDIVISIONS; PROVIDING A DISPUTE RESOLUTION PROCESS; AMENDING SECTIONS 69-5-102, 69-5-105, 69-5-106, AND 69-5-110, 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 69-5-102, MCA, is amended to read:

“69-5-102. Definitions. When used in this part, the following definitions apply:

(1) “Agreement” means a written agreement between two or more electric facilities providers that identifies the geographical area to be served exclusively by each electric facilities provider that is a party to the agreement and any terms and conditions pertinent to the agreement.

(2) "*Cost*" means the gross cost of constructing new electric service facilities to the premises, using new materials and similar design standards required to meet the load, from a point where there is existing electrical capacity to serve.

~~(2) "Electric cooperative" means a rural electric cooperative organized under Title 35, chapter 18, or a foreign corporation admitted thereunder to do business in Montana.~~

~~(3)(3) "Electric facilities provider" means any utility that provides electric service facilities to the public.~~

~~(4)(4) "Electric service facilities" means any distribution or transmission system or related facility necessary to provide electricity to the premises, including lines.~~

~~(5) "Electric utility" means a person, firm, or corporation other than an electric cooperative that provides electric service facilities to the public.~~

~~(5) "Large customer" means any premises, except subdivisions, with the estimated connected load for full operation at an individual service for the premises of 500 kilowatts or larger.~~

~~(6) "Line" means any electric supply conductor material that is used to convey electrical energy and that is normally energized between 2,400 volts phase to ground and 14,400 volts phase to ground.~~

~~(7) "Premises" means a building, residence, structure, irrigation pump, or facility to which electric service facilities are provided or are to be installed; however However, two or more buildings, structures, irrigation pumps, or facilities that are located on one tract or contiguous tracts of land and that are used by one electric consumer for farming, business, commercial, industrial, institutional, governmental, or trailer court purposes must together constitute one premises, except that any building, structure, irrigation pump, or facility, other than a trailer court, may not, together with any other building, structure, irrigation pump, or facility, constitute one premises if the electric service to it is separately metered and the charges for that service are calculated independently of charges for service to any other building, structure, irrigation pump, or facility.~~

~~(8) "Regulated utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.~~

~~(9) "Subdivision" has the meaning provided for in 76-3-103. The definition includes subdivisions that may be developed in one or more phases of development at different periods of time.~~

~~(8)(10) "Utility" means a public utility regulated by the commission pursuant to Title 69, chapter 3, or a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18, or their successors or assignees.~~

~~(11) "Vector" means a straight line between two points."~~

Section 2. Section 69-5-105, MCA, is amended to read:

"69-5-105. Service to new consumers. (1) ~~Subject to this part, Except as provided in 69-5-106 and [section 5],~~ the electric facilities provider ~~having that has a line nearest the premises, and that has the capacity to serve the premises,~~ as measured in accordance with subsection (2), shall provide electric service facilities to the premises initially requiring service after May 2, 1997, ~~which creates a rebuttable presumption that the nearest line is the least-cost electric~~

service facility to the new customer. However, a customer or another electric facilities provider may rebut the presumption, and another electric facilities provider may provide the electric service facilities if it can do so at less cost.

(2) All measurements under this part must be made on the shortest straight line vector that can be drawn from the conductor line nearest the premises to the nearest permanent portion of the premises.

~~(3) If the electric facilities providers are unable to reach agreement as to which electric facilities provider can provide electric service facilities at least cost, an independent consultant engineer agreeable to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric facilities provider can extend its lines to the consumer at the least cost. The cost of those engineering services must be paid equally by the electric facilities providers involved."~~

Section 3. Section 69-5-106, MCA, is amended to read:

"69-5-106. Electric service facilities to large customers. (1) An electric *A regulated utility electric facilities provider* has the right to furnish electric service facilities to any premises if the estimated connected load for full operation at the premises will be 400 kilowatts or larger within 2 years from the date of initial service and the premises of a large customer if the electric regulated utility electric facilities provider can extend its electric service facilities to the premises of a large customer at less cost to the electric utility than the electric cooperative cost than other electric facilities providers. The estimated connected load must be determined from the plans and specifications prepared for construction of the premises or, if an estimate is not available, must be determined by mutual agreement of the electric facilities provider and the large customer. The fact that the actual connected load after 2 years from the date of initial service is less than 400 kilowatts does not affect the right of the electric facilities provider initially providing electric service facilities to continue to provide electric service facilities to the premises:

~~(2) An independent consultant engineer agreeable to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric facilities provider can extend its facilities at the least cost to the utility. The cost of those engineering services must be paid equally by the electric facilities providers involved."~~

Section 4. Section 69-5-110, MCA, is amended to read:

"69-5-110. Jurisdiction of district courts over disputes. The district courts of the county or counties within which the premises, vectors, or lines involved in any dispute are located have jurisdiction under this part over all electric facilities providers subject to this part."

Section 5. Service to new subdivisions. (1) Except as provided in 69-5-108, if two or more electric facilities providers have lines in general proximity to a new subdivision, electric service to the new subdivision must be apportioned by drawing a series of vectors through the subdivision equidistant from the lines of each electric facilities provider with that part of the subdivision closest to an electric facilities provider's line receiving service from that electric facilities provider.

(2) Nothing in this section prohibits electric facilities providers from agreeing among themselves on how to provide service to a new subdivision.

Section 6. Review by independent consultant. (1) If electric facilities providers that have provided cost estimates to a new large customer are unable to reach agreement as to which electric facilities provider can provide electric service facilities at the least cost, an independent consultant engineer agreeable to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric facilities provider can extend its line to the new large customer at the least cost. The cost of those engineering services must be paid equally by the electric facilities providers involved.

(2) If electric facilities providers proposing to provide service to a subdivision do not agree on the location of a vector, as provided in [section 5(1)], an independent consultant engineer agreeable to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine the location of a vector. The cost of those engineering services must be paid equally by the electric facilities providers involved.

(3) If electric facilities providers having lines near the premises of a new consumer do not agree if a line has capacity to serve the premises, an independent consultant engineer agreeable to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine if a line has capacity to serve the premises. The cost of those engineering services must be paid equally by the electric facilities providers involved.

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. Codification instruction. [Sections 5 and 6] are intended to be codified as an integral part of Title 69, chapter 5, part 1, and the provisions of Title 69, chapter 5, part 1, apply to [sections 5 and 6].

Section 9. Effective date. [This act] is effective on passage and approval.

Section 10. Applicability. [This act] does not apply to any pending litigation filed under the Territorial Integrity Act on or before [the effective date of this act].

Approved April 23, 2007

CHAPTER NO. 232

[HB 540]

AN ACT REVISING SILICOSIS BENEFITS; APPROPRIATING FUNDS TO THE DEPARTMENT OF LABOR AND INDUSTRY TO INCREASE SILICOSIS BENEFITS BY \$50 A MONTH FOR EACH INDIVIDUAL RECEIVING BENEFITS; AMENDING SECTIONS 39-73-101, 39-73-103,

39-73-104, 39-73-107, AND 39-73-109, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 39-73-101, MCA, is amended to read:

“39-73-101. Definitions. (1) “Examining board” means a well-qualified physician or physicians, as designated by the department of labor and industry.

(2) The term “gainful occupation” may not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential but means any person having an income from any other source exceeding ~~§300~~ *§350* a month.

(3) “Payments” means money payments to persons having silicosis.

(4) “Silicosis” means a fibrotic condition of the lungs due to the inhalation of silica dust.”

Section 2. Section 39-73-103, MCA, is amended to read:

“39-73-103. Conformity with acts of federal government. If the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, the department of labor and industry is authorized to administer the grants-in-aid and payments in addition to grants made by this chapter. The total payments to any individual under this chapter may not exceed ~~§300~~ *§350* a month, exclusive of any grants made by congress.”

Section 3. Section 39-73-104, MCA, is amended to read:

“39-73-104. Eligibility requirements for benefits. Payment must be made under this chapter to any person who:

(1) has silicosis, as defined in 39-73-101, that results in the person’s total disability so as to render it impossible for the person to follow continuously any substantially gainful occupation;

(2) has resided in and been an inhabitant of the state of Montana for 10 years or more immediately preceding the date of the application;

(3) is not receiving, with respect to any month for which the person would receive a payment under this chapter, compensation under 39-71-115 equal to the sum of ~~§300~~ *§350*.”

Section 4. Section 39-73-107, MCA, is amended to read:

“39-73-107. Amount of payments. Subject to the provisions of this chapter and the deductions provided in this chapter, any person who has silicosis and who has, subject to the regulations and standards of the department of labor and industry, been determined by the department to be entitled to payment under this chapter for silicosis must be granted a payment by the department of ~~§300~~ *§350* a month, subject to any additional appropriations. If the person is receiving payments under 39-71-715 that are less in the aggregate than ~~§300~~ *§350*, then the person is entitled to a payment under this chapter of the difference between the amount received under 39-71-715 and ~~§300~~ *§350* a month. The legislature shall authorize additional appropriations that may be necessary to make the increased monthly payments provided in this section.”

Section 5. Section 39-73-109, MCA, is amended to read:

“39-73-109. Payment of benefits to surviving spouse. (1) Upon the death of a person receiving payments for silicosis under 39-73-104 or 39-73-108,

the surviving spouse, as long as the spouse remains unmarried, is entitled to receive the payments granted to the deceased spouse.

(2) A person who otherwise is qualified to receive payments under subsection (1) but whose spouse died prior to March 14, 1974, is eligible to begin receiving \$300 \$350 a month.”

Section 6. Appropriation. The following money is appropriated from the general fund to the department of labor and industry to fund an increase of \$50 a month for each individual who receives silicosis benefits:

Fiscal year 2008	\$21,000
Fiscal year 2009	\$21,000

Section 7. Effective date. [This act] is effective July 1, 2007.

Approved April 23, 2007

CHAPTER NO. 233

[SB 185]

AN ACT PROVIDING FOR THE OPERATION OF ELECTRIC VEHICLES; DEFINING “MEDIUM-SPEED ELECTRIC VEHICLE”; PROHIBITING OPERATION OF A MEDIUM-SPEED ELECTRIC VEHICLE ON CERTAIN HIGHWAYS; REQUIRING CERTAIN EQUIPMENT ON A MEDIUM-SPEED ELECTRIC VEHICLE; ALLOWING FOR THE OPERATION OF A VEHICLE EQUIPPED A CERTAIN WAY WITHOUT A MOTORCYCLE ENDORSEMENT; AMENDING SECTIONS 61-1-101 AND 61-5-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 61-1-101, MCA, is amended to read:

“61-1-101. Definitions. As used in this title, unless the context indicates otherwise, the following definitions apply:

(1) (a) “Authorized agent” means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department’s motor vehicle titling, registration, or driver records, using an approved automated interface, for specific functions or purposes upon behalf of a third party.

(b) For purposes of this subsection (1), “person” means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.

(2) “Authorized agent agreement” means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent must operate in performing specific motor vehicle or driver-related record functions.

(3) “Bus” means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(4) (a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(b) The term does not include a truck canopy cover or topper.

(5) "Certificate of title" means the paper record issued by the department 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.

(6) "Commercial driver's license" means:

(a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; and

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.

(7) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(i) 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;

(ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(iii) is designed to transport at least 16 passengers, including the driver;

(iv) is a school bus; or

(v) is of any size and is used in the transportation of hazardous materials as defined in 61-8-801.

(b) The following vehicles are not commercial motor vehicles:

(i) an authorized emergency service vehicle:

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) entitled to the exemptions granted under 61-8-107;

(ii) a vehicle:

(A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;

(B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm 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

(C) not used to transport goods for compensation or for hire; or

(iii) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in part-time national guard training, and national guard military technicians, or active duty United States coast guard personnel.

(c) For purposes of this subsection (7):

(i) "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;

(ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle;

(iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; and

(iv) "school bus" has the meaning provided in 49 CFR 383.5.

(8) "Commission" means the state transportation commission.

(9) "County where a vehicle is domiciled" means the county in which the vehicle owner permanently resides or, if a vehicle is owned by a corporation or is leased or used for commercial purposes, the county in which the vehicle is permanently assigned or most frequently used, dispatched, or controlled.

(10) "Custom vehicle" means a motor vehicle other than a motorcycle that:

(a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or

(ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(11) (a) "Dealer" means a person, firm, association, or corporation that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker, as defined in 61-4-131, of new or used motor vehicles, trailers, semitrailers, or pole trailers that are not registered in the name of the person, firm, association, or corporation and that are required to be licensed under chapter 4 of this title.

(b) The term does not include the following:

(i) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(ii) employees of the persons included in subsection (11)(b)(i) when engaged in the specific performance of their duties as employees; or

(iii) public officers while performing or in the operation of their duties.

(12) "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.

(13) "Department" means the department of justice acting directly or through its duly authorized officers or agents.

(14) "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.

(15) "Driver" means a person who drives or is in actual physical control of a vehicle.

(16) "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

- (a) any temporary license or instruction permit;
- (b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;
- (c) any nonresident's driving privilege;
- (d) a motorcycle endorsement; or
- (e) a commercial driver's license.

(17) "Electric personal assistive mobility device" means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour.

(18) "For hire" means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(19) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

(20) "Highway" or "public highway" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

(21) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(22) "Implement of husbandry" means a vehicle that is designed for agricultural purposes and exclusively used by the owner of the vehicle in the conduct of the owner's agricultural operations.

(23) "Kit vehicle" is a motor vehicle assembled from a manufactured kit either as:

- (a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle; or
- (b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain, commonly referred to as a donor vehicle.

(24) "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

(25) "Manufactured home" has the meaning provided in 15-1-101.

(26) "Manufacturer" includes any person, firm, corporation, or association engaged in the manufacture of motor vehicles, trailers, or semitrailers as a regular business.

(27) "Manufacturer's certificate of origin" means the original paper record produced and issued by the manufacturer of a vehicle 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.

(28) (a) *“Medium-speed electric vehicle” is a motor vehicle, upon or by which a person may be transported, that:*

(i) *has a maximum speed of 35 miles an hour as certified by the manufacturer;*

(ii) *is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;*

(iii) *stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;*

(iv) *is fully enclosed and includes at least one door for entry;*

(v) *has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;*

(vi) *exhibits a manufacturer’s compliance with 49 CFR, part 565, or displays a 17-character vehicle identification number as provided in 49 CFR, part 565;*

(vii) *bears a sticker, affixed by the manufacturer or dealer, on the left side of the rear window that indicates the vehicle’s maximum speed rating; and*

(viii) *as certified by the manufacturer, is equipped as provided in [section 3].*

(b) *A medium-speed electric vehicle must be treated as a light vehicle for purposes of titling and registration under Title 61, chapter 3.*

(28)(29) *“Mobile home” or “housetrailer” has the meaning provided in 15-1-101.*

(29)(30) (a) *“Motorboat” means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.*

(b) *The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.*

(30)(31) (a) *“Motor carrier” means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles upon a public highway in this state for the transportation of property for hire on a commercial basis.*

(b) *The term does not include motor carriers regulated under Title 69, chapter 12.*

(31)(32) (a) *“Motorcycle” means a motor vehicle having not more than three wheels in contact with the ground and a seat or saddle on which the operator sits or a platform on which the operator stands and a driving wheel in contact with the ground in addition to the wheels of the vehicle itself. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.*

(b) *The term does not include a tractor, a bicycle as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.*

(32)(33) (a) *“Motor-driven cycle” means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.*

(b) *The term does not include a bicycle, as defined in 61-8-102, or a motorized nonstandard vehicle.*

(33)(34) *“Motor home” means a motor vehicle:*

(a) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

(b) containing permanently installed independent life support systems that meet the ANSIA/A119.2 standard; and

(c) providing at least four of the following types of facilities:

(i) cooking, refrigeration, or icebox;

(ii) self-contained toilet;

(iii) heating or air-conditioning, or both;

(iv) potable water supply, including a faucet and sink; or

(v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply; or both.

~~(34)~~(35) (a) “Motorized nonstandard vehicle” means a vehicle, upon or by which a person may be transported, that:

(i) is propelled by its own power, using an internal combustion engine or an electric motor;

(ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(iii) does not display a manufacturer’s certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a “pocket rocket”.

(c) The term does not include an electric personal assistive mobility device or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

~~(35)~~(36) (a) “Motor vehicle” means a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state.

(b) The term does not include a bicycle as defined in 61-8-102 or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

~~(36)~~(37) “New motor vehicle” means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.

~~(37)~~(38) “Nonresident” means a person who is not a resident of this state.

~~(38)~~(39) (a) “Not used for general transportation purposes” means the operation of a motor vehicle, registered as a collector’s item, a custom vehicle, or a street rod, to or from a car club activity or event or an exhibit, show, cruise night, or parade, or other occasional transportation activity.

(b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.

~~(39)~~(40) (a) “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) The term does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) vehicles otherwise 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.

(40)(41) "Operator" means a person who is in actual physical control of a motor vehicle.

(41)(42) "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested the right of possession or control.

(42)(43) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

(43)(44) "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.

(44)(45) "Pole trailer" means a vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

(45)(46) "Police officer" means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(46)(47) (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor capable of producing not more than 50 horsepower.

(b) The term does not include golf carts.

(47)(48) "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

(48)(49) (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated upon rails.

(b) The term does not include streetcars.

(49)(50) "Recreational vehicle" includes self-propelled vehicles originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use.

(50)(51) "Registration" or "register" means the act or process of creating an electronic record, maintained by the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records.

(51)(52) "Registration decal" means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county treasurer to the owner of a motor vehicle, trailer, semitrailer, or pole trailer as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department under 61-3-101.

(52)(53) "Registration receipt" means a paper record that is produced and issued or, if authorized by the department, an electronic record that is 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.

(53)(54) "Retail sale" means the sale of a new motor vehicle or used motor vehicle, a recreational vehicle, a trailer, a travel trailer, a motorcycle, a quadricycle, or special mobile equipment by a dealer to a person for purposes other than resale.

(54)(55) "Revocation" means that the driver's license and privilege to drive a motor vehicle on the public highways are terminated and may not be renewed or restored. An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.

(55)(56) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways, the term refers to any roadway separately but not to all roadways collectively.

(56)(57) (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.

(57)(58) "Semitrailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.

(58)(59) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, that is designed primarily for travel on snow or ice, that may be steered by skis or runners, and that is not otherwise registered or licensed under the laws of the state of Montana.

(59)(60) "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this subsection is partial and

does not exclude other vehicles that are within the general terms of this subsection.

~~(60)~~(61) (a) “Specially constructed vehicle” means a motor vehicle, including a motorcycle, that:

(i) was not originally constructed under a distinctive make, model, or type by a generally recognized manufacturer of motor vehicles;

(ii) has been structurally modified so that it does not have the same appearance as similar vehicles from a generally recognized manufacturer of motor vehicles;

(iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from other vehicles;

(iv) has been constructed or assembled by using major component parts from one or more manufactured vehicles and that cannot be identified as a specific make or model; or

(v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.

(b) The term does not include a motor vehicle that has been repaired or restored to its original design by replacing parts.

~~(61)~~(62) (a) “Sport utility vehicle” means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use.

(b) The term does not include trucks having a manufacturer’s rated capacity of 1 ton or less.

~~(62)~~(63) (a) “Stop”, when required, means complete cessation from movement.

(b) “Stop”, “stopping”, or “standing”, when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrol officer, or traffic control sign or signal.

~~(63)~~(64) “Street” means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

~~(64)~~(65) “Street rod” means a motor vehicle, other than a motorcycle, that:

(a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949, including a kit vehicle intended to resemble a vehicle manufactured before 1949; and

(b) has been altered from the manufacturer’s original design or has a body constructed from nonoriginal materials.

~~(65)~~(66) “Suspension” means that the driver’s license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn, but only during the period of suspension.

~~(66)~~(67) “Temporary registration permit” means a paper record:

(a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:

(i) required vehicle and owner information; and

(ii) the purpose for which the record was generated; and

(b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs.

~~(67)~~(68) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

~~(68)~~(69) (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

~~(69)~~(70) "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.

~~(70)~~(71) "Travel trailer" means a vehicle:

(a) that is 40 feet or less in length;

(b) that is of a size or weight that does not require special permits when towed by a motor vehicle;

(c) with gross trailer area of less than 320 square feet; and

(d) that is designed to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.

~~(71)~~(72) "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

~~(72)~~(73) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

~~(73)~~(74) "Under the influence" has the meaning provided in 61-8-401.

~~(74)~~(75) "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, given away, or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as "secondhand" within the ordinary meaning of that term.

~~(75)~~(76) "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.

(76)(77) (a) “Vehicle” means a device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.

(b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

(77)(78) “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 motor vehicle or a component part of the motor vehicle.

(78)(79) “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.

(79)(80) “Wholesaler” means a person, firm, partnership, association, or corporation that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, recreational vehicle, trailer, semitrailer, pole trailer, special mobile equipment, motorcycle, or quadricycle only to vehicle dealers and auto auctions licensed under chapter 4, part 1.”

Section 2. Medium-speed electric vehicle — operating requirements. (1) A medium-speed electric vehicle may only be operated on a highway for which the posted speed limit does not exceed 45 miles an hour.

(2) Except as provided in subsection (1), the provisions of this chapter apply to the operator of a medium-speed electric vehicle.

Section 3. Medium-speed electric vehicles — required equipment. A medium-speed electric vehicle, as defined in 61-1-101, must be equipped with:

- (1) headlamps, front and rear turn signal lamps, taillamps, and stop lamps;
- (2) three red reflectors, two of which must be placed on each side as far to the rear of the vehicle as practicable, and one of which must be placed on the rear of the vehicle;
- (3) an exterior mirror mounted on the driver’s side of the vehicle and either an exterior mirror mounted on the passenger’s side of the vehicle or an interior mirror;
- (4) a parking brake;
- (5) a windshield that conforms to the federal motor vehicle safety standard provided in 49 CFR 571.205;
- (6) a seatbelt assembly that conforms to the federal motor vehicle safety standard provided in 49 CFR 571.209; and
- (7) a roll bar, roll cage, or crush-proof body design.

Section 4. 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) (i) *Except as provided in subsection (2)(a)(ii), a license is not valid for the operation of a motorcycle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement".*

(ii) *A motorcycle endorsement is not required for the operation of a motorcycle that is propelled by an electric motor or other device that transforms stored electrical energy into the motion of the vehicle, has a fully enclosed cab, is equipped with three wheels in contact with the ground, and is equipped with a seat and seatbelts.*

(b) A license is not valid for the operation of a commercial motor vehicle unless the holder of the license has completed the requirements of 61-5-110, the license has been clearly marked with the words "commercial driver's license", and the license bears the proper endorsement for:

- (i) the specific vehicle type or types being operated; or
- (ii) the passengers or type or types of cargo being transported.

(3) 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 5. Codification instruction. (1) [Section 2] is 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 [section 2].

(2) [Section 3] is intended to be codified as in integral part of Title 61, chapter 9, part 4, and the provisions of Title 61, chapter 9, part 4, apply to [section 3].

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 23, 2007

CHAPTER NO. 234

[SB 369]

AN ACT ELIMINATING THE REQUIREMENT THAT RURAL COOPERATIVES USE THE FORMULAS PROVIDED IN POLE ATTACHMENT RULES OF THE FEDERAL COMMUNICATIONS COMMISSION OR SUCCESSOR FORMULAS RELATED TO RATES, TERM, OR CONDITIONS OF POLE ATTACHMENT AGREEMENTS; AMENDING SECTION 35-18-104, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 35-18-104, MCA, is amended to read:

"35-18-104. Exemption from jurisdiction of public service commission — federal pole regulation. Cooperatives and foreign corporations transacting business in this state pursuant to this chapter:

(4) are exempt in all respects from the jurisdiction and control of the public service commission of this state; and

~~(2) if they operate in a rural area described in 35-18-102(6)(d), shall use the formulas provided in pole attachment rules of the federal communications commission or successor formulas with respect to any matters pertaining to rates, terms, or conditions of any pole attachment agreement between themselves and any pole tenant or lessee made after April 28, 2001.”~~

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 June 30, 2009.

Approved April 23, 2007

CHAPTER NO. 235

[HB 361]

AN ACT REVISING REQUIREMENTS FOR A PROXY MARRIAGE; REQUIRING ONE PARTY TO A PROXY MARRIAGE TO BE A MEMBER OF THE ARMED FORCES OF THE UNITED STATES ON FEDERAL ACTIVE DUTY OR A RESIDENT OF MONTANA; AMENDING SECTIONS 40-1-202 AND 40-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 40-1-202, MCA, is amended to read:

“40-1-202. License issuance. ~~When~~ *Except as provided in 40-1-301, when* a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the clerk of the district court and paid the marriage license fee of \$53, the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained ~~the age of 18 years~~ *of age* at the time the marriage license is effective or will have attained ~~the age of 16 years~~ *of age* and has obtained judicial approval as provided in 40-1-213;

(2) satisfactory proof that the marriage is not prohibited; and

(3) a certificate of the results of any medical examination required by the laws of this state.”

Section 2. Section 40-1-301, MCA, is amended to read:

“40-1-301. Solemnization and registration. (1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, by a mayor, city judge, or justice of the peace, by a tribal judge, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the clerk of the district court.

(2) If a party to a marriage is unable to be present at the solemnization, ~~he~~ *the party* may authorize in writing a third person to act as ~~his~~ proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, ~~he~~ *the person* may solemnize the

marriage by proxy. If ~~he~~ *the person solemnizing the marriage* is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

(3) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if either party to the marriage believed ~~him~~ *that person* to be so qualified.

(4) *One party to a proxy marriage must be a member of the armed forces of the United States on federal active duty or a resident of Montana at the time of application for a license and certificate pursuant to 40-1-202. One party or a legal representative shall appear before the clerk of court and pay the marriage license fee. For the purposes of this subsection, residency must be determined in accordance with 1-1-215.*

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

Approved April 24, 2007

CHAPTER NO. 236

[HB 369]

AN ACT INCREASING THE AMOUNTS THAT A COUNTY MAY BORROW WITHOUT A VOTE OF THE ELECTORATE; AMENDING SECTION 7-7-2402, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 7-7-2402, MCA, is amended to read:

“7-7-2402. Election required to borrow money — exceptions. (1) Except as provided in subsection (4), the board of county commissioners may not borrow money for any of the purposes mentioned in this title or for any single purpose in an amount exceeding the limits set in subsection (2) without:

(a) first submitting the question of a loan to a vote of the electors of the county; and

(b) obtaining the approval of a majority of the electors of the county.

(2) Based upon the taxable valuation of a county *and not exceeding the limits on county indebtedness established in 7-7-2101*, a county may borrow the following amounts without a vote of the electorate:

(a) up to ~~\$500,000~~ *\$1 million* if the county’s taxable value is less than \$50 million;

(b) up to ~~\$750,000~~ *\$1.5 million* if the county’s taxable value is between \$50 million and \$100 million; and

(c) up to ~~\$1~~ *\$2 million* if the county’s taxable valuation is greater than \$100 million.

(3) If a majority of the votes cast are in favor of the loan, then the board of county commissioners may enter into the loan, issuing bonds or otherwise as is in the best interests of the county.

(4) It is not necessary to submit to the electors the question of borrowing money:

(a) to refund outstanding bonds; or

(b) for the purpose of enabling any county to liquidate its indebtedness to another county incident to the creation of a new county or the change of any county boundary lines.”

Section 2. Effective date. [This act] is effective on July 1, 2007.

Approved April 24, 2007

CHAPTER NO. 237

[HB 450]

AN ACT ALLOWING THE USE OF A PARTIAL RATHER THAN A FULL SOCIAL SECURITY NUMBER ON AN APPLICATION FOR A RECREATIONAL LICENSE, CONTINGENT UPON THE GRANT OF AN EXEMPTION FROM THE FEDERAL GOVERNMENT ALLOWING THE USE OF THE LAST FOUR DIGITS OF A SOCIAL SECURITY NUMBER AND UPON WRITTEN CERTIFICATION THAT THE CONTINGENCY HAS OCCURRED; AMENDING SECTIONS 87-2-106 AND 87-2-202, MCA, AND SECTION 3, CHAPTER 321, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A CONTINGENT TERMINATION DATE.

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

Section 1. Section 87-2-106, MCA, is amended to read:

“87-2-106. Application for license — penalties for violation — forfeiture of privileges. (1) A license may be procured from the director, a warden, or an authorized agent of the director. The applicant shall state the applicant’s name, age, [*last four digits of the applicant’s 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 other facts, data, or descriptions as may be required by the department. An applicant for a resident license shall present a valid Montana driver’s license, Montana driver’s examiner’s identification card, or other identification specified by the department to substantiate the required information. It is the applicant’s burden to provide documentation establishing the applicant’s identity and qualifications to purchase a license. It is a misdemeanor for a license agent to sell a hunting, fishing, or trapping license to an applicant who fails to produce the required identification at the time of application for licensure. Except as provided in subsections (2) through (4), the statements made by the applicant must be subscribed to before the officer or agent issuing the license.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by telephone, by mail, on the internet, or by other electronic means. Statements on an application for a license to be issued by telephone, by mail, on the internet, or by other electronic means need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102(7), the applicant shall apply to the director and shall submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102(7). The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing license for the resident's spouse, parent, child, brother, or sister who is otherwise qualified to obtain the license.

(5) A license is void unless subscribed to by the licensee.

(6) It is unlawful to subscribe to or make any statement, on an application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. A person violating any provision of this subsection is guilty of a misdemeanor.

(7) It is unlawful for a nonresident to apply for or purchase for a nonresident's use the following resident licenses and permits:

- (a) wildlife conservation license;
- (b) hunting license or permit; or
- (c) fishing license or permit.

(8) (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of affirming to or making a false statement to obtain a resident license or who is convicted of applying for or purchasing a resident license in violation of subsection (7) shall be:

(i) fined not less than the greater of \$100 or twice the cost of the nonresident license that authorized the sought-after privilege or more than \$1,000;

(ii) imprisoned in the county jail for not more than 6 months; or

(iii) both fined and imprisoned.

(b) In addition to the penalties specified in subsection (8)(a), upon conviction or forfeiture of bond or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt, fish, and trap in Montana for not less than 18 months.

(9) It is a misdemeanor for a person to purposely or knowingly assist an unqualified applicant in obtaining a resident license in violation of this section.

[(10) 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.]

(11) The department shall delete an 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 2. Section 87-2-202, MCA, is amended to read:

“87-2-202. Application — fee — expiration. (1) Except as provided in 87-2-803(12), a wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, [*last four digits of the applicant's 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 or to receive a free wildlife conservation license pursuant to 87-2-803(12). 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 \$8, of which 25 cents is a search and rescue surcharge.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of \$10, 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]. (Bracketed language terminates or is amended on occurrence of contingency—sec. 3, Ch. 321, L. 2001; the \$2 wildlife conservation license fee increases in subsections (3)(a) and (3)(b) enacted by Ch. 596, L. 2003, are void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)”

Section 3. Section 3, Chapter 321, Laws of 2001, is amended to read:

“Section 3. Contingent termination. (1) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted the state of Montana an exemption from the requirement that an applicant under 16 years of age provide a social security number on an application for a recreational license, the

bracketed language in 87-2-106(1) and [section 1 of this act] and 87-2-202(1) and [section 2 of this act] must read: “last four digits of the social security number for an applicant 16 years of age or older”.

(2) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted the state of Montana an exemption from the requirement that a Montana resident provide a social security number on an application for a recreational license, the bracketed language in 87-2-106(1) and [section 1 of this act] and 87-2-202(1) and [section 2 of this act] must read: “social security number for a nonresident applicant, last four digits of the social security number for a resident applicant, a driver’s license number, or a Montana identification card number issued by the department of justice for a resident who does not hold a Montana driver’s license if the applicant has provided a social security number when applying for the Montana identification card”.

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted the state of Montana an exemption from the requirement that any applicant provide a social security number on an application for a recreational license, the bracketed language in 87-2-106(1) and [section 1 of this act] and 87-2-202(1) and [section 2 of this act] must read: “last four digits of the social security number for a nonresident applicant who does not hold and present a valid driver’s license from the applicant’s state of residence, last four digits of the social security number for a resident applicant, a driver’s license number, or a Montana identification card number issued by the department of justice for a resident who does not hold a Montana driver’s license if the applicant has provided a social security number when applying for the Montana identification card”.

(4) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government, through repeal or amendment of federal law, no longer requires an applicant to provide a social security number on an application for a recreational license, the bracketed language in 87-2-106(1) and [section 1 of this act] and 87-2-202(1) and [section 2 of this act] is void, the bracketed language in 87-2-106(9) 87-2-106(10) and 87-2-202(5) is void, and the bracketed language in 87-2-106(10) 87-2-106(11) and 87-2-202(6) must read: “maintained by the department”.

(5) The secretary of state shall notify the code commissioner of the occurrence of any of the contingencies described in subsections (1) through (4).”

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

Section 5. Contingent termination. [This act] terminates 3 years after [the effective date of this act] unless the director of the department of public health and human services certifies to the governor and the secretary of state and provides written notice to the code commissioner that an extension to the use of the last four digits of a social security number for recreational licenses has been granted by the federal government.

Approved April 24, 2007

CHAPTER NO. 238

[HB 452]

AN ACT PROVIDING FOR THE ACKNOWLEDGMENT OF EDUCATIONAL AND EMPLOYMENT ACHIEVEMENT CREDIT BY THE DEPARTMENT OF CORRECTIONS TO A PAROLEE THAT MAY REDUCE SUPERVISED TIME SPENT ON PAROLE; AND AMENDING SECTION 46-23-1021, MCA.

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

Section 1. Parole achievement credit. (1) The department shall acknowledge achievements by a parolee who, by completion of an activity described in subsection (2), has shown a willingness to reenter society as a productive and responsible member.

(2) The department shall acknowledge achievements, such as:

- (a) obtaining a high school diploma or general equivalency diploma;
- (b) obtaining a degree from an accredited postsecondary educational institution;
- (c) completion of an approved apprenticeship program;
- (d) completion of an accredited vocational certification program;
- (e) employment of at least 20 scheduled hours a week, for 6 or more months;
- (f) attendance at a faith-based, social service, or rehabilitation activity for 6 or more months; or
- (g) any other achievement designated by a department rule.

Section 2. Section 46-23-1021, MCA, is amended to read:

“46-23-1021. Supervision on parole. (1) The department shall retain custody of all persons placed on parole and shall supervise the persons during their parole periods in accordance with the conditions set by the board.

(2) The department shall assign personnel to assist a person who is eligible for parole in preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board prior to its consideration of the case of the eligible person.

(3) A copy of the conditions of parole must be signed by the parolee and given to the parolee and to the parolee’s probation and parole officer, who shall report on the parolee’s progress under the rules of the board.

(4) The probation and parole officer shall regularly advise and consult with the parolee, assist the parolee in adjusting to community life, and inform the parolee of the restoration of rights on successful completion of the sentence.

(5) The probation and parole officer shall keep records as the board or department may require. All records must be entered in the master file of the individual.

(6) (a) Upon recommendation of the probation and parole officer, the board may conditionally discharge a parolee from supervision before expiration of the parolee’s sentence if the board determines that a conditional discharge from supervision is in the best interests of the parolee and society and will not present unreasonable risk of danger to the victim of the offense.

(b) *Any of the achievements listed in [section 1(2)] must be considered a significant achievement by the board in deciding whether to grant a conditional discharge from supervision to a parolee.*

(c) *If the board discharges a parolee from supervision, the department is relieved of the obligation of supervising the parolee.*

(d) *For good cause, the board may return a parolee who was conditionally discharged to the status of a regular parolee.*

(b)(e) Subsection (6)(a) does not prohibit the board from revoking the parole, as provided in 46-23-1025, of a parolee who has been conditionally discharged from supervision.

(e)(f) If the department certifies to the board that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the board may not parole a prisoner to that district office unless it grants a conditional discharge to a parolee being supervised by that district office. The department may recommend parolees to the board for conditional discharge. The board may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office.”

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 23, part 10, and the provisions of Title 46, chapter 23, part 10, apply to [section 1].

Approved April 24, 2007

CHAPTER NO. 239

[HB 36]

AN ACT REPEALING THE TERMINATION DATE FOR INCREASING THE LIMIT TO \$3 MILLION FOR A LOAN TO A WATER USERS' ASSOCIATION OR DITCH COMPANY FROM THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM STATE SPECIAL REVENUE ACCOUNT OR THE RENEWABLE RESOURCE LOAN PROCEEDS ACCOUNT; REPEALING SECTION 2, CHAPTER 418, LAWS OF 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Repealer. Section 2, Chapter 418, Laws of 2005, is repealed.

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

Approved April 25, 2007

CHAPTER NO. 240

[HB 153]

AN ACT ADOPTING THE MODEL REGISTERED AGENTS ACT; PROVIDING FOR FILING OF REGISTRATION FOR AGENTS FOR SERVICE OF PROCESS WITH THE SECRETARY OF STATE; PROVIDING THAT A REGISTERED AGENT'S ADDRESS IS NOT THE MEANS OF DETERMINING WHERE PUBLICATION IS APPROPRIATE; ELIMINATING THE REQUIREMENT FOR A REGISTERED OFFICE;

PROVIDING FOR JURISDICTION IF A PRINCIPAL OFFICE IS NOT LOCATED IN MONTANA; AMENDING SECTIONS 15-31-103, 35-1-116, 35-1-216, 35-1-226, 35-1-425, 35-1-518, 35-1-523, 35-1-838, 35-1-940, 35-1-1028, 35-1-1029, 35-1-1037, 35-1-1038, 35-1-1040, 35-1-1104, 35-1-1109, 35-1-1309, 35-2-115, 35-2-130, 35-2-213, 35-2-222, 35-2-423, 35-2-528, 35-2-535, 35-2-609, 35-2-613, 35-2-729, 35-2-822, 35-2-823, 35-2-832, 35-2-904, 35-2-909, 35-2-1109, 35-3-202, 35-3-209, 35-3-210, 35-4-311, 35-4-411, 35-6-102, 35-8-202, 35-8-208, 35-8-209, 35-8-1003, 35-8-1011, 35-8-1014, 35-8-1203, 35-9-207, 35-9-501, 35-12-508, AND 35-12-601, MCA; REPEALING SECTIONS 35-1-313, 35-1-314, 35-1-315, 35-1-316, 35-1-317, 35-1-1032, 35-1-1033, 35-1-1034, 35-1-1036, 35-2-309, 35-2-310, 35-2-311, 35-2-314, 35-2-315, 35-2-827, 35-2-828, 35-2-829, 35-8-105, 35-8-911, 35-8-1004, 35-8-1005, 35-8-1006, 35-8-1103, AND 35-12-507, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Short title. [Sections 1 through 17] may be cited as the “Model Registered Agents Act”.

Section 2. Definitions. Unless the context requires otherwise, as used in [sections 1 through 17], the following definitions apply:

(1) “Appointment of agent” means a statement appointing an agent for service of process filed by:

(a) a domestic or foreign unincorporated nonprofit association; or

(b) a domestic entity that is not a filing entity or a nonqualified foreign entity under [section 12].

(2) “Commercial registered agent” means an individual or a domestic or foreign entity listed under [section 6].

(3) “Domestic entity” means an entity whose internal affairs are governed by the law of this state.

(4) “Entity” means a person that has a separate legal existence or has the power to acquire an interest in real property in its own name other than:

(a) an individual;

(b) a testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust, or similar trust;

(c) an association or relationship that is not a partnership by reason of 35-10-202(3) or a similar provision of the law of any other jurisdiction;

(d) a decedent’s estate; or

(e) a public corporation, government, governmental subdivision, agency, instrumentality, or quasi-governmental instrumentality.

(5) “Filing entity” means an entity that is created by the filing of a public organic document.

(6) “Foreign entity” means an entity other than a domestic entity.

(7) “Foreign qualification document” means an application for a certificate of authority or other foreign qualification filing with the secretary of state by a foreign entity.

(8) “Governance interest” means the right under the organic law or organic rules of an entity, other than as a governor, agent, assignee, or proxy, to:

(a) receive or demand access to information concerning or to the books and records of the entity;

(b) vote for the election of the governors of the entity; or

(c) receive notice of or vote on any or all issues involving the internal affairs of the entity.

(9) "Governor" means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(10) "Interest" means:

(a) a governance interest in an unincorporated entity;

(b) a transferable interest in an unincorporated entity; or

(c) a share or membership in a corporation.

(11) "Interest holder" means a direct holder of an interest.

(12) "Jurisdiction of organization", with respect to an entity, means the jurisdiction whose law includes the organic law of the entity.

(13) "Noncommercial registered agent" means a person that is not listed as a commercial registered agent under [section 6] and that is an individual or a domestic or foreign entity that serves in this state as the agent for service of process of an entity.

(14) "Nonqualified foreign entity" means a foreign entity that is not authorized to transact business in this state pursuant to a filing with the secretary of state.

(15) "Nonresident LLP statement" means:

(a) a statement of qualification of a domestic limited liability partnership that does not have an office in this state; or

(b) a statement of foreign qualification of a foreign limited liability partnership that does not have an office in this state.

(16) "Organic law" means the statutes, if any, other than [sections 1 through 17], governing the internal affairs of an entity.

(17) "Organic rules" means the public organic document and private organic rules of an entity.

(18) "Person" means an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government, governmental subdivision, agency, instrumentality, or any other legal or commercial entity.

(19) "Private organic rules" mean the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic document, if any.

(20) "Public organic document" means the public record that when filed creates an entity and any amendment to or restatement of that record.

(21) "Qualified foreign entity" means a foreign entity that is authorized to transact business in this state pursuant to a filing with the secretary of state.

(22) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) “Registered agent” means a commercial registered agent or a noncommercial registered agent.

(24) “Registered agent filing” means:

- (a) the public organic document of a domestic filing entity;
- (b) a nonresident LLP statement;
- (c) a foreign qualification document; or
- (d) an appointment of agent.

(25) “Represented entity” means:

- (a) a domestic filing entity;
- (b) a domestic or qualified foreign limited liability partnership that does not have an office in this state;
- (c) a qualified foreign entity;
- (d) a domestic or foreign unincorporated nonprofit association for which an appointment of agent has been filed;
- (e) a domestic entity that is not a filing entity for which an appointment of agent has been filed; or
- (f) a nonqualified foreign entity for which an appointment of agent has been filed.

(26) “Sign” means, with present intent to authenticate or adopt a record:

- (a) to execute or adopt a tangible symbol; or
- (b) to attach to or logically associate with the record an electronic sound, symbol, or process.

(27) “Transferable interest” means the right under an entity’s organic law to receive distributions from the entity.

(28) “Type”, with respect to an entity, means a generic form of entity:

- (a) recognized at common law; or
- (b) organized under an organic law, whether or not some entities organized under that organic law are subject to provisions of that law that create different categories of the form of entity.

Section 3. Fees. The secretary of state shall by rule set fees for filings and the services provided under [sections 1 through 17].

Section 4. Addresses in filings. Whenever a provision of [sections 1 through 17] other than [section 11(1)(d)] requires that a filing state an address, the filing must state:

- (1) an actual street address or rural route box number in this state; and
- (2) a mailing address in this state, if different from the address under subsection (1).

Section 5. Appointment of registered agent. (1) A registered agent filing must state:

- (a) the name of the represented entity’s commercial registered agent; or
- (b) if the entity does not have a commercial registered agent, the name and address of the entity’s noncommercial registered agent.

(2) The appointment of a registered agent pursuant to subsection (1)(a) or (1)(b) is an affirmation by the represented entity that the agent has consented to serve as a registered agent.

(3) The secretary of state shall notify the registered agent as soon as practicable of filings that contain the name of the registered agent. The list must:

(a) be available for at least 14 calendar days; and

(b) state the type of filing and name of the represented entity making the filing.

Section 6. Listing of commercial registered agent. (1) An individual or a domestic or foreign entity may become listed as a commercial registered agent by filing with the secretary of state a commercial registered agent listing statement signed by or on behalf of the person that states:

(a) the name of the individual or the name, type, and jurisdiction of organization of the entity;

(b) that the person is in the business of serving as a commercial registered agent in this state; and

(c) the address of a place of business of the person in this state to which service of process and other notice and documents being served on or sent to entities represented by it may be delivered.

(2) If the name of a person filing a commercial registered agent listing statement is not distinguishable on the records of the secretary of state from the name of another commercial registered agent listed under this section, the person shall adopt a fictitious name that is distinguishable and use that name in its statement and when it does business in this state as a commercial registered agent.

(3) A commercial registered agent listing statement takes effect on filing.

(4) The secretary of state shall note the filing of the commercial registered agent listing statement in the index of filings maintained by the secretary of state for each entity represented by the registered agent at the time of the filing. The statement has the effect of deleting the address of the registered agent from the registered agent filing of each of those entities.

Section 7. Termination of listing of commercial registered agent. (1) A commercial registered agent may terminate its listing as a commercial registered agent by filing with the secretary of state a commercial registered agent termination statement signed by or on behalf of the agent that states:

(a) the name of the agent as currently listed under [section 6]; and

(b) that the agent is no longer in the business of serving as a commercial registered agent in this state.

(2) A commercial registered agent termination statement takes effect on the 31st day after the day on which it is filed.

(3) The commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of the commercial registered agent termination statement.

(4) When a commercial registered agent termination statement takes effect, the registered agent ceases to be an agent for service of process on each entity formerly represented by it. Until an entity formerly represented by a

terminated commercial registered agent appoints a new registered agent, service of process may be made on the entity as provided in [section 13]. Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity may have against the agent or that the agent may have against the entity.

Section 8. Change of registered agent by entity. (1) A represented entity may change the information currently on file under [section 5(1)] by filing with the secretary of state a statement of change signed on behalf of the entity that states:

(a) the name of the entity; and

(b) the information that is to be in effect as a result of the filing of the statement of change.

(2) The interest holders or governors of a domestic entity need not approve the filing of:

(a) a statement of change under this section; or

(b) a similar filing changing the registered agent or registered office of the entity in any other jurisdiction.

(3) The appointment of a registered agent pursuant to subsection (1) is an affirmation by the represented entity that the agent has consented to serve as a registered agent.

(4) A statement of change filed under this section takes effect on filing.

(5) As an alternative to using the procedures in this section, a represented entity may change the information currently on file under [section 5(1)] by amending its most recent registered agent filing in the manner provided by the laws of this state other than [sections 1 through 17] for amending that filing.

Section 9. Change of name or address by noncommercial registered agent. (1) If a noncommercial registered agent changes its name or its address as currently in effect with respect to a represented entity pursuant to [section 5(1)], the agent shall file with the secretary of state, with respect to each entity represented by the agent, a statement of change signed by or on behalf of the agent that states:

(a) the name of the entity;

(b) the name and address of the agent as currently in effect with respect to the entity;

(c) if the name of the agent has changed, its new name; and

(d) if the address of the agent has changed, the new address.

(2) A statement of change filed under this section takes effect on filing.

(3) A noncommercial registered agent shall promptly furnish the represented entity with notice in a record of the filing of a statement of change and the changes made by the filing.

Section 10. Change of name, address, or type of organization by commercial registered agent. (1) If a commercial registered agent changes its name as a result of a merger, conversion, exchange, sale, reorganization, or amendment, its address as currently listed under [section 6(1)], or its type or jurisdiction of organization, the agent shall file with the secretary of state a statement of change signed by or on behalf of the agent that states:

(a) the name of the agent as currently listed under [section 6(1)];

- (b) if the name of the agent has changed, its new name;
- (c) if the address of the agent has changed, the new address; and
- (d) if the type or jurisdiction of organization of the agent has changed, the new type or jurisdiction of organization.

(2) The filing of a statement of change under subsection (1) is effective to change the information regarding the commercial registered agent with respect to each entity represented by the agent.

(3) A statement of change filed under this section takes effect on filing.

(4) A commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of a statement of change relating to the name or address of the agent and the changes made by the filing.

(5) If a commercial registered agent changes its address without filing a statement of change as required by this section, the secretary of state may cancel the listing of the agent under [section 6]. A cancellation under this subsection has the same effect as a termination under [section 7]. Promptly after canceling the listing of an agent, the secretary of state shall serve notice in a record in the manner provided in [section 13(2) or (3)] on:

(a) each entity represented by the agent, stating that the agent has ceased to be an agent for service of process on the entity and that, until the entity appoints a new registered agent, service of process may be made on the entity as provided in [section 13]; and

(b) the agent, stating that the listing of the agent has been canceled under this section.

(6) The secretary of state shall note the filing of the commercial registered agent change statement in the index of filings maintained by the secretary of state for each entity represented by the registered agent at the time of filing.

Section 11. Resignation of registered agent. (1) A registered agent may resign at any time with respect to a represented entity by filing with the secretary of state a statement of resignation signed by or on behalf of the agent that states:

- (a) the name of the entity;
- (b) the name of the agent;
- (c) that the agent resigns from serving as agent for service of process for the entity; and
- (d) the name and address of the person to which the agent will send the notice required by subsection (3).

(2) A statement of resignation takes effect on the earlier of the 31st day after the day on which it is filed or the appointment of a new registered agent for the represented entity.

(3) The registered agent shall promptly furnish the represented entity notice in a record of the date on which a statement of resignation was filed.

(4) When a statement of resignation takes effect, the registered agent ceases to have responsibility for any matter tendered to it as agent for the represented entity. A resignation under this section does not affect any contractual rights the entity has against the agent or that the agent has against the entity.

(5) A registered agent may resign with respect to a represented entity whether or not the entity is in good standing.

Section 12. Appointment of agent by nonfiling or nonqualified foreign entity. (1) A domestic entity that is not a filing entity or a nonqualified foreign entity may file with the secretary of state a statement appointing an agent for service of process signed on behalf of the entity that states:

- (a) the name, type, and jurisdiction of organization of the entity; and
 - (b) the information required by [section 5(1)].
- (2) A statement appointing an agent for service of process takes effect on filing.
- (3) The appointment of a registered agent under this section does not qualify a nonqualified foreign entity to do business in this state and is not sufficient alone to create personal jurisdiction over the nonqualified foreign entity in this state.

(4) A statement appointing an agent for service of process may not be rejected for filing because the name of the entity filing the statement is not distinguishable on the records of the secretary of state from the name of another entity appearing in those records. The filing of a statement appointing an agent for service of process does not make the name of the entity filing the statement unavailable for use by another entity.

(5) An entity that has filed a statement appointing an agent for service of process may cancel the statement by filing a statement of cancellation, which takes effect upon filing, and must state the name of the entity and that the entity is canceling its appointment of an agent for service of process in this state. A statement appointing an agent for service of process that has not been canceled earlier is effective for a period of 5 years after the date of filing.

(6) A statement appointing an agent for service of process for a nonqualified foreign entity terminates automatically on the date the entity becomes a qualified foreign entity.

Section 13. Service of process on entities. (1) A registered agent is an agent of the represented entity authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity.

(2) If an entity that previously filed a registered agent filing with the secretary of state no longer has a registered agent or if its registered agent cannot with reasonable diligence be served, the entity may be served in accordance with any applicable judicial rules and procedures.

(3) Service of process, notice, or demand on a registered agent must be in the form of a written document.

(4) Service of process, notice, or demand may be perfected by any other means prescribed by law other than [sections 1 through 17].

Section 14. Duties of registered agent. The only duties under [sections 1 through 17] of a registered agent that has complied with [sections 1 through 17] are:

- (1) to forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand that is served on the agent;
- (2) to provide the notices required by [sections 1 through 17] to the entity at the address most recently supplied to the agent by the entity;

(3) if the agent is a noncommercial registered agent, to keep current the information required by [section 5(1)] in the most recent registered agent filing for the entity; and

(4) if the agent is a commercial registered agent, to keep current the information listed for it under [section 6(1)].

Section 15. Jurisdiction. The appointment or maintenance in this state of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in this state.

Section 16. Consistency of application. In applying and construing [sections 1 through 17], consideration must be given to the need to promote consistency of the law with respect to its subject matter among states that enact it.

Section 17. Relation to electronic signatures in global and national commerce act. [Sections 1 through 17] modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but do not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Section 18. Section 15-31-103, MCA, is amended to read:

“15-31-103. Research and development firms exempt from taxation — application. (1) A research and development firm organized to engage in business in the state of Montana for the first time is not subject to any of the taxes imposed by this chapter on net income earned from research and development activities during its first 5 taxable years of activity in Montana. For purposes of 15-31-401 and this section, “taxable year” means a research and development firm’s taxable year for federal income tax purposes.

(2) (a) To be considered a research and development firm, the chief executive officer of the firm or ~~his~~ *the officer’s* agent shall file with the department of revenue an application for treatment as a research and development firm.

(b) The application must be made on a form to be provided by the department. The form must include, at a minimum:

(i) the name and address of each officer of the research and development firm;

(ii) the name of the research and development firm as required for the purpose of incorporation in 35-1-216;

~~(iii) the address of its initial registered office required for the purpose of incorporation as required in 35-1-216~~ *information required in [section 5(1)];*

(iv) the date the articles of incorporation were filed with the secretary of state as required in 35-1-215; and

(v) other information the department requires to effectively administer the provisions of this section.

(c) The application must be filed with the department before the end of the first calendar quarter during which the research and development firm engages in business in Montana.

(3) On receipt of the information required in subsection (2)(b), provided that it was filed in the time allowed under subsection (2)(c), the department shall designate the applicant as a research and development firm for the purposes of this section.

(4) Failure by an applicant to provide information required by the department under subsection (2)(b) or, except as provided in subsection (5), failure to file within the time allowed under subsection (2)(c) automatically disqualifies the applicant from being designated and treated as a research and development firm for the purposes of this section.

(5) The director of the department may grant an extension of time for an applicant to file an application for treatment as a research and development firm, provided the extension is given in writing and the extension does not extend beyond 30 days from the date the application was required to be filed under subsection (2)(c).

(6) For the purpose of calculating or otherwise determining the period for which a deduction, exclusion, exemption, or credit may be taken under the provisions of this chapter, the department shall disregard a research and development firm's first 5 taxable years of activity in Montana and administer the deduction, exclusion, exemption, or credit as if the corporation did not exist during those taxable years. This treatment of a research and development firm extends to net operating loss carryback and net operating loss carryforward provisions allowed under this chapter."

Section 19. Section 35-1-116, MCA, is amended to read:

"35-1-116. Notice. (1) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances.

(2) Notice may be communicated in person; by telephone, telegraph, teletype, facsimile, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where it is published or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its shareholders, if in a comprehensible form, is effective when mailed if it is mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state, may be addressed to:

(a) its registered agent ~~at its registered office~~; or

(b) the corporation or its secretary at its principal office as shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsections (3) and (4), written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) when received;

(b) 5 days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid with correct postage; or

(c) on the date shown on the return receipt, if sent by certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if it is communicated in a comprehensible manner.

(7) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws

prescribe notice requirements that are consistent with this section or other provisions of this chapter, those requirements govern.”

Section 20. Section 35-1-216, MCA, is amended to read:

“35-1-216. Articles of incorporation. (1) The articles of incorporation must set forth:

(a) a corporate name for the corporation that satisfies the requirements of 35-1-308;

(b) the number of shares the corporation is authorized to issue;

(c) ~~(i) the complete business street address of the corporation’s initial registered office and, if different, the mailing address~~ *information required by [section 5(1)]*; and

(ii) the name of its initial registered agent ~~at that office~~; and

(d) the name and address of each incorporator.

(2) The articles of incorporation may set forth:

(a) the names and complete street addresses of the individuals who are to serve as the initial directors;

(b) provisions consistent with law regarding:

(i) the purpose or purposes for which the corporation is organized;

(ii) managing the business and regulating the affairs of the corporation;

(iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(iv) a par value for authorized shares or classes of shares; and

(v) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(c) any provision that under this chapter is required or permitted to be set forth in the bylaws; and

(d) a provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any actions taken or any failure to take any action, as a director, except liability for:

(i) the amount of a financial benefit received by a director to which the director is not entitled;

(ii) an intentional infliction of harm on the corporation or the shareholders;

(iii) a violation of 35-1-713; or

(iv) an intentional violation of criminal law.

(3) The articles of incorporation are not required to set forth any of the corporate powers enumerated in this chapter.”

Section 21. Section 35-1-226, MCA, is amended to read:

“35-1-226. Amendment by board of directors. Unless the articles of incorporation provide otherwise, a corporation’s board of directors may adopt one or more amendments to the corporation’s articles of incorporation without shareholder action:

(1) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) to delete the names and addresses of the initial directors;

(3) to delete the names and address of the initial registered agent or registered office if a statement of change is on file with the secretary of state *the information required by [section 5(1)]*;

(4) to change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding;

(5) to change the corporate name by substituting the word “corporation”, “incorporated”, “company”, “limited” or the abbreviation “corp.”, “inc.”, “co.”, or “ltd.” for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution for the name; or

(6) to make any other change expressly permitted by this chapter to be made without shareholders’ action.”

Section 22. Section 35-1-425, MCA, is amended to read:

“35-1-425. Removal of directors by judicial proceeding. (1) The district court of the county where a corporation’s principal office *is located* or, if the office is not located in this state, ~~the county where its registered office is located~~ *in Lewis and Clark County* may remove a director of the corporation from office in a proceeding begun either by the corporation or by its shareholders holding at least 10% of the outstanding shares of any class if the court finds that:

(a) the director engaged in fraudulent or dishonest conduct or in gross abuse of authority or discretion, with respect to the corporation; and

(b) removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(3) If shareholders begin a proceeding under subsection (1), they shall make the corporation a party defendant.”

Section 23. Section 35-1-518, MCA, is amended to read:

“35-1-518. Court-ordered meeting. (1) The district court of the county where a corporation’s principal office *is located* or, if its principal office is not located in this state, ~~in the county where its registered office is located~~ *Lewis and Clark County* may summarily order a meeting to be held:

(a) on application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of 6 months after the end of the corporation’s fiscal year or 15 months after its last annual meeting; or

(b) on application of a shareholder who signed a demand for a special meeting valid under 35-1-517, if:

(i) notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation’s secretary; or

(ii) the special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.”

Section 24. Section 35-1-523, MCA, is amended to read:

“35-1-523. Shareholders’ list for meeting. (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders’ meeting. The list must:

(a) be arranged by voting group, and within each voting group by class or series of shares; and

(b) show the address of and number of shares held by each shareholder.

(2) The shareholders’ list must be available for inspection by any shareholder, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation’s principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder or a shareholder’s agent or attorney is entitled on written demand to inspect and, subject to the requirements of 35-1-1107(3), to copy the list, during regular business hours and at that shareholder’s expense, during the period it is available for inspection.

(3) The corporation shall make the shareholders’ list available at the meeting, and any shareholder or the shareholder’s agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a shareholder or the shareholder’s agent or attorney to inspect the shareholders’ list before or at the meeting or to copy the list as permitted by subsection (2), on application of the shareholder, the district court of the county where a corporation’s principal office *is located* or, if the principal office is not located in this state, ~~its registered office is located,~~ *in Lewis and Clark County* may summarily order the inspection or copying at the corporation’s expense and may provide recovery to a shareholder for costs, including reasonable attorney fees, in bringing the action.

(5) Refusal or failure to prepare or make available the shareholders’ list does not affect the validity of action taken at the meeting.”

Section 25. Section 35-1-838, MCA, is amended to read:

“35-1-838. Court action. (1) If a demand for payment under 35-1-837 remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and shall petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The corporation shall commence the proceeding in the district court of the county where a corporation’s principal office *is located* or, if its principal office is not located in this state, ~~where its registered office is located~~ *in Lewis and Clark County*. If the corporation is a foreign corporation ~~without a registered office in this state,~~ it shall commence the proceeding in the county in this state where the ~~registered~~ *principal* office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located *or, if the domestic corporation did not have its principal office in the state at the time of the transaction, in Lewis and Clark County*.

(3) The corporation shall make all dissenters whose demands remain unsettled, whether or not residents of this state, parties to the proceeding as in an action against their shares, and all parties must be served with a copy of the

petition. Nonresidents may be served by certified mail or by publication as provided by law.

(4) The jurisdiction of the district court in which the proceeding is commenced under subsection (2) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(5) Each dissenter made a party to the proceeding is entitled to judgment:

(a) for the amount, if any, by which the court finds the fair value of the dissenter's shares plus interest exceeds the amount paid by the corporation; or

(b) for the fair value plus accrued interest of ~~his~~ *the dissenter's* after-acquired shares for which the corporation elected to withhold payment under 35-1-836."

Section 26. Section 35-1-940, MCA, is amended to read:

"35-1-940. Procedure for judicial dissolution. (1) Venue for a proceeding by the attorney general or any other party named in 35-1-938 to dissolve a corporation lies in the county where a corporation's principal office *is or was located* or, if its principal office is not located in this state, ~~where its registered office is or was last located~~ *in Lewis and Clark County.*

(2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held."

Section 27. Section 35-1-1028, MCA, is amended to read:

"35-1-1028. Application for certificate of authority. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of 35-1-1031;

(b) the name of the state or country under whose law it is incorporated;

(c) its date of incorporation and period of duration;

(d) the street address of its principal office;

(e) ~~the address of its registered office in this state and the name of its registered agent at that office~~ *information required in [section 5(1)];*

(f) the names and usual business addresses of its current directors and officers; and

(g) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business in this state.

(2) The foreign corporation shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated."

Section 28. Section 35-1-1029, MCA, is amended to read:

“35-1-1029. Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

- (a) its corporate name;
- (b) the period of its duration; or
- (c) any of the information required by [section 5(1)]; or
- (e)(d) the state or country of its incorporation.

(2) The requirements of 35-1-1028 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.”

Section 29. Section 35-1-1037, MCA, is amended to read:

“35-1-1037. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

- (a) the name of the foreign corporation and the name of the state or country under whose law it is incorporated;
- (b) that it is not transacting business in this state and that it surrenders its authority to transact business in this state;
- (c) that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;
- (d) a mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subsection (3);
- (e) a commitment to notify the secretary of state in the future of any change in its mailing address;
- (f) that all taxes imposed on the corporation by Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana; and

(g) additional information as may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation as prescribed by 35-1-1026 through ~~35-1-1034~~ and ~~35-1-1036~~ 35-1-1031, 35-1-1038 through 35-1-1040, and this section.

(3) After the withdrawal of the corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (2).”

Section 30. Section 35-1-1038, MCA, is amended to read:

“35-1-1038. Grounds for revocation. The secretary of state may commence a proceeding under 35-1-1039 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) the foreign corporation does not deliver its annual report to the secretary of state within 90 days after it is due;

(2) the foreign corporation does not pay within 90 days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(3) the foreign corporation is without a registered agent ~~or registered office~~ in this state for 90 days or more;

(4) the foreign corporation does not inform the secretary of state ~~under 35-1-1033 or 35-1-1036~~ *by an appropriate filing* that its registered agent ~~or registered office~~ has changed, ~~that its registered agent has or resigned, or that its registered office has been discontinued~~ within 60 days of the change, ~~or resignation, or discontinuance;~~

(5) an incorporator, director, officer, or agent of the foreign corporation signed a document the person knew was false in any material respect with the intent that the document be delivered to the secretary of state for filing; or

(6) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.”

Section 31. Section 35-1-1040, MCA, is amended to read:

“35-1-1040. Appeal from revocation. (1) A foreign corporation may appeal the secretary of state’s revocation of its certificate of authority to the district court within 30 days after service of the certificate of revocation is perfected ~~pursuant to 35-1-1034~~. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state’s certificate of revocation.

(2) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court’s final decision may be appealed as in other civil proceedings.”

Section 32. Section 35-1-1104, MCA, is amended to read:

“35-1-1104. Annual report for secretary of state. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the corporation and the ~~state or country~~ *jurisdiction* under whose law it is incorporated;

(b) the ~~mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state~~ *information required by [section 5(1)]*;

(c) the address of its principal office, *wherever located*;

(d) the names ~~and business addresses~~ of its ~~directors and~~ principal officers, *except that in the case of a corporation that has eliminated its board of directors pursuant to 35-1-820, the annual report must set forth the names of shareholders instead; and*

(e) a brief description of the nature of its business;

(f) the total number of authorized shares, itemized by class and series, if any, within each class; and

(g) the total number of issued and outstanding shares, itemized by class and series, if any, within each class

(e) *the names of its directors, except that in the case of a corporation that has eliminated its board of directors pursuant to 35-1-820, the annual report must set forth the names of shareholders instead.*

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed.”

Section 33. Section 35-1-1109, MCA, is amended to read:

“35-1-1109. Court-ordered inspection. (1) If a corporation does not allow a shareholder who complies with 35-1-1107(1) to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the corporation’s principal office *is located* or, if there is no principal office in this state, ~~where its registered office is located in Lewis and Clark County~~ may summarily order inspection and copying of the records demanded at the corporation’s expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with 35-1-1107(2) and (3) may apply to the district court in the county where the corporation’s principal office *is located* or, if there is no principal office in this state, ~~where its registered office is located in Lewis and Clark County~~ for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder’s costs, including reasonable attorney fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.”

Section 34. Section 35-1-1309, MCA, is amended to read:

“35-1-1309. Filing duty of secretary of state. (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of 35-1-217 and 35-1-218, if applicable, the secretary of state shall file it.

(2) The secretary of state shall file a document by stamping or otherwise endorsing on the document "Filed", the secretary of state's official title, and the date and time the document was received by the secretary of state for filing. ~~Except as provided in 35-1-315 and 35-1-1034, after~~ *After* filing a document, the secretary of state shall deliver a certification letter to the domestic or foreign corporation or its representative as acknowledgment that the document has been filed and all applicable fees have been paid.

(3) If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign corporation or the corporation's representative within 10 days after the document was delivered to the secretary of state, together with a brief written explanation of the reason for the refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not:

- (a) affect the validity or invalidity of the document in whole or part;
- (b) relate to the correctness or incorrectness of information contained in the document; or
- (c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect."

Section 35. Section 35-2-115, MCA, is amended to read:

"35-2-115. Notice. (1) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances.

(2) (a) Notice may be communicated in person; by telephone, telegraph, teletype, facsimile, or other form of wire or wireless communication; or by mail or private carrier.

(b) If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where it is published or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its members, if in a comprehensible form, is effective when mailed if it is mailed postpaid and correctly addressed to the member's address shown in the corporation's current record of members.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to:

- (a) its registered agent ~~at its registered office~~; or
- (b) the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsections (3) and (4), written notice, if in a comprehensible form, is effective at the earliest of the following:

- (a) when received;
- (b) 5 days after its deposit in the United States mail, as evidenced by the postmark, if it is mailed postpaid and with correct postage; or
- (c) on the date shown on the return receipt, if it is sent by certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if it is communicated in a comprehensible manner.

(7) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If the articles of incorporation or bylaws prescribe notice requirements that are consistent with this section or other provisions of this chapter, those requirements govern.”

Section 36. Section 35-2-130, MCA, is amended to read:

“35-2-130. Judicial relief. (1) If for any reason it is impractical or impossible for a corporation to call or conduct a meeting of its members, delegates, or directors or to otherwise obtain their consent, in the manner prescribed by its articles, bylaws, or this chapter, then upon petition of a director, officer, delegate, member, or the attorney general, the state district court for the judicial district in which the ~~registered office~~ *principal office* is located *or, if the principal office is not located in this state, in Lewis and Clark County* may order that a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authorized, in the manner the court finds fair and equitable under the circumstances.

(2) In an order issued pursuant to this section, the court shall provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws, and this chapter, whether or not the method results in actual notice to all persons entitled to notice or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the court may determine who the members or directors are.

(3) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or this chapter.

(4) Whenever practical, an order issued pursuant to this section must limit the subject matter of meetings or other forms of consent authorized to approve items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section. However, an order under this section may also authorize the obtaining of votes and approvals necessary for dissolution, merger, or sale of assets.

(5) A meeting or other method of obtaining the vote of members, delegates, or directors that is conducted pursuant to an order issued under this section and that complies with all the provisions of the order is for all purposes a valid meeting or vote, and has the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and this chapter.”

Section 37. Section 35-2-213, MCA, is amended to read:

“35-2-213. Articles of incorporation. (1) The articles of incorporation must set forth:

(a) a corporate name for the corporation that satisfies the requirements of 35-2-305;

(b) a statement that:

(i) the corporation is a public benefit corporation;

- (ii) the corporation is a mutual benefit corporation; or
- (iii) the corporation is a religious corporation;
- (c) ~~(i) the street address of the corporation's initial registered office and, if different, the mailing address; and~~
 - (ii) ~~the name of its initial registered agent at that office~~ *information required by [section 5(1)];*
 - (d) the name and address of each incorporator;
 - (e) whether or not the corporation will have members; and
 - (f) provisions consistent with law regarding the distribution of assets on dissolution.
- (2) The articles of incorporation may set forth:
 - (a) the purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;
 - (b) the names and addresses of the individuals who are to serve as the initial directors;
 - (c) provisions consistent with law regarding:
 - (i) managing and regulating the affairs of the corporation;
 - (ii) defining, limiting, and regulating the powers of the corporation, its board of directors, its members, or any class of members; and
 - (iii) the characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members;
 - (d) any provision that under this chapter is required or permitted to be set forth in the bylaws; and
 - (e) provisions eliminating or limiting the personal liability of a director to the corporation or members of the corporation for monetary damages for breach of a director's duties to the corporation and its members, provided that the provision may not eliminate or limit the liability of a director:
 - (i) for a breach of the director's duty of loyalty to the corporation or its members;
 - (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
 - (iii) for a transaction from which a director derived an improper personal economic benefit; or
 - (iv) under 35-2-418, 35-2-435, or 35-2-436.
- (3) A provision referred to in subsection (2)(e) may not eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective.
- (4) Each incorporator and director named in the articles shall sign the articles.
- (5) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter."

Section 38. Section 35-2-222, MCA, is amended to read:

“35-2-222. Amendment by directors. (1) Unless the articles provide otherwise, a corporation’s board of directors may adopt one or more amendments to the corporation’s articles without member approval:

(a) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(b) to delete the names and addresses of the initial directors;

(c) ~~to delete the name and address of the initial registered agent or registered office if a statement of change is on file with the secretary of state change the information required by [section 5(1)];~~

(d) to change the corporate name by substituting the word “corporation”, “incorporated”, “company”, “limited”, or the abbreviation “corp.”, “inc.”, “co.”, or “ltd.” for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution to the name; or

(e) to make any other change expressly permitted by this chapter to be made by action of the board of directors.

(2) If a corporation has no members, its incorporators, until directors have been chosen, and later its board of directors may adopt one or more amendments to the corporation’s articles subject to any approval required pursuant to 35-2-232. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice must be in accordance with 35-2-429(3). The notice must also state that the purpose or one of the purposes of the meeting is to consider a proposed amendment to the articles and must contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.”

Section 39. Section 35-2-423, MCA, is amended to read:

“35-2-423. Removal of directors by judicial proceeding. (1) The district court for the judicial district of the county where a corporation’s principal office is located or, if the principal office is not located in the state, ~~the county where its registered office is located~~ *Lewis and Clark County* may remove any director of the corporation from office in a proceeding commenced by the corporation, by its members holding at least 10% of the voting power of any class, or by the attorney general in the case of a public benefit corporation, if the court finds that:

(a) (i) the director engaged in fraudulent or dishonest conduct or in gross abuse of authority or discretion; with respect to the corporation; or

(ii) a final judgment has been entered finding that the director has violated a duty set forth in 35-2-416, 35-2-418, 35-2-435, or 35-2-436; and

(b) removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from serving on the board for a period prescribed by the court.

(3) If members or the attorney general commence a proceeding under subsection (1), the corporation must be made a party defendant.

(4) If a public benefit corporation or its members commence a proceeding under subsection (1), they shall give the attorney general written notice of the proceeding.

(5) The articles or bylaws of a religious corporation may limit or prohibit the application of this section.”

Section 40. Section 35-2-528, MCA, is amended to read:

“35-2-528. Court-ordered meeting. (1) The district court for the judicial district of the county where a corporation’s principal office is located; or, if the principal office is not located in this state, ~~where its registered office is located in Lewis and Clark County~~ may summarily order a meeting to be held:

(a) on application of a member or other person entitled to participate in an annual or regular meeting and, in the case of a public benefit corporation, the attorney general, if an annual meeting was not held within the earlier of 6 months after the end of the corporation’s fiscal year or 15 months after its last annual meeting;

(b) on application of a member or other person entitled to participate in a regular meeting and, in the case of a public benefit corporation, the attorney general, if a regular meeting is not held within 40 days after the date it was required to be held; or

(c) on application of a member who signed a demand for a special meeting valid under 35-2-527, a person entitled to call a special meeting and, in the case of a public benefit corporation, the attorney general, if:

(i) notice of the special meeting was not given within 30 days after the date the demand was delivered to a corporate officer; or

(ii) the special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(3) If the court orders a meeting, it may also order the corporation to pay the member’s costs, including reasonable attorney fees, incurred to obtain the order.”

Section 41. Section 35-2-535, MCA, is amended to read:

“35-2-535. Members’ list for meeting. (1) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare, on a current basis through the time of the membership meeting, a list of members, if any, who are entitled to vote at the meeting but not entitled to notice of the meeting. This list must be prepared on the same basis and be part of the list of members.

(2) The list of members must be available:

(a) for inspection by any member for the purpose of communication with other members concerning the meeting, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting; and

(b) at the corporation’s principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member’s agent, or a member’s attorney is entitled, on written demand, to inspect and, subject to the limitations of 35-2-907(3) and 35-2-910, to copy the

list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(3) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or a member's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting or to copy the list as permitted by subsection (2), the district court for the judicial district of the county where a corporation's principal office *is located* or, if the principal office is not located in this state, ~~where its registered office is located in Lewis and Clark County~~, on application of the member, may summarily order the inspection or copying at the corporation's expense, may postpone the meeting for which the list was prepared until the inspection or copying is complete, and may order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order.

(5) Unless a written demand to inspect and copy a membership list has been made under subsection (2) prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

(6) The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy any corporate record."

Section 42. Section 35-2-609, MCA, is amended to read:

"35-2-609. Limitations on mergers by public benefit or religious corporations. (1) Except as provided in subsection (4) or without the prior approval of the district court for the judicial district in which the corporation's ~~registered principal office is located or, if the principal office is not located in this state, in Lewis and Clark County~~, in a proceeding of which the attorney general has been given written notice, a public benefit corporation or religious corporation may merge only with:

- (a) a public benefit corporation or religious corporation;
- (b) a foreign corporation that would qualify under this chapter as a public benefit corporation or religious corporation;
- (c) a wholly owned foreign or domestic business or mutual benefit corporation, if the public benefit corporation or religious corporation is the surviving corporation and continues to be a public benefit corporation or religious corporation after the merger; or
- (d) a business or mutual benefit corporation, provided that:
 - (i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including good will, of the public benefit corporation or the fair market value of the public benefit corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under 35-2-725(1)(e) and (1)(f) had it dissolved;
 - (ii) it shall return, transfer, or convey any assets held by it upon condition requiring return, transfer, or conveyance in case of merger, in accordance with the condition; and
 - (iii) the merger is approved by a majority of directors of the public benefit corporation or religious corporation who are not and will not become members or

shareholders in or officers, employees, agents, or consultants of the surviving corporation.

(2) At least 20 days before consummation of any merger of a public benefit corporation or a religious corporation pursuant to subsection (1)(d), notice, including a copy of the proposed plan of merger, must be delivered to the attorney general.

(3) Without the prior written consent of the attorney general or of the district court in a proceeding in which the attorney general has been given notice, a member of a public benefit corporation or religious corporation may not receive or keep anything as a result of a merger other than a membership in the surviving public benefit corporation or religious corporation. The court shall approve the transaction if it is in the public interest.

(4) A public benefit corporation or a religious corporation that is considered a nonprofit health entity, as defined in 50-4-701, is subject to the provisions of 35-2-617 and Title 50, chapter 4, part 7.”

Section 43. Section 35-2-613, MCA, is amended to read:

“35-2-613. Merger with foreign corporation. (1) Except as provided in 35-2-609, one or more foreign business or nonprofit corporations may merge with one or more domestic nonprofit corporations if:

(a) the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger; or

(b) the foreign corporation complies with 35-2-611 if it is the surviving corporation of the merger; and

(c) each domestic nonprofit corporation complies with the applicable provisions of 35-2-608 through 35-2-610 and, if it is the surviving corporation of the merger, with the provisions of 35-2-611.

(2) When the merger takes effect, the surviving foreign business or nonprofit corporation ~~is considered to have irrevocably appointed the secretary of state as its agent for service of~~ *may be served with* process in any proceeding brought against it *as provided in [section 13].*”

Section 44. Section 35-2-729, MCA, is amended to read:

“35-2-729. Procedure for judicial dissolution. (1) Venue for a proceeding by the attorney general to dissolve a corporation lies in the district court for the first judicial district. Venue for a proceeding brought by any other party named in 35-2-728 lies in the judicial district for the county where a corporation’s principal office *is or was last located* or, if the principal office is not located in this state, ~~the in Lewis and Clark County county where its registered office is or was last located.~~

(2) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) In a proceeding brought to dissolve a corporation, a court may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.

(4) A person other than the attorney general who brings an involuntary dissolution proceeding for a public benefit corporation or religious corporation

shall give written notice of the proceeding to the attorney general who may intervene.”

Section 45. Section 35-2-822, MCA, is amended to read:

“35-2-822. Application for certificate of authority. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state. The application must set forth:

(a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of 35-2-826;

(b) the name of the state or country under whose law it is incorporated;

(c) the date of incorporation and period of duration;

(d) the street address and, if different, the mailing address of its principal office;

~~(e) the street address and, if different, the mailing address of its registered office in this state and the name of its registered agent at that office~~ *information required by [section 5(1)];*

(f) the names and usual business or home addresses of its current directors and officers;

(g) whether the foreign corporation has members;

(h) whether the corporation, if it had been incorporated in this state, would be a public benefit corporation, mutual benefit corporation, or religious corporation; and

(i) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business in this state.

(2) The foreign corporation shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated.”

Section 46. Section 35-2-823, MCA, is amended to read:

“35-2-823. Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

(a) its corporate name;

(b) the period of its duration;

(c) *any of the information required by [section 5(1)];*

~~(d)~~ the state or country of its incorporation; or

~~(d)~~(e) its designation as a public benefit corporation, mutual benefit corporation, or religious corporation.

(2) The requirements of 35-2-822 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.”

Section 47. Section 35-2-832, MCA, is amended to read:

“35-2-832. Grounds for revocation. (1) The secretary of state may commence a proceeding under 35-2-833 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(a) the foreign corporation does not deliver the annual report to the secretary of state within 90 days after it is due;

(b) the foreign corporation does not pay within 90 days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(c) the foreign corporation is without a registered agent ~~or registered office~~ in this state for 90 days or more;

(d) the foreign corporation does not inform the secretary of state ~~under 35-2-828 or 35-2-829~~ *by an appropriate filing* that its registered agent ~~or registered office~~ has changed, ~~that its registered agent has or resigned, or that its registered office has been discontinued,~~ within 90 days of the change, ~~or resignation, or discontinuance;~~

(e) an incorporator, director, officer, or agent of the foreign corporation signed a document that the person knew was false in any material respect, with the intent that the document be delivered to the secretary of state for filing; or

(f) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated, ~~which~~ *and the* certificate states that the foreign corporation has been dissolved or disappeared as the result of a merger.

(2) The attorney general may commence a proceeding under 35-2-833 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(a) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(b) the corporation is designated as a foreign public benefit corporation and its corporation assets in this state are being misapplied or wasted; or

(c) the corporation is designated as a foreign public benefit corporation and it is no longer able to carry out its purpose.”

Section 48. Section 35-2-904, MCA, is amended to read:

“35-2-904. Annual report for secretary of state. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report on a form prescribed and furnished by the secretary of state that sets forth:

(a) the name of the corporation and the ~~state or country~~ *jurisdiction* under whose law it is incorporated;

(b) ~~the address of its registered office and the name of its registered agent at the office in this state~~ *information required by [section 5(1)];*

(c) the address of its principal office, *wherever located;*

(d) the names and business or residence addresses of its directors and principal officers;

(e) a brief description of the nature of its activities; and

(f) whether or not it has members.

(2) The information in the annual report must be current on the date the annual report is executed on behalf of the corporation.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which

a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed.”

Section 49. Section 35-2-909, MCA, is amended to read:

“35-2-909. Court-ordered inspection. (1) If a corporation does not allow a member who complies with 35-2-907(1) to inspect and copy any records required by that subsection to be available for inspection, the district court, for the judicial district of the county where the corporation’s principal office, *is located* or, if none in this state, ~~its registered office, is located in Lewis and Clark County~~ may summarily order inspection and copying of the records demanded at the corporation’s expense upon application of the member.

(2) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with 35-2-907(2) and (3) may apply to the district court, for the judicial district of the county where the corporation’s principal office *is located* or, if the principal office is not located in this state, ~~the in Lewis and Clark County county where its registered office is located~~ for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member’s costs, including reasonable attorney fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.”

Section 50. Section 35-2-1109, MCA, is amended to read:

“35-2-1109. Filing duty of secretary of state. (1) If a document delivered to the office of the secretary of state for filing satisfies the applicable requirements of 35-2-119 and 35-2-120, the secretary of state shall file it.

(2) The secretary of state shall file a document by stamping or otherwise endorsing on the document “Filed”, the secretary of state’s official title, and the date and time the secretary of state received the document. Except as provided in ~~35-2-314 and~~ 35-2-830, after filing a document, the secretary of state shall deliver a certification letter to the domestic or foreign corporation or its representative as acknowledgment that the document has been filed and the fee has been paid.

(3) If the secretary of state refuses to file a document, the secretary of state shall return the document to the domestic or foreign corporation or its representative within 10 days after the document was delivered to the secretary of state and include a brief written explanation of the reason for the refusal.

(4) The secretary of state's duty concerning the documents under this section is ministerial. Filing or refusal to file a document does not:

- (a) affect the validity or invalidity of the document in whole or in part;
- (b) relate to the correctness or incorrectness of information contained in the document; or
- (c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect."

Section 51. Section 35-3-202, MCA, is amended to read:

"35-3-202. Articles of incorporation. (1) The articles of incorporation ~~shall~~ *must* set forth:

- (a) the name of the corporation;
- (b) the period of duration, which may be perpetual;
- (c) the name of the religious denomination, society, or church creating the corporation sole;
- (d) the name of the bishop, chief priest, or presiding elder whose office is incorporated under this chapter, together with a designation of the boundaries of the territory over which ~~he~~ *that person* presides or over which ~~his~~ *that person's* jurisdiction extends and the facts authorizing ~~such~~ *the* incorporation;
- (e) the manner in which any vacancy occurring in the incumbency of ~~such~~ *the* bishop, chief priest, or presiding elder, as required by the rules or discipline of ~~such~~ *the* religious denomination, society, or church, ~~shall~~ *must* be filled;
- (f) any provisions, not inconsistent with law, ~~which~~ *that* the incorporator elects to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provisions for distribution of assets on dissolution or final liquidation;

(g) the address of its ~~initial registered~~ *principal* office and the ~~name of its initial registered agent at such address~~ *information specified in [section 5(1)]*;

(h) the name and address of the incorporator.

(2) It ~~shall~~ *is* not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(3) The articles ~~shall~~ *must* be verified by affidavit of the incorporator, and ~~he~~ *the incorporator* shall also file the original or a copy or translation of ~~his~~ *the incorporator's* commission, certificate, or letters of appointment as ~~such~~ *the* bishop, chief priest, or presiding elder, duly attested, and ~~his~~ *the incorporator's* affidavit that the ~~same~~ *document* is a true copy or translation ~~shall~~ *must* be deemed ~~considered~~ *as sufficient attestation thereof*."

Section 52. Section 35-3-209, MCA, is amended to read:

"35-3-209. Annual report. (1) Each corporation, subject to the provisions of this chapter, shall file within the time and in the manner prescribed by the Montana Nonprofit Corporation Act, an annual report on forms or in a computerized format prescribed by the secretary of state, setting forth:

(a) the name of the corporation and the name of the present incumbent chief corporate officer;

(b) the address of the ~~registered~~ *principal* office of the corporation, ~~in Montana wherever located, and the name of its registered agent in Montana at that address~~ *information specified in [section 5(1)]*;

(c) the names and respective addresses of the present members of the board of advisers or consultants of the corporation.

(2) The report must be executed by the chief corporate officer or by an attorney-in-fact acting under a power of attorney filed with the secretary of state by the chief corporate officer.”

Section 53. Section 35-3-210, MCA, is amended to read:

“35-3-210. Registered agent — ~~registered corporate office.~~ (1) A corporation sole organized under the provisions of this chapter shall maintain a corporate office in this state and shall appoint a resident registered agent *as provided in [section 5(1)]*.

(2) ~~Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment.”~~

Section 54. Section 35-4-311, MCA, is amended to read:

“35-4-311. Death or disqualification of a shareholder. (1) Upon the death of a shareholder of a professional corporation or if a shareholder of a professional corporation becomes a disqualified person or if shares of a professional corporation are transferred by operation of law or court decree to a disqualified person, the shares may be transferred to a qualified person and if not so transferred must be purchased or redeemed by the corporation to the extent that the corporation has funds legally available for the purchase.

(2) If the share price is not fixed by the articles of incorporation or bylaws of the corporation or by private agreement, the corporation must within 6 months after ~~such the~~ death or 30 days after ~~such the~~ disqualification or transfer to a disqualified person make a written offer to pay for the shares at a specified price considered by the corporation to be the fair value ~~thereof~~ as of the date of death, disqualification, or transfer. The offer must be given to the personal representative of the estate of a deceased shareholder or to the disqualified shareholder or transferee and must be accompanied by both a balance sheet of the corporation as of the latest available date and not more than 12 months prior to the offer and a profit and loss statement of the corporation for the 12-month period ending on the date of the balance sheet.

(3) If the fair value of the shares is agreed upon within 30 days after the date of the written offer, payment must be made within 60 days after the date of the offer or within ~~such other~~ *another* period *as that the parties fix by agreement* and upon surrender of the certificate or certificates representing ~~such the~~ shares. Upon payment the transferor ceases to have any interest in ~~such the~~ shares.

(4) If the fair value is not agreed upon within 30 days after the date of the written offer, the corporation ~~must~~ *shall* within the next 30 days file a petition in the district court of the county in this state where the ~~registered principal~~ office of the corporation is located *or, if the principal office is not located in this state, in Lewis and Clark County*, requesting that the fair value of ~~such the~~ shares be found and determined. If the corporation fails or refuses to institute the proceeding, the disqualified person may do so. The disqualified person must be made a party to a proceeding brought by the corporation, and a copy of the petition must be served on the disqualified person if a resident of this state and must be served by certified mail if a nonresident. Service on nonresidents must also be made by publication as provided by law. The jurisdiction of the court is

plenary and exclusive. The disqualified person is entitled to judgment against the corporation for the fair value of ~~his~~ *the person's* shares as of the date of death, disqualification, or transfer and upon payment of the judgment ~~must~~ *shall* surrender to the corporation the certificates representing the shares. The court may ~~in its discretion~~ order that judgment be paid in installments determined by the court and may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value.

(5) The judgment must include interest from the date of death, disqualification, or transfer, at a rate the court finds equitable under the circumstances.

(6) The costs and expenses of a proceeding must be determined by the court and either assessed against the corporation or assessed as the court considers equitable if the court finds that an agreed share value was not reached because the disqualified person was arbitrary or vexatious or did not act in good faith. Expenses include reasonable compensation for and expenses of the appraisers, but do not include fees and expenses of counsel for and experts employed by any party, except that if the court determines that the fair value of shares materially exceeds the amount the corporation offered ~~therefor~~ or if no offer was made, the court may award to the disqualified person reasonable compensation for any expert employed by the disqualified person.

(7) If a purchase, redemption, or transfer of shares is not completed within 10 months after the death of the deceased shareholder or 5 months after the disqualification or transfer, the corporation shall cancel the shares on its books and the disqualified person has no further interest as a shareholder other than ~~his~~ *the* right under this section to payment for ~~such~~ *the* shares.

(8) Shares acquired by a corporation upon payment of their agreed value or payment of a judgment decreeing their fair value may be held and disposed of as in the case of other treasury shares.

(9) This section does not apply to shares of a disqualified person if the period of disqualification is less than 5 months.

(10) Any provision regarding purchase, redemption, or transfer of shares of a professional corporation contained in the articles of incorporation, the bylaws, or any private agreement is specifically enforceable in the courts of this state.

(11) This section does not prevent or relieve a professional corporation from paying pension benefits or other deferred compensation for services rendered to or on behalf of a former shareholder as otherwise permitted by law.”

Section 55. Section 35-4-411, MCA, is amended to read:

“35-4-411. Admission of foreign professional corporations — application — revocation. (1) A foreign professional corporation is entitled to a certificate of authority to transact business in this state only if:

- (a) the name of the corporation meets the requirements of 35-4-206;
- (b) the corporation is organized only for purposes for which a professional corporation may be organized under this chapter; and
- (c) all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

(2) ~~No~~ A foreign professional corporation is *not* required to obtain a certificate of authority to transact business in this state unless it maintains an office in this state for the conduct of business or professional practice.

(3) The application for a certificate of authority must include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer are licensed in at least one state or territory or the District of Columbia to render a professional service described in the statement of purposes of the corporation.

(4) The certificate of authority may be revoked by the secretary of state if the corporation fails to comply with any provision of this chapter. The licensing authority shall certify to the secretary of state, from time to time, the names of all foreign professional corporations that have given cause for revocation, together with the facts pertinent ~~thereto~~ *to the cause*, and shall concurrently mail to each corporation ~~at~~ *through* its registered office ~~in this state~~ *agent* a notice that ~~such~~ *the* certification has been made. ~~No~~ A certificate of authority of a foreign professional corporation may *not* be revoked unless there has been both 60 days' notice of intent to revoke and a failure to correct the noncompliance during ~~such~~ *the* 60 days."

Section 56. Section 35-6-102, MCA, is amended to read:

"35-6-102. Involuntary dissolution — grounds. (1) Any domestic corporation, whether for profit or not for profit, may be dissolved involuntarily by order of the secretary of state when:

(a) the corporation has failed to file its annual report within the time required by law or failed to remit any fees required by law;

(b) the corporation procured its certificate of incorporation through fraud;

(c) the corporation has exceeded or abused the authority conferred upon it by law and ~~such~~ *the* excesses or abuses have continued after a written notice specifying the manner in which the corporation has exceeded or abused ~~such~~ *the* authority has been received by the registered agent of the corporation from the secretary of state;

(d) the corporation has failed for 60 days to appoint and maintain a registered agent in this state; or

(e) the corporation has failed for 60 days after change of its ~~registered office~~ ~~or~~ registered agent to file in the office of the secretary of state a statement of ~~such~~ *the* change.

(2) If dissolution is sought under subsection (1)(b) or (1)(c) ~~of this section~~, the secretary of state may ~~so~~ dissolve *the corporation* only when ~~such~~ *that* fact is established by an order of the district court. In addition to other persons ~~so~~ authorized by law, the secretary of state or the attorney general may maintain an action in the district court to implement the provisions of this section."

Section 57. Section 35-8-202, MCA, is amended to read:

"35-8-202. Articles of organization. (1) The articles of organization must set forth:

(a) the name of the limited liability company that satisfies the requirements of 35-8-103;

(b) whether the company is a term company and, if so, the term specified;

(c) ~~the complete street address of its principal place of business in this state and, if different, its registered office and the name and complete street address of its registered agent at the registered office, wherever located in this state;~~

(d) *the information required by [section 5(1)];*

~~(e)~~(i) if the limited liability company is to be managed by a manager or managers, a statement that the company is to be managed in that fashion and the names and street addresses of managers who are to serve as managers until the first meeting of members or until their successors are elected;

(ii) if the management of a limited liability company is reserved to the members, a statement that the company is to be managed in that fashion and the names and street addresses of the initial members;

~~(f)~~(f) whether one or more members of the company are to be liable for the limited liability company's debts and obligations under 35-8-304(3);

~~(g)~~(g) if the limited liability company is a professional limited liability company, a statement to that effect and a statement of the professional service or services it will render; and

~~(h)~~(h) any other provision, not inconsistent with law, that the members elect to set out in the articles, including but not limited to a statement of whether there are limitations on the authority of members or management to bind the limited liability company.

(2) It is not necessary to set out in the articles of organization any of the powers enumerated in 35-8-107.

(3) The articles of organization may not vary the nonwaivable provisions set out in 35-8-109. As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(a) the operating agreement controls as to managers, members, and a member's transferee; and

(b) the articles of organization control as to a person, other than a manager, member, and member's transferee, that reasonably relies on the articles of organization to that person's detriment."

Section 58. Section 35-8-208, MCA, is amended to read:

"35-8-208. Annual report for secretary of state. (1) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the limited liability company and the ~~state or country~~ *jurisdiction* under whose law it is organized;

(b) ~~the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state~~ *information required by [section 5(1)];*

(c) the address of its principal office, *wherever located;*

(d) (i) if the limited liability company is managed by a manager or managers, a statement that the company is managed in that fashion and the names and street addresses of the managers;

(ii) if the management of a limited liability company is reserved to the members, a statement to that effect;

(e) if the limited liability company is a professional limited liability company, a statement that all of its members and not less than one-half of its managers are qualified persons with respect to the limited liability company.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic limited liability company is organized or a foreign limited liability company is authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction.

(5) The annual report must be executed by at least one member of the limited liability company and must include the street address of the member.

(6) A domestic professional limited liability company or a foreign professional limited liability company authorized to transact business in this state shall annually file before April 15, with each licensing authority having jurisdiction over a professional service of a type described in its articles of organization, a statement of qualification setting forth the names and addresses of the members and managers of the company and additional information that the licensing authority may by rule prescribe as appropriate in determining whether the company is complying with the provisions of part 13 of this chapter and rules promulgated under part 13 of this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification.”

Section 59. Section 35-8-209, MCA, is amended to read:

“35-8-209. Administrative dissolution — rules. (1) A domestic limited liability company may be dissolved involuntarily by order of the secretary of state if the limited liability company:

(a) (i) has failed for 60 days after a change of its ~~registered office or~~ registered agent to file in the office of the secretary of state a statement of the change; or

(ii) has failed for 60 days to appoint and maintain a registered agent in this state;

(b) has failed for 140 days to file its annual report within the time required by law;

(c) has failed to remit any fees required by law;

(d) procured its certificate of existence through fraud; or

(e) has exceeded or abused the authority conferred upon it by law and the excesses or abuses have continued after a written notice of the alleged excesses or abuses has been received from the secretary of state by the registered agent of the limited liability company.

(2) If dissolution is sought under subsection (1)(d) or (1)(e), the secretary of state may dissolve a limited liability company when an alleged violation of subsection (1)(d) or (1)(e) is established by an order of a district court. In addition to any other person authorized by law, the secretary of state or the attorney

general may maintain an action in district court to implement the provisions of this section.”

Section 60. Section 35-8-1003, MCA, is amended to read:

“35-8-1003. Application for certificate of authority. (1) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign limited liability company or, if its name is unavailable for use in this state, a name that satisfies the requirements of 35-8-1009;

(b) the name of the ~~state or country~~ *jurisdiction* under whose law it is organized;

(c) its date of organization and period of duration;

(d) the street address of its principal office, *wherever located*;

(e) ~~the address of its registered office in this state and the name of its registered agent at that office~~ *information required by [section 5(1)]*; and

(f) the names and usual business addresses of its current managers, if different from its members.

(2) A foreign limited liability company shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the ~~state or country~~ *jurisdiction* under whose law the foreign limited liability company is organized.”

Section 61. Section 35-8-1011, MCA, is amended to read:

“35-8-1011. Grounds for revocation. The secretary of state may commence a proceeding under 35-8-1012 to revoke the certificate of authority of a foreign limited liability company authorized to transact business in this state if:

(1) the foreign limited liability company does not deliver its annual report to the secretary of state within 140 days after it is due;

(2) the foreign limited liability company is without a registered agent or registered office in this state for 60 days or more;

(3) the foreign limited liability company does not inform the secretary of state ~~under 35-8-105~~ that its registered agent or registered office has changed, ~~that its registered agent has or resigned, or that its registered office has been discontinued~~ within 60 days of the change, ~~or resignation, or discontinuance~~; or

(4) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of company records in the state or country under whose law the foreign limited liability company is organized, stating that it has been dissolved or disappeared as the result of a merger.”

Section 62. Section 35-8-1014, MCA, is amended to read:

“35-8-1014. Admission of foreign professional limited liability companies — application — revocation. (1) A foreign professional limited liability company is entitled to a certificate of authority to transact business in this state only if:

(a) the name of the foreign professional limited liability company meets the requirements of 35-8-1302;

(b) the foreign professional limited liability company is organized only for purposes for which a professional limited liability company may be organized under part 13 of this chapter; and

(c) all the members and not less than one-half of the managers of the foreign professional limited liability company are qualified persons with respect to the foreign professional limited liability company.

(2) Notwithstanding 35-8-1001, a foreign professional limited liability company may not be required to obtain a certificate of authority to transact business in this state unless it maintains an office in this state for the conduct of business or professional practice.

(3) The application for a certificate of authority must include a statement that all the members and not less than one-half of the managers are licensed in at least one state or territory or the District of Columbia to render a professional service described in the statement of purposes of the foreign professional limited liability company.

(4) The certificate of authority may be revoked by the secretary of state if the foreign professional limited liability company fails to comply with any provision of part 13 of this chapter. The licensing authority shall certify to the secretary of state, from time to time, the names of all foreign professional limited liability companies that have given cause for revocation, together with the pertinent facts, and shall concurrently mail to each foreign professional limited liability company *at through* its registered office ~~in this state~~ *agent* a notice that the certification has been made. A certificate of authority of a foreign professional limited liability company may not be revoked unless there have been both 60 days' notice of intent to revoke and a failure to correct the noncompliance during the 60 days.

(5) A foreign professional limited liability company is subject to all other provisions of part 13 of this chapter not inconsistent with this section."

Section 63. Section 35-8-1203, MCA, is amended to read:

"35-8-1203. Effect of merger. (1) When a merger takes effect:

(a) the separate existence of each limited liability company and other entity that are a party to the merger, other than the surviving entity, terminates;

(b) all property owned by each of the limited liability companies and other entities that are a party to the merger vests in the surviving entity;

(c) all debts, liabilities, and other obligations of each limited liability company and other entity that are a party to the merger become the obligations of the surviving entity;

(d) an action or proceeding pending by or against a limited liability company or other entity that is a party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and

(e) except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of every limited liability company and other entity that are a party to a merger vest in the surviving entity.

(2) ~~The secretary of state is an agent for service of process in an action or proceeding against a surviving foreign entity to enforce an obligation of any party to the merger if~~ *If* the surviving foreign entity fails to appoint or maintain an agent designated for service of process in this state or if the agent for service

of process cannot with reasonable diligence be found, ~~at the designated office. Upon receipt of process, the secretary of state shall send a copy of the process by registered mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger service of process may be made on the foreign entity as provided in [section 13(2)].~~ Service is effected under this subsection at the earliest of:

- (a) the date on which the company receives the process, notice, or demand;
 - (b) the date shown on the return receipt, if signed on behalf of the company;
- or
- (c) 5 days after its deposit in the mail, if mailed postpaid and correctly addressed.

(3) A member of the surviving limited liability company is liable for all obligations of a party to the merger for which the member was personally liable before the merger.

(4) Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger does not require the limited liability company to wind up its business under this chapter or to pay its liabilities and distribute its assets pursuant to this chapter.

(5) Articles of merger serve as articles of dissolution for a limited liability company that is not the surviving entity in the merger.”

Section 64. Section 35-9-207, MCA, is amended to read:

“35-9-207. Court action to compel purchase. (1) (a) If an offer to purchase shares made under 35-9-206 is rejected or if no offer is made, the person exercising the compulsory purchase right may commence a proceeding against the corporation to compel the purchase in the district court of the county where the corporation’s principal office is located or, if there is no principal office in this state, ~~its registered office in Lewis and Clark County.~~

(b) The corporation at its expense shall notify in writing all of its shareholders, and any other person the court directs, of the commencement of the proceeding.

(c) The jurisdiction of the court in which the proceeding is commenced under this subsection is plenary and exclusive.

(2) (a) The court shall determine the fair value of the shares subject to compulsory purchase in accordance with the standards set forth in 35-9-503, together with terms for the purchase.

(b) Upon making these determinations, the court shall order the corporation to purchase or cause the purchase of the shares or empower the person exercising the compulsory purchase right to have the corporation dissolved.

(3) After the purchase order is entered, the corporation may petition the court to modify the terms of purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.

(4) If the corporation or other purchaser does not make a payment required by the court’s order within 30 days of its due date, the seller may petition the court to dissolve the corporation and, absent a showing of good cause for not making the payment, the court shall do so.

(5) A person making a payment to prevent or cure a default by the corporation or other purchaser is entitled to recover the payment from the defaulter.”

Section 65. Section 35-9-501, MCA, is amended to read:

“35-9-501. Court action to protect shareholders. (1) Subject to satisfying the conditions of subsections (3) and (4), a shareholder of a statutory close corporation may petition the district court for any of the relief described in 35-9-502 through 35-9-504 if:

(a) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner, whether in ~~his~~ *the petitioner's* capacity as shareholder, director, or officer of the corporation;

(b) the directors or those in control of the corporation are deadlocked in the management of the corporation's affairs, the shareholders are unable to break the deadlock, and the corporation is suffering or will suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

(c) there exists one or more grounds for judicial dissolution of the corporation under 35-1-938.

(2) A shareholder shall commence a proceeding under subsection (1) in the district court of the county where the corporation's principal office is located or, if there is no principal office in this state, ~~its registered office in Lewis and Clark County~~. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(3) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters, ~~he~~ *the shareholder* may not commence a proceeding under this section with respect to the matters until ~~he~~ *the shareholder* has exhausted the nonjudicial remedy.

(4) If a shareholder has dissenters' rights under this chapter or 35-1-826 through 35-1-839 with respect to proposed corporate actions, ~~he must~~ *the shareholder shall* commence a proceeding under this section before ~~he~~ *the shareholder* is required to give notice of ~~his~~ *the* intent to demand payment under 35-1-826 through 35-1-839 or the proceeding is barred.

(5) Except as provided in subsections (3) and (4), a shareholder's right to commence a proceeding under this section and the remedies available under 35-9-502 through 35-9-504 are in addition to any other right or remedy ~~he~~ *the shareholder* may have.”

Section 66. Section 35-12-508, MCA, is amended to read:

“35-12-508. Records to be kept. (1) Each limited partnership shall keep at the *principal* office ~~referred to in 35-12-507(1)~~ the following:

(a) a current list of the full name and last-known business address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;

(b) a copy of the certificate of limited partnership and all certificates of amendment, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;

(c) copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the 3 most recent years;

(d) copies of any then-effective written partnership agreements and of any financial statements of the limited partnership for the 3 most recent years; and

(e) unless contained in a written partnership agreement, a writing setting out:

(i) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and that each partner has agreed to contribute;

(ii) the times at which or the events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(iii) any right of a partner to receive or of a general partner to make distributions to a partner that include a return of all or any part of the partner's contribution; and

(iv) any events, upon the happening of which, the limited partnership is to be dissolved and its affairs wound up.

(2) Records kept under this section must be available for inspection and copying at the reasonable request and at the expense of any partner during ordinary business hours."

Section 67. Section 35-12-601, MCA, is amended to read:

"35-12-601. Certificate of limited partnership. (1) In order to form a limited partnership, a certificate of limited partnership must be executed, must be filed in the office of the secretary of state, and must set forth:

(a) the name of the limited partnership;

(b) ~~the complete street address of the office and the name and complete street address of the agent for service of process required to be maintained by 35-12-507~~ information required by [section 5(1)];

(c) the name and the complete business street address of each general partner; and

(d) any other matters the general partners, in their sole discretion, determine to include.

(2) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in each case, there has been substantial compliance with the requirements of this section."

Section 68. Repealer. Sections 35-1-313, 35-1-314, 35-1-315, 35-1-316, 35-1-317, 35-1-1032, 35-1-1033, 35-1-1034, 35-1-1036, 35-2-309, 35-2-310, 35-2-311, 35-2-314, 35-2-315, 35-2-827, 35-2-828, 35-2-829, 35-8-105, 35-8-911, 35-8-1004, 35-8-1005, 35-8-1006, 35-8-1103, and 35-12-507, MCA, are repealed.

Section 69. Codification instruction. [Sections 1 through 17] are intended to be codified as an integral part of Title 35, and the provisions of Title 35 apply to [sections 1 through 17].

Section 70. Effective date. [This act] is effective October 1, 2008.

Approved April 25, 2007

CHAPTER NO. 241

[HB 433]

AN ACT REQUIRING STATE AGENCIES AND LOCAL GOVERNMENTS TO MAKE READILY AVAILABLE FOR PUBLIC INSPECTION A SUMMARY REPORT ITEMIZING EXPENDITURES FOR LOBBYING AN ELECTED OR APPOINTED FEDERAL OFFICIAL; REQUIRING STATE AGENCIES AND LOCAL GOVERNMENTS TO DESIGNATE AN OFFICE FROM WHICH THE SUMMARY REPORT MAY BE OBTAINED; AND REQUIRING STATE AGENCIES AND LOCAL GOVERNMENTS TO POST THE SUMMARY REPORT TO THE INTERNET.

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

Section 1. Full disclosure of public expenditures on federal lobbying. (1) Each quarter of a fiscal year that a state agency or a local government, as the terms are defined in 2-2-102, makes an expenditure for the services of a lobbyist to lobby an elected federal official or an appointee of an elected federal official, the state agency or local government shall make readily available for public inspection upon request a summary report itemizing each lobbying service provided and how much money was spent for each service.

(2) Each state agency and local government subject to subsection (1) shall:

(a) designate an office from which a copy of the report may be obtained; and

(b) post a copy of the report to the agency's or local government's website on the internet, if the agency or local government has a website.

(3) For purposes of this section, "expenditure" means a payment by the state agency or local government or a payment by a contractor of the state agency or local government.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 5, chapter 7, part 1, and the provisions of Title 5, chapter 7, part 1, apply to [section 1].

Approved April 25, 2007

CHAPTER NO. 242

[HB 496]

AN ACT ALLOWING ADVANCED PRACTICE REGISTERED NURSES OR LICENSED PHYSICIAN ASSISTANTS TO COMPLETE MEDICAL EXAMS REQUIRED BY TRAFFIC LAWS; AND AMENDING SECTIONS 61-5-105, 61-5-111, 61-5-120, 61-5-207, 61-9-428, AND 61-13-103, MCA.

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

Section 1. Section 61-5-105, MCA, is amended to read:

"61-5-105. Who may not be licensed. The department may not issue a license under this chapter to a person:

(1) who is under 16 years of age unless:

(a) the person is at least 15 years of age and has passed a driver's education course approved by the department and the superintendent of public instruction; or

(b) the person is at least 13 years of age and, because of individual hardship, to be determined by the department, needs a restricted license;

(2) whose license or driving privilege is currently suspended, revoked, or canceled or who is disqualified from operating a commercial motor vehicle in this or any state, as evidenced by an ineligible status report from the national driver register, established under 49 U.S.C. 30302, or from the commercial driver's license information system, established under 49 U.S.C. 31309;

(3) who is addicted to the use of alcohol or narcotic drugs;

(4) who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who, at the time of application, has not been restored to competency by the methods provided by law;

(5) who is required by this chapter to take an examination;

(6) who has not deposited proof of financial responsibility when required under the provisions of chapter 6 of this title;

(7) who has any condition characterized by lapse of consciousness or control, either temporary or prolonged, that is or may become chronic. However, the department, may in its discretion, issue a license to an otherwise qualified person suffering from a condition if the afflicted person's attending physician, *licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102*, attests in writing that the person's condition has stabilized and would not be likely to interfere with that person's ability to operate a motor vehicle safely and, if a commercial driver's license is involved, the person is physically qualified to operate a commercial motor vehicle under applicable state or federal regulations;

(8) who lacks the functional ability, due to a physical or mental disability or limitation, to safely operate a motor vehicle on the highway;

(9) who is not a resident of or domiciled in Montana except as provided in 61-5-103(3); or

(10) who does not submit proof satisfactory to the department that the applicant's presence in the United States is authorized under federal law. The department may not accept as a primary source of identification a driver's license issued by a state if the state does not require that a driver licensed in that state be lawfully present in the United States under federal law."

Section 2. Section 61-5-111, MCA, is amended to read:

"61-5-111. Contents of driver's license, renewal, renewal by mail, license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration. (1) (a) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's license receipts. The department shall adopt 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 appoint an agent to sell receipts.

(b) The department may enter into an authorized agent agreement with the county treasurer of any county in which the department no longer maintains a driver examination station for the purpose of providing driver's license renewal services.

(2) (a) 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:

(i) a full-face photograph of the licensee in the size and form prescribed by the department;

(ii) a distinguishing number issued to the licensee;

(iii) the full legal name, date of birth, Montana mailing address, and a brief description of the licensee; and

(iv) either the licensee's customary signature or a digital reproduction of the licensee's customary signature.

(b) 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 road or 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) Except as provided in subsections (3)(d)(iv) through (3)(d)(vi), 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. A person may not renew by mail for a subsequent license term after a mail renewal, except that a spouse or dependent of a person stationed outside Montana on active military duty may renew a driver's license by mail for one additional consecutive term following a mail renewal.

(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, *licensed physician assistant*, or *advanced practice registered nurse, as defined in 37-8-102*, 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) Except as provided in subsections (4)(b) and (4)(c), the term of a license renewed by mail is 8 years.

(v) The department may not renew a license by mail if:

(A) the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant; or

(B) the applicant holds a commercial driver's license with a hazardous materials endorsement, the retention of which requires additional testing and a security threat assessment under 49 CFR, part 1572.

(vi) If a license was issued to a foreign national whose presence in the United States is temporarily authorized under federal law, the license may not be renewed by mail.

(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 driver's license. Except as provided in 61-3-119 and 61-5-115, the department shall mail the notice to the Montana mailing address shown on the driver's license.

(4) (a) Except as provided in subsections (4)(b) through (4)(e), 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.

(d) (i) Except as provided in subsection (4)(d)(ii), a commercial driver's license expires on the anniversary of the licensee's birthday 5 years or less after the date of issue.

(ii) When a person obtains a Montana commercial driver's license with a hazardous materials endorsement after surrendering a comparable commercial driver's license with a hazardous materials endorsement from another licensing jurisdiction, the license expires on the anniversary of the licensee's birthday 5 years or less after the date of the issue of the surrendered license if, as reported in the commercial driver's license information system, a security threat assessment was performed on the person as a condition of issuance of the surrendered license.

(e) A license issued to a person who is a foreign national whose presence in the United States is temporarily authorized under federal law expires, as determined by the department, no later than the expiration date of the official document issued to the person by the bureau of citizenship and immigration services of the department of homeland security authorizing the person's presence in the United States.

(5) When the department issues a driver's license to a person under 18 years of age, the license must be clearly marked with a notation that conveys the restrictions imposed under 61-5-133.

(6) (a) Upon application for a driver's license or commercial driver's license and any combination of the specified endorsements, the following fees must be paid:

(i) driver's license, except a commercial driver's license — \$5 a year or fraction of a year;

(ii) motorcycle endorsement — 50 cents a year or fraction of a year;

(iii) commercial driver's license:

(A) interstate — \$10 a year or fraction of a year; or

(B) intrastate — \$8.50 a year or fraction of a year.

(b) A renewal notice for either a driver's license or a commercial driver's license is 50 cents."

Section 3. Section 61-5-120, MCA, is amended to read:

"61-5-120. Medical assessment and rehabilitation driving permit. (1)

Upon the written request of a licensed physician, *licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102*, on a form prescribed by the department, the department may authorize a driver rehabilitation specialist to issue a temporary medical assessment and rehabilitation driving permit to a person who is not licensed to drive or whose license has expired under the provisions of this chapter for the purpose of driver assessment, rehabilitation, and training.

(2) The temporary permit may be issued only to a person who is 16 years of age or older.

(3) The permit is valid for up to 6 weeks, beginning with the date of the first evaluation of the permitholder by the driver rehabilitation specialist. The driver rehabilitation specialist shall sign and date the permit at the time of the first evaluation.

(4) The permit is valid only when the permitholder is operating a motor vehicle under the immediate supervision of the driver rehabilitation specialist during the permitholder's participation in an actual in-vehicle evaluation process.

(5) The department may extend the duration of a medical assessment and rehabilitation permit for an additional 6-week period if the driver rehabilitation specialist, ~~or the licensed physician,~~ *licensed physician assistant, or advanced practice registered nurse* certifies that the permitholder needs additional time to complete the driver assessment, rehabilitation, and training process."

Section 4. Section 61-5-207, MCA, is amended to read:

"61-5-207. Reexamination or medical evaluation — when required.

(1) If the department receives reliable evidence that a licensed driver lacks the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, the department may, upon written notice of at least 5 days to the licensee, require the licensee to obtain a medical evaluation from a licensed physician, *licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102*, or submit to one or more tests customarily conducted by the department for licensure under 61-5-110.

(2) Upon the review of a medical evaluation, the conclusion of testing, or both, the department may:

(a) impose restrictions on the license, as provided in 61-5-113, that are appropriate to the licensee's acknowledged or demonstrated functional abilities;

(b) suspend the license indefinitely based upon a licensee's inability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; or

(c) take no action modifying the license or placing restrictions on the licensee.

(3) The age of a licensee, by itself, does not constitute evidence of a condition requiring a reexamination or a medical evaluation ~~by a licensed physician.~~

(4) A suspension under this section continues in effect until evidence satisfactory to the department establishes that the licensee has regained the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on a highway.

(5) Refusal or neglect of the licensee to obtain a medical evaluation from a licensed physician, *licensed physician assistant, or advanced practice registered nurse* or submit to testing as required by the department is grounds for suspension of the person's license."

Section 5. Section 61-9-428, MCA, is amended to read:

"61-9-428. Window tinting and suncreening — waiver — conditions. The highway patrol or a local law enforcement agency may grant a waiver of the standards of 61-9-405(4) for reasons of safety or security or for medical reasons based on an affidavit signed by a licensed physician, *licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102.* The waiver must be in writing and must include the vehicle identification number, registration number, or other description to clearly identify the motor vehicle to which the waiver applies and the date issued, the name of the owner of the vehicle, the reason for granting the waiver, the dates the waiver is effective, and the signature of the law enforcement officer granting the waiver. The highway patrol or the local law enforcement agency shall keep a copy of the waiver until the waiver expires."

Section 6. Section 61-13-103, MCA, is amended to read:

"61-13-103. Seatbelt use required — exceptions. (1) 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, *licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102,* that 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 or a motor-driven cycle;

(d) an occupant of a vehicle licensed as special mobile equipment; or

(e) an occupant who makes frequent stops with a motor vehicle during official job duties and who may be exempted by the department.

(3) The department may adopt rules to implement subsection (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 the driver has violated another traffic regulation or that the driver's vehicle is unsafe or not equipped as required by law."

Approved April 25, 2007

CHAPTER NO. 243

[HB 594]

AN ACT DESIGNATING AN OFFICIAL LULLABY FOR MONTANA.

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

Section 1. State lullaby. The song "Montana Lullaby", written by Ken Overcast and Wylie Gustafson, is the official lullaby of Montana.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 5, and the provisions of Title 1, chapter 1, part 5, apply to [section 1].

Approved April 25, 2007

CHAPTER NO. 244

[HB 636]

AN ACT PROHIBITING QUOTAS FOR STOPS, CITATIONS, AND ARRESTS BY LAW ENFORCEMENT OFFICERS; PROHIBITING THE USE OF QUOTAS IN EVALUATING LAW ENFORCEMENT OFFICERS; AMENDING SECTIONS 7-32-103, 7-32-2107, 7-32-4105, 44-1-302, AND 46-6-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-32-103, MCA, is amended to read:

"7-32-103. Structure of department of public safety — duties — restrictions on evaluations. (1) The director ~~shall have~~ *has* the powers and *shall* perform the duties conferred on and required of sheriffs, police officers, and chiefs of police, except in cases involving the discharge or termination of employment of subordinate employees.

(2) Officers and patrol officers of the city or town police department and deputies of the county sheriff's office ~~shall be~~ *are* subordinate to the director and ~~shall~~ have the power and *shall* perform the duties conferred on and required of police officers and patrol officers in cities and towns and of sheriff's deputies in counties, as required by state law and municipal ordinance.

(3) *Quotas for investigative stops, citations, or arrests may not be established and may not be used in evaluating officers."*

Section 2. Section 7-32-2107, MCA, is amended to read:

"7-32-2107. Tenure for deputy sheriffs — grounds for termination of employment — restrictions on evaluations. (1) Any deputy sheriff ~~now~~ employed or who may hereafter be employed shall continue in service until

relieved of his employment in the manner hereinafter provided *in this part* and only for one or more of the following specified causes:

(1)(a) conviction of a felony subsequent to the commencement of such employment;

(2)(b) willful disobedience of an order or orders given by the sheriff;

(3)(c) drinking intoxicating liquor while in uniform or while on official duty or being intoxicated in a public place while in uniform or while on official duty;

(4)(d) sleeping while on duty;

(5)(e) incapacity materially affecting ability to perform official duties;

(6)(f) gross inefficiency in the performance of official duties.

(2) *Quotas for investigative stops, citations, or arrests may not be established and may not be used in evaluating deputies."*

Section 3. Section 7-32-4105, MCA, is amended to read:

"7-32-4105. Duties of chief of police. (1) It is the duty of the chief of police:

(a) to execute and return all process issued by the city judge or directed to him *the chief* by any legal authority and to attend upon the city court regularly;

(b) to arrest all persons guilty of a breach of the peace or for the violation of any city or town ordinance and bring them before the city judge for trial;

(c) to have charge and control of all ~~police~~ *police officers*, subject to such rules as *that* may be prescribed by ordinance, and to report to the council all delinquencies or neglect of duty or official misconduct of ~~police~~ *police officers* for action of the council;

(d) to perform such other duties as the council may prescribe.

(2) The chief of police has the same powers as a constable in the discharge of his *the chief's* duties, but he ~~must~~ *may* not serve a process in any civil action or proceeding except when a city or town is a party.

(3) *Quotas for investigative stops, citations, or arrests may not be established and may not be used in evaluating police officers."*

Section 4. Section 44-1-302, MCA, is amended to read:

"44-1-302. Powers relating to supervisory personnel — quotas prohibited. The duties and jurisdiction of the supervisory personnel shall *must* be outlined and defined by and under the control of the chief. *Quotas for investigative stops, citations, or arrests may not be established and may not be used in evaluating highway patrol officers."*

Section 5. Section 46-6-420, MCA, is amended to read:

"46-6-420. Arrest, or citation, or stop quotas prohibited. (1) A state or local government agency employing a peace officer may not adopt and require a peace officer to comply with a quota and may not suggest a quota for arrests, or citations, or *investigative stops* for any criminal offense or class of criminal offenses, including violations of traffic or motor vehicle laws, contained in state law, an administrative rule adopted by an agency of the state government, or a local government ordinance.

(2) (a) For purposes of this section, "quota" means a specific number of arrests, or citations, or *investigative stops*.

(b) The term does not include the use of generally accepted management techniques that employ performance objectives as part of an overall employee evaluation.”

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 25, 2007

CHAPTER NO. 245

[HB 641]

AN ACT PROVIDING THAT A PERSON UNDER 21 YEARS OF AGE MAY NOT BE ARRESTED FOR OR CHARGED WITH THE OFFENSE OF POSSESSION OR CONSUMPTION OF AN ALCOHOLIC BEVERAGE SOLELY BECAUSE THE PERSON WAS AT A PLACE WHERE OTHER PERSONS WERE POSSESSING OR CONSUMING ALCOHOLIC BEVERAGES; AND AMENDING SECTION 45-5-624, MCA.

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

Section 1. Section 45-5-624, MCA, is amended to read:

“45-5-624. Unlawful attempt to purchase or possession of intoxicating substance — interference with sentence or court order. (1) A person under 21 years of age commits the offense of possession of an intoxicating substance if the person knowingly consumes or has in the person’s possession an intoxicating substance. *A person may not be arrested for or charged with the offense solely because the person was at a place where other persons were possessing or consuming alcoholic beverages.* A person does not commit the offense if the person consumes or gains possession of ~~the~~ *an alcoholic beverage* because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages.

(2) (a) In addition to any disposition by the youth court under 41-5-1512, a person under 18 years of age who is convicted under this section:

(i) for the first offense, shall be fined an amount not less than \$100 and not to exceed \$300 and:

(A) shall be ordered to perform 20 hours of community service;

(B) shall be ordered, and the person’s parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9), if one is available; and

(C) if the person has a driver’s license, must have the license confiscated by the court for 30 days, except as provided in subsection (2)(b);

(ii) for a second offense, shall be fined an amount not less than \$200 and not to exceed \$600 and:

(A) shall be ordered to perform 40 hours of community service;

(B) shall be ordered, and the person’s parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9), if one is available;

(C) if the person has a driver’s license, must have the license confiscated by the court for 6 months, except as provided in subsection (2)(b); and

(D) shall be required to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (8);

(iii) for a third or subsequent offense, shall be fined an amount not less than \$300 or more than \$900, shall be ordered to perform 60 hours of community service, shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9), if one is available, and shall be required to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (8). If the person has a driver's license, the court shall confiscate the license for 6 months, except as provided in subsection (2)(b).

(b) If the convicted person fails to complete the community-based substance abuse course and has a driver's license, the court shall order the license suspended for 3 months for a first offense, 9 months for a second offense, and 12 months for a third or subsequent offense.

(c) The court shall retain jurisdiction for up to 1 year to order suspension of a license under subsection (2)(b).

(3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating substance:

(a) for a first offense:

(i) shall be fined an amount not less than \$100 or more than \$300;

(ii) shall be ordered to perform 20 hours of community service; and

(iii) shall be ordered to complete and pay all costs of participation in a community-based substance abuse information course that meets the requirements of subsection (9);

(b) for a second offense:

(i) shall be fined an amount not less than \$200 or more than \$600;

(ii) shall be ordered to perform 40 hours of community service; and

(iii) shall be ordered to complete and pay for an alcohol information course at an alcohol treatment program that meets the requirements of subsection (9), which may, in the court's discretion and upon recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both;

(c) for a third or subsequent offense:

(i) shall be fined an amount not less than \$300 or more than \$900;

(ii) shall be ordered to perform 60 hours of community service;

(iii) shall be ordered to complete and pay for an alcohol information course at an alcohol treatment program that meets the requirements of subsection (9), which may, in the sentencing court's discretion and upon recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both; and

(iv) in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed 6 months.

(4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed \$150 if the person was under 21 years of age at the time that the offense was committed and may be ordered to perform community service.

(5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth in need of intervention as defined in 41-5-103. The youth court may enter its judgment under 41-5-1512.

(6) A person commits the offense of interference with a sentence or court order if the person purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined \$100 or imprisoned in the county jail for 10 days, or both.

(7) A conviction or youth court adjudication under this section must be reported by the court to the department of public health and human services if treatment is ordered under subsection (8).

(8) (a) A person convicted of a second or subsequent offense of possession of an intoxicating substance shall be ordered to complete a chemical dependency assessment.

(b) The assessment must be completed at a treatment program that meets the requirements of subsection (9) and must be conducted by a licensed addiction counselor. The person may attend a program of the person's choice as long as a licensed addiction counselor provides the services. If able, the person shall pay the cost of the assessment and any resulting treatment.

(c) The assessment must describe the person's level of abuse or dependency, if any, and contain a recommendation as to the appropriate level of treatment if treatment is indicated. A person who disagrees with the initial assessment may, at the person's expense, obtain a second assessment provided by a licensed addiction counselor or program that meets the requirements of subsection (9).

(d) The treatment provided must be at a level appropriate to the person's alcohol or drug problem, or both, if any, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon the determination, the court shall order the appropriate level of treatment, if any. If more than one counselor makes a determination, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(e) Each counselor providing treatment shall, at the commencement of the course of treatment, notify the court that the person has been enrolled in a chemical dependency treatment program. If the person fails to attend the treatment program, the counselor shall notify the court of the failure.

(f) The court shall report to the department of public health and human services the name of any person who is convicted under this section. The department of public health and human services shall maintain a list of those persons who have been convicted under this section. This list must be made available upon request to peace officers and to any court.

(9) (a) A community-based substance abuse information course required under subsection (2)(a)(i)(B), (2)(a)(ii)(B), (2)(a)(iii), or (3)(a)(iii) must be:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(b) An alcohol information course required under subsection (3)(b)(iii) or (3)(c)(iii) must be provided at an alcohol treatment program:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(c) A chemical dependency assessment required under subsection (8) must be completed at a treatment program:

(i) approved by the department of public health and human services under 53-24-208 or by a court or provided under a contract with the department of corrections; or

(ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency services and that is accredited by the joint commission on accreditation of healthcare organizations to provide chemical dependency services.

(10) Information provided or statements made by a person under 21 years of age to a health care provider or law enforcement personnel regarding an alleged offense against that person under Title 45, chapter 5, part 5, may not be used in a prosecution of that person under this section. This subsection's protection also extends to a person who helps the victim obtain medical or other assistance or report the offense to law enforcement personnel. (See compiler's comments for contingent termination of certain text.)"

Approved April 25, 2007

CHAPTER NO. 246

[HB 681]

AN ACT REVISING PROVISIONS OF THE MONTANA RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT; DEFINING TERMS; APPLYING CERTAIN PROVISIONS OF THE MONTANA RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT TO COMPETITIVE ELECTRICITY SUPPLIERS; AMENDING SECTIONS 69-8-1003, 69-8-1004, 69-8-1005, AND 69-8-1007, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 69-8-1003, MCA, is amended to read:

"69-8-1003. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric power other than simple generation,

transmission, or distribution. Ancillary services related to transmission services include energy losses, energy imbalances, scheduling and dispatching, load following, system protection, and reactive power.

(2) "Common ownership" means the same or substantially similar persons or entities that maintain a controlling interest in more than one community renewable energy project even if the ownership shares differ between two community renewable energy projects. Two community renewable energy projects may not be considered to be under common ownership simply because the same entity provided debt or equity or both debt and equity to both projects.

(3) "Community renewable energy project" means an eligible renewable resource that is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 5 megawatts in total calculated nameplate capacity.

(4) "*Competitive electricity supplier*" means any person, corporation, or governmental entity that is selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or cooperative.

(4)(5) "Compliance year" means each calendar year beginning January 1 and ending December 31, starting in 2008, for which compliance with this part must be demonstrated.

(5)(6) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(6)(7) "Eligible renewable resource" means a facility either located within Montana or delivering electricity from another state into Montana that commences commercial operation after January 1, 2005, and that produces electricity from one or more of the following sources:

(a) wind;

(b) solar;

(c) geothermal;

(d) water power, in the case of a hydroelectric project that does not require a new appropriation, diversion, or impoundment of water and that has a nameplate rating of 10 megawatts or less;

(e) landfill or farm-based methane gas;

(f) gas produced during the treatment of wastewater;

(g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;

(h) hydrogen derived from any of the sources in this subsection (6) (7) for use in fuel cells; and

(i) the renewable energy fraction from the sources identified in subsections (6)(a) (7)(a) through (6)(h) (7)(h) of electricity production from a multiple-fuel process with fossil fuels.

(7)(8) "Local owners" means:

(a) Montana residents or entities composed of Montana residents;

- (b) Montana small businesses;
- (c) Montana nonprofit organizations;
- (d) Montana-based tribal councils;
- (e) Montana political subdivisions or local governments;
- (f) Montana-based cooperatives other than cooperative utilities; or
- (g) any combination of the individuals or entities listed in subsections ~~(7)(a)~~ ~~(8)(a)~~ through ~~(7)(f)~~ ~~(8)(f)~~.

~~(8)(9)~~ “Public utility” means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on January 1, 2005, including the public utility’s successors or assignees.

~~(9)(10)~~ “Renewable energy credit” means a tradable certificate of proof of 1 megawatt hour of electricity generated by an eligible renewable resource that is tracked and verified by the commission and includes all of the environmental attributes associated with that 1 megawatt-hour unit of electricity production.

~~(11)~~ “*Small customer*” means a retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts.

~~(10)(12)~~ “Total calculated nameplate capacity” means the calculation of total nameplate capacity of the community renewable energy project and other eligible renewable resources that are:

- (a) located within 5 miles of the project;
- (b) constructed within the same 12-month period; and
- (c) under common ownership.”

Section 2. Section 69-8-1004, MCA, is amended to read:

“69-8-1004. Renewable resource standard — administrative penalty — waiver. (1) Except as provided in 69-8-1007 and ~~subsection subsections~~ (11) and (12) of this section, a graduated renewable energy standard is established for public utilities *and competitive electricity suppliers* as provided in subsections (2) through (4) of this section.

(2) In each compliance year beginning January 1, 2008, through December 31, 2009, each public utility *and competitive electricity supplier* shall procure a minimum of 5% of its retail sales of electrical energy in Montana from eligible renewable resources.

(3) (a) In each compliance year beginning January 1, 2010, through December 31, 2014, each public utility *and competitive electricity supplier* shall procure a minimum of 10% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) As part of their compliance with subsection (3)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 50 megawatts in nameplate capacity.

(c) Public utilities shall proportionately allocate the purchase required under subsection (3)(b) based on each public utility’s retail sales of electrical energy in Montana in the calendar year 2009.

(4) (a) In the compliance year beginning January 1, 2015, and in each succeeding compliance year, each public utility *and competitive electricity*

supplier shall procure a minimum of 15% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) (i) As part of their compliance with subsection (4)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 75 megawatts in nameplate capacity.

(ii) In meeting the standard in subsection (4)(b)(i), a public utility may include purchases made under subsection (3)(b).

(c) Public utilities shall proportionately allocate the purchase required under subsection (4)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2014.

(5) (a) In complying with the standards required under subsections (2) through (4), a public utility *or competitive electricity supplier* shall, for any given compliance year, calculate its procurement requirement based on the public utility's *or competitive electricity supplier's* previous year's sales of electrical energy to retail customers in Montana.

(b) The standard in subsections (2) through (4) must be calculated on a delivered-energy basis after accounting for any line losses.

(6) A public utility *or competitive electricity supplier* has until 3 months following the end of each compliance year to purchase renewable energy credits for that compliance year.

(7) (a) In order to meet the standard established in subsections (2) through (4), a public utility *or competitive electricity supplier* may only use:

(i) electricity from an eligible renewable resource in which the associated renewable energy credits have not been sold separately;

(ii) renewable energy credits created by an eligible renewable resource purchased separately from the associated electricity; or

(iii) any combination of subsections (7)(a)(i) and (7)(a)(ii).

(b) A public utility *or competitive electricity supplier* may not resell renewable energy credits and count those sold credits against the public utility's *or the competitive electricity supplier's* obligation to meet the standards established in subsections (2) through (4).

(c) Renewable energy credits sold through a voluntary service such as the one provided for in 69-8-210(4) may not be applied against a public utility's *or competitive electricity supplier's* obligation to meet the standards established in subsections (2) through (4).

(8) Nothing in this part limits a public utility *or competitive electricity supplier* from exceeding the standards established in subsections (2) through (4).

(9) If a public utility *or competitive electricity supplier* exceeds a standard established in subsections (2) through (4) in any compliance year, the public utility *or competitive electricity supplier* may carry forward the amount by which the standard was exceeded to comply with the standard in either or both of the 2 subsequent compliance years. The carryforward may not be double-counted.

(10) Except as provided in ~~subsection (11)~~ *subsections (11) and (12)*, if a public utility *or competitive electricity supplier* is unable to meet the standards established in subsections (2) through (4) in any compliance year, that public

utility or *competitive electricity supplier* shall pay an administrative penalty, assessed by the commission, of \$10 for each megawatt hour of renewable energy credits that the public utility or *competitive electricity supplier* failed to procure. A public utility may not recover this penalty in electricity rates. Money generated from these penalties must be deposited in the universal low-income energy assistance fund established in 69-8-412(1)(a).

(11) A public utility or *competitive electricity supplier* may petition the commission for a short-term waiver from full compliance with the standards in subsections (2) through (4) and the penalties levied under subsection (10). The petition must demonstrate that the:

(a) public utility or *competitive electricity supplier* has undertaken all reasonable steps to procure renewable energy credits under long-term contract, but full compliance cannot be achieved either because renewable energy credits cannot be procured or for other legitimate reasons that are outside the control of the public utility or *competitive electricity supplier*; or

(b) integration of additional eligible renewable resources into the electrical grid will clearly and demonstrably jeopardize the reliability of the electrical system and that the public utility or *competitive electricity supplier* has undertaken all reasonable steps to mitigate the reliability concerns.

(12) (a) *Retail sales made by a competitive electricity supplier made according to prices, terms, and conditions of a written contract executed prior to [the effective date of this act] are exempt from the standards in subsections (2) through (4).*

(b) *The exemption provided for in subsection (12)(a) is terminated upon modification after [the effective date of this act] of the prices, terms, or conditions in a written contract."*

Section 3. Section 69-8-1005, MCA, is amended to read:

"69-8-1005. Procurement — cost recovery — reporting. (1) In meeting the requirements of this part, a public utility shall:

(a) conduct renewable energy solicitations under which the public utility offers to purchase renewable energy credits, either with or without the associated electricity, under contracts of at least 10 years in duration; and

(b) consider the importance of geographically diverse rural economic development when procuring renewable energy credits.

(2) A public utility that intends to enter into contracts of less than 10 years in duration shall demonstrate to the commission that these contracts will provide a lower long-term cost of meeting the standard established in 69-8-1004.

(3) (a) Contracts signed for projects located in Montana must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if the Montana residents have substantially equal qualifications to those of nonresidents.

(b) Contracts signed for projects located in Montana must require all contractors to pay the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), during the construction phase of the project.

(4) All contracts signed by a public utility to meet the requirements of this part are eligible for advanced approval under procedures established by the commission. Upon advanced approval by the commission, these contracts are

eligible for cost recovery from ratepayers, except that nothing in this part limits the commission's ability to subsequently, in any future cost-recovery proceeding, inquire into the manner in which the public utility has managed the contract and to disallow cost recovery if the contract was not reasonably administered.

(5) A public utility *or competitive electricity supplier* shall submit renewable energy procurement plans to the commission in accordance with rules adopted by the commission. The plans must be submitted to the commission on or before:

- (a) January 1, 2007, for the standard required in 69-8-1004(2);
- (b) June 1, 2008, for the standard required in 69-8-1004(3);
- (c) June 1, 2013, for the standard required in 69-8-1004(4); and
- (d) any additional future dates as required by the commission.

(6) A public utility *or competitive electricity supplier* shall submit annual reports, in a format to be determined by the commission, demonstrating compliance with this part for each compliance year. The reports must be filed by March 1 of the year following the compliance year.

(7) *For the purpose of implementing this part, the commission has regulatory authority over competitive electricity suppliers."*

Section 4. Section 69-8-1007, MCA, is amended to read:

"69-8-1007. Cost caps. (1) A public utility that has restructured pursuant to Title 69, chapter 8, is not obligated to take electricity from an eligible renewable resource unless the eligible renewable resource has demonstrated through a competitive bidding process that the total cost of electricity from that eligible resource, including the associated cost of ancillary services necessary to manage the transmission grid and firm the resource, is less than or equal to bids for the equivalent quantity of power over the equivalent contract term from other electricity suppliers.

(2) A public utility that has not restructured pursuant to Title 69, chapter 8, is not obligated to take electricity from an eligible renewable resource unless the cost per kilowatt hour of the generation from the renewable resource does not exceed by more than 15% the cost of power from any other alternate generating resource available to the public utility.

(3) *A competitive electricity supplier is not obligated to take electricity from an eligible renewable resource unless the total cost of the electricity from that eligible renewable resource, including ancillary services, is less than or equal to a cost cap determined by the commission based on:*

(a) the cost of alternate power supplies available to the competitive electricity supplier; and

(b) the cost caps applicable to other utilities under this section."

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

Approved April 25, 2007

CHAPTER NO. 247

[HB 19]

AN ACT REVISING LAWS GOVERNING STATE LAND ADMINISTRATION TO CLARIFY THAT LAND GRANTED PURSUANT TO THE MORRILL ACT IS NOT SUBJECT TO DEDUCTIONS OF INTEREST OR INCOME FOR PURPOSES OF FUNDING THE ADMINISTRATION OF MORRILL ACT LAND OR FUNDS DERIVED FROM MORRILL ACT LAND; PROVIDING A STATUTORY APPROPRIATION FOR THE ADMINISTRATION OF MORRILL ACT LAND; PROVIDING FOR THE CARRYOVER OF THE UNEXPENDED PORTION OF THE STATUTORY APPROPRIATION; PROVIDING FOR REIMBURSEMENT FROM THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO THE MORRILL ACT TRUST FOR THE ADMINISTRATIVE COSTS OF INVESTING THE MORRILL ACT FUNDS; AMENDING SECTIONS 17-1-508, 17-6-201, 17-7-502, 77-1-108, 77-1-109, 77-1-602, 77-1-606, 77-1-613, 77-1-905, 77-2-328, AND 77-5-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 17-1-508, MCA, is amended to read:

“17-1-508. Review of statutory appropriations. (1) Each biennium, the office of budget and program planning shall, in development of the executive budget, review and identify instances in which statutory appropriations in current law do not appear consistent with the guidelines set forth in subsection (2).

(2) The review of statutory appropriations must determine whether a statutory appropriation meets the requirements of 17-7-502. *Except as provided in 77-1-108*, a statutory appropriation from a continuing and reliable source of revenue may not be used to fund administrative costs. In reviewing and establishing statutory appropriations, the legislature shall consider the following guidelines. A statutory appropriation may be considered appropriate if:

- (a) the fund or use requires an appropriation;
- (b) the money is not from a continuing, reliable, and estimable source;
- (c) the use of the appropriation or the expenditure occurrence is not predictable and reliable;
- (d) the authority does not exist elsewhere;
- (e) an alternative appropriation method is not available, practical, or effective;
- (f) other than for emergency purposes, it does not appropriate money from the state general fund;
- (g) the money is dedicated for a specific use;
- (h) the legislature wishes the activity to be funded on a continual basis; and
- (i) when feasible, an expenditure cap and sunset date are included.

(3) The office of budget and program planning shall prepare a fiscal note for each piece of legislation that proposes to create or amend a statutory appropriation. It shall, consistent with the guidelines in this section, review each of these pieces of legislation. Its findings concerning the statutory

appropriation must be contained in the fiscal note accompanying that legislation.”

Section 2. Section 17-6-201, MCA, is amended to read:

“17-6-201. Unified investment program — general provisions. (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires an investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation.

(b) Other public funds may not be invested in private corporate capital stock. “Private corporate capital stock” means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring real property obtained through investments. Prior to the transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a qualified appraiser.

(b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund, *other than the fund derived from land granted to the state 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 329. An appropriation to pay the costs of administering and accounting for the Morrill Act fund is provided for in 77-1-108.*"

Section 3. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 10-2-603; 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; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; 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, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)”

Section 4. Section 77-1-108, MCA, is amended to read:

“77-1-108. Trust land administration account. (1) There is a trust land administration account in the state special revenue fund. Money in the account is available to the department by appropriation and must be used to pay the costs of administering state trust lands.

(2) Appropriations from the account for each fiscal year may not exceed the sum of 1 1/8% of the book value balance in the ~~five~~ permanent funds administered by the department, *other than the fund containing proceeds derived from land granted to the state 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 329*, on the first day of January preceding the new biennium and 10% of the revenue deposited in the capitol building land grant trust fund in the last-completed fiscal year prior to the new biennium.

(3) ~~Unreserved~~ *Except as provided in subsection (4), unreserved* funds remaining in the account at the end of a fiscal year must be transferred to each of the permanent funds in proportionate shares to each fund's contribution to the account as calculated in 77-1-109(3).

(4) (a) *The amount of \$80,000 each biennium is transferred from the state general fund to an account in the state special revenue fund. The account is statutorily appropriated, as provided in 17-7-502, to the department for the purposes of administering the land granted to the state 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 329. Any unexpended portion of the statutory appropriation may be retained in the account and used for the administration of the Morrill Act land.*

(b) *At the end of each fiscal year, the department shall pay from the appropriation in subsection (4)(a) to the trust containing proceeds derived from land granted to the state 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 329, an amount calculated to be the cost of administering the investment of the fund derived from that trust. The payment must be based upon the percentage that the Morrill Act fund constitutes of the total fund derived from all trust lands.”*

Section 5. Section 77-1-109, MCA, is amended to read:

“77-1-109. Deposits of proceeds in trust land administration account. (1) (a) 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~~)*(i)* mineral royalties;

(~~b~~)*(ii)* the proceeds or income from the sale of easements and timber, except timber from public school and Montana university system lands;

(e)(iii) 5% of the interest and income annually credited to the public school fund in accordance with 20-9-341; and

(d)(iv) fees collected pursuant to 77-2-328.

(b) *The department may not make deductions from interest or income generated from lands granted to the state 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 329.*

(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 and other than those purchased pursuant to 17-6-340, 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). Royalty payments purchased pursuant to 17-6-340 must be used as provided in that section and 20-9-622.

(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, *other than the fund containing proceeds derived from lands granted to the state 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 329*, 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 6. Section 77-1-602, MCA, is amended to read:

“77-1-602. Definition of terms. Unless the context requires otherwise, in this part, the following definitions apply:

(1) “Account” means the resource development account in the state special revenue fund.

(2) (a) “Income” means all proceeds received for the use of state land except:

(i) revenue required by law to be placed in the permanent fund type; and

(ii) revenue from the sale of timber.

(b) *For purposes of subsection (2)(a), state land does not include land granted to the state 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 329.”*

Section 7. Section 77-1-606, MCA, is amended to read:

“77-1-606. Restriction on use of income from school and institutional lands. Money in the resource development account created in 77-1-604 that is derived from the income from public school lands, university lands, *other than land granted to the state 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 329*, agricultural college lands, scientific school lands, normal school lands, capitol building lands, or institutional lands must be expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in developing public lands of the same trust. If the board determines that public lands in a trust may be developed and ~~moneys~~ *money* in the account from that trust ~~are~~ *is* insufficient to defray the necessary costs and expenses incurred, the board may transfer sufficient ~~moneys~~ *money* from other trusts in the account. Trust accounts from which money is transferred must be reimbursed by a method approved by the board.”

Section 8. Section 77-1-613, MCA, is amended to read:

“77-1-613. Deduction of portion of income received from sale of timber from state trust lands — creation of account. (1) There is an account in the state special revenue fund called the state timber sale account. Money in the account may be appropriated by the legislature for use by the department in the manner set out in this section to enhance the revenue creditable to the trusts. There must be placed in the account an amount from timber sales on state lands, *other than land granted to the state 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 329*, each fiscal year equal to the amount appropriated from the account for the corresponding fiscal year.

(2) Timber sale program funds deducted under subsection (1) must be directly applied to timber sale preparation and documentation.

(3) In order to increase the volume of timber sold at the earliest possible time while continuing to meet the requirements of applicable state and federal laws and in order to avoid unnecessary delays and extra costs that would result from increasing its permanent staff, the department may contract for services that will enable achievement of the purposes of this section and that will achieve the highest net return to the trusts.

(4) To maximize overall return to the trusts, the timely salvage of timber must be considered. However, salvage timber sales may not adversely affect the implementation of green timber sales programs.”

Section 9. Section 77-1-905, MCA, is amended to read:

“77-1-905. 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 this part may include an amortization schedule to be used to determine the value to the lessee of improvements when the lease is terminated.

(3) ~~The~~ *Except for rent received from lands granted to the state 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 329, 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 10. 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 sales of state land as in its judgment the interests of the state may demand. *The rules may not include a deduction of fees from land granted to the state 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 329.* Any fees collected by a rule adopted pursuant to this section must be deposited in the trust land administration account as provided in 77-1-108."

Section 11. Section 77-5-204, MCA, is amended to read:

"77-5-204. Sale of timber — fee for forest improvement. (1) The board may sell timber on state lands, at a price per 1,000 board feet, when appropriate, that, in the board's judgment, is in the best interest of the state, provided that live timber is not sold for less than full market value.

(2) Timber sold or cut from state lands must be cut and removed under rules that may be prescribed by the board for standing timber preservation and fire prevention. In all cases, the board shall require the person cutting the timber to pile and burn or otherwise dispose of the brush and slash in the manner that may be prescribed by the board.

(3) Before the sale of timber is granted, the value of the timber must be appraised under the direction of the department, upon the request and subject to the approval of the board. An appraisal must show as nearly as possible the value per 1,000 board feet, when appropriate, of all merchantable timber.

(4) In addition to the price of the timber established under subsection (1), the board may require a timber purchaser to pay a fee for forest improvement *unless the timber is to be harvested from land granted to the state 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 329.* Revenue from the fee must be deposited in the state special revenue fund to the credit of the department and, as appropriated by the legislature, may be used only for:

- (a) disposing of logging slash;
- (b) acquiring access and maintaining roads necessary for timber harvesting on state lands;

(c) reforesting, thinning, and otherwise improving the condition and income potential of forested state lands; and

(d) complying with legal requirements for timber harvesting.”

Section 12. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2007

CHAPTER NO. 248

[HB 26]

AN ACT TRANSFERRING THE RAIL SERVICE COMPETITION COUNCIL FROM THE OFFICE OF THE GOVERNOR TO THE DEPARTMENT OF TRANSPORTATION FOR ADMINISTRATIVE PURPOSES; DECREASING, MODIFYING, AND STAGGERING THE MEMBERSHIP OF THE COUNCIL; EXPANDING THE DUTIES OF THE COUNCIL TO INCLUDE PROMOTING THE EXPANSION OF EXISTING RAIL LINES AND THE CONSTRUCTION OF NEW RAIL LINES IN MONTANA; PROVIDING AN APPROPRIATION; AND AMENDING SECTION 2-15-246, MCA.

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

Section 1. Section 2-15-246, MCA, is amended to read:

“2-15-246. Rail service competition council. (1) There is a rail service competition council consisting of the following members:

(a) the director of the department of agriculture provided for in 2-15-3001;

(b) the director of the department of transportation provided for in 2-15-2501;

~~(c) the director of the department of revenue provided for in 2-15-1301;~~

~~(d) the chief business development officer of the office of economic development provided for in 2-15-218;~~

(c) the director of the department of revenue provided for in 2-15-1301;

(d) the chief business development officer of the office of economic development provided for in 2-15-218;

~~(e)~~*(e) six seven* people, appointed by the governor, *who shall serve staggered 4-year terms commencing January 1 following their appointment,* with the following qualifications:

(i) one person with substantial knowledge and experience related to Class I railroads;

(ii) one person with substantial knowledge and experience related to Class II railroads;

~~(iii)~~*(iii)* one person who is a farm commodity producer in the state of ~~Montana~~ and who has substantial knowledge and experience related to transportation of farm commodities;

~~(iv)~~*(iv)* one person with substantial knowledge and experience in the trucking industry in the state of ~~Montana~~;

~~(v)~~*(v)* one person with substantial knowledge and experience related to transportation for the mineral industry in the state of ~~Montana~~; and

(vi) *one person with substantial knowledge and experience related to transportation for the coal industry in the state; and*

~~(vi)~~(vii) *one person with substantial knowledge and experience related to transportation for the wood products industry in the state of Montana; and*

~~(f)~~(f) *two members, one from each political party and one from each house of the legislature, from the economic affairs interim committee established in 5-5-223, selected by the presiding officer of the economic affairs interim committee with the concurrence of the vice presiding officer at the first interim committee meeting at the beginning of each interim.*

(2) The rail service competition council shall perform the following duties:

(a) *promote rail service competition in the state of Montana that results in reliable and adequate service at reasonable rates;*

(b) *develop a comprehensive and coordinated plan to increase rail service competition in the state of Montana;*

(c) *reevaluate the state's railroad taxation practices to ensure reasonable competition while minimizing any transfer of tax burden. The reevaluation of the state's railroad taxation practices should include but is not limited to a reevaluation of property taxes, taxes that minimize highway damage, special fuel taxes, and corporate tax rates.*

(d) *develop various means to assist Montanans impacted by high rates and poor rail service;*

(e) *analyze the feasibility of developing legal structures to facilitate growth of producer transportation investment cooperatives and rural transportation infrastructure authorities;*

(f) *provide advice and recommendations to the department of transportation on the department's activities under 60-11-113 through 60-11-116;*

(g) *coordinate efforts and develop cooperative partnerships with other states and federal agencies to promote rail service competition; and*

(h) *act as the state's liaison in working with Class I railroads to promote rail service competition; and*

(i) *promote the expansion of existing rail lines and the construction of new rail lines in the state.*

(3) (a) *The council shall cooperate with and report to any standing or interim legislative committee that is assigned to study or has oversight duties for rail service competition issues.*

(b) *The council shall report to the 2009 legislature on its activities and its progress in performing the duties required in subsection (2).*

(4) *The council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.*

(5) *The council is attached for administrative purposes only to the governor's office department of transportation, which may assist the council by providing staff and budgetary, administrative, and clerical services that the council or its presiding officer requests.*

(6) *Staffing and other resources may be provided to the council only from state and nonstate resources donated to the council and from direct appropriations by each legislature."*

Section 2. Appropriation. There is appropriated from the general fund to the department of transportation the following amounts to support the rail service competition council and its work:

Fiscal Year 2008	\$50,000
Fiscal Year 2009	50,000

Section 3. Directions to code commissioner. Section 2-15-246, MCA, is intended to be renumbered and codified as an integral part of Title 2, chapter 15, part 25.

Approved April 26, 2007

CHAPTER NO. 249

[HB 77]

AN ACT IMPLEMENTING MEDICAID PROVISIONS OF THE FEDERAL DEFICIT REDUCTION ACT OF 2005 BY ALLOWING RECOVERY OF PAYMENTS OWED TO MEDICAID RECIPIENTS AND REQUIRING COORDINATION OF ELIGIBILITY INFORMATION ABOUT MEDICAID RECIPIENTS; AMENDING SECTION 33-35-306, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Eligibility requirements of health insurance issuers. As a condition of doing business in the state of Montana, a health insurance issuer, a multiple employer welfare arrangement, a third-party administrator, a health maintenance organization, a pharmacy benefit manager, a health services corporation, or any other party that by statute, contract, or agreement is legally responsible for payment of a claim for a health-care item or service shall:

(1) upon request, provide to the department of public health and human services eligibility information for individuals who are eligible for or receiving medicaid, including but not limited to:

(a) data to determine during what period the medicaid recipient or medicaid-eligible individual or the spouse or dependents of the recipient or eligible individual may be or may have been covered by any of the entities listed in this section; and

(b) data regarding the nature of the coverage that is or was provided, including but not limited to the name, address, and identifying information of the entity providing coverage;

(2) respond to any inquiry from the department of public health and human services regarding a claim for payment for any health-care item or service submitted not later than 3 years after the date the item or service was provided;

(3) accept the department of public health and human services' right of recovery and the assignment from the medicaid recipient to the department of public health and human services of any right of an individual or other entity to payment from any of the entities listed in this section for an item or service for which medicaid has paid; and

(4) agree not to deny a claim submitted by the department of public health and human services solely on the basis of the date of submission of the claim, the

type or format of the claim form, or a failure to present proper documentation at the point of sale that is the basis of the claim if:

(a) the claim is submitted by the department of public health and human services within the 3-year period beginning on the date on which the service or item was provided; and

(b) any action by the department of public health and human services to enforce its rights with respect to the claim is commenced within 6 years after the department submitted the claim.

(5) This section may not be construed to:

(a) require that a third party pay any department claim for services or items that are not covered under the applicable health care plan;

(b) require that any third-party administrator, fiscal intermediary, or other contractor pay a department claim from its own funds unless the entity also bears the financial obligation for the claim under the applicable plan documents;

(c) impose any liability on an entity to pay claims that the entity does not otherwise bear; or

(d) negate any right of indemnification against a plan sponsor or other entity with ultimate liability for health care claims by a third-party administrator, fiscal intermediary, or other contractor that pays the claims.

Section 2. Section 33-35-306, MCA, is amended to read:

“33-35-306. Application of insurance code to arrangements. (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions:

(a) 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) [section 1];

~~(e)(d)~~ 33-3-308;

~~(d)(e)~~ Title 33, chapter 18, except 33-18-242;

~~(e)(f)~~ Title 33, chapter 19;

~~(f)(g)~~ 33-22-107, 33-22-131, 33-22-134, and 33-22-135; and

~~(g)(h)~~ 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 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 1, and the provisions of Title 33 apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2007.

Approved April 26, 2007

CHAPTER NO. 250

[HB 83]

AN ACT REVISING THE LAWS RELATING TO MEDICAL PAROLE OF PRISON INMATES; PROVIDING THAT THE BOARD OF PARDONS AND PAROLE SHALL HOLD A HEARING ON APPLICATIONS FOR MEDICAL PAROLE; REVISING PROCEDURES AND STANDARDS FOR APPLICATION FOR AND ELIGIBILITY FOR MEDICAL PAROLE; AMENDING SECTION 46-23-210, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 46-23-210, MCA, is amended to read:

“46-23-210. Medical parole. (1) The board may release on medical parole by appropriate order a *any* person placed in a correctional institution or program, except a person under sentence of death. To be eligible for a medical parole, a person must have an examination and written diagnosis by a physician licensed under Title 37 to practice medicine. The diagnosis must include:

(a) a determination that the person suffers from an incapacitating physical condition, disease, or syndrome;

(b) a description of the physical condition, disease, or syndrome and a detailed description of the person's physical incapacity; and *confined in a state prison or any person sentenced to a state prison and confined in a prerelease center who:*

(a) *is not under sentence of death or sentence of life imprisonment without possibility of release;*

(b) *is unlikely to pose a detriment to the person, victim, or community; and*

(c) (i) *has a medical condition requiring extensive medical attention; or*

(ii) *has been determined by a physician to have a medical condition that will likely cause death within 6 months or less.*

(2) *A person designated ineligible for parole under 46-18-202(2) must have approval of the sentencing judge before being eligible for medical parole. The provisions of this subsection do not apply to a person who is ineligible for medical parole under subsection (1)(a).*

(3) *Medical parole may be requested by the board, the department, an incarcerated person, or an incarcerated person's spouse, parent, child, grandparent, or sibling by submitting a completed application to the administrator of the correctional institution in which the person is incarcerated. The application must include a detailed description of the person's proposed placement and medical care and an explanation of how the person's medical care will be financed if the person is released on medical parole. The application must include a report of an examination and written diagnosis by a physician licensed under Title 37 to practice medicine. The physician's report must include:*

(a) *a description of the medical attention required to treat the person's medical condition;*

(b) *a description of the person's medical condition, any diagnosis, and any physical incapacity; and*

(c) *a prognosis addressing the likelihood of the person's recovery from the physical condition, disease, or syndrome medical condition or diagnosis and the*

extent of any potential recovery. *The prognosis may include whether the person has a medical condition causing the likelihood of death within 6 months.*

~~(2)(4) The diagnosis application must be reviewed and accepted by the department before the board may consider granting a medical parole. The board may not grant a medical parole unless the incapacitating physical condition, disease, or syndrome renders the person highly unlikely to present a clear and present danger to public safety.~~

(5) Upon receiving the application from the department, the board shall hold a hearing. Any interested person or the interested person's representative may submit written or oral statements, including written or oral statements from a victim. A victim's statement may be kept confidential.

~~(3)(6) The board shall require as a condition of medical parole that the person agree to placement in an environment chosen approved by the department during the parole period, including but not limited to a hospital, nursing home, hospice facility, or prerelease center, to intensive supervision, to some other appropriate community corrections facility or program, or to a family home. The board may require as a condition of parole that the person agree to periodic examinations and diagnoses at the person's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the person's physical capacity medical condition has improved to the extent that the person no longer requires extensive medical attention or is likely to pose a possible detriment to society the person, victim, or community, the board may revoke the parole and return the person to the custody of the department.~~

~~(4) Medical parole may be requested by the board, the department, an incarcerated person, or an incarcerated person's parent, grandparent, child, or sibling by submitting the request in writing to the administrator of the correctional institution in which the person is incarcerated.~~

~~(5)(7) A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.~~

~~(6) Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply to nonmedical parole.~~

~~(8) Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply to medical parole.~~

(9) Before July 1 of each even-numbered year, the board shall report to the children, families, health, and human services interim committee and the law and justice interim committee regarding the outcome related to any person released on medical parole since the last report, including health care costs and payments related to the care of the person released on medical parole."

Section 2. Effective date. [This act] is effective July 1, 2007.

Section 3. Applicability. [This act] applies to applications for medical parole received on or after [the effective date of this act].

Approved April 26, 2007

CHAPTER NO. 251

[HB 117]

AN ACT REQUIRING NEWBORN HEARING SCREENINGS AND EDUCATION; AMENDING SECTIONS 53-19-401, 53-19-402, AND 53-19-404, MCA; AND REPEALING SECTION 53-19-403, MCA.

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

Section 1. Section 53-19-401, MCA, is amended to read:

“53-19-401. Purpose. The purposes of this part are:

(1) to provide early detection of hearing loss in newborn infants as soon after birth as possible to enable children, their families, and primary health care providers to obtain any necessary multidisciplinary evaluation, audiologic assessment, treatment, and intervention services at the earliest opportunity and to prevent or mitigate the developmental delays and academic failures associated with late identification of hearing loss; and

(2) to provide the state with the necessary information to effectively plan, establish, and evaluate a comprehensive system of appropriate services for newborn infants *and children who have a hearing loss or who are deaf or hard of hearing.*”

Section 2. Section 53-19-402, MCA, is amended to read:

“53-19-402. Statewide universal newborn hearing screening, tracking, and intervention program. (1) There is a universal newborn hearing screening program in the department of public health and human services. The department shall implement the program to ~~encourage~~ *ensure* a hearing screening test for all newborn infants ~~to undergo~~ for identification of newborn infant hearing loss. The department shall ~~encourage~~ *implement the program to ensure* newborn infant hearing screening tests ~~to be~~ *are* completed before discharge from a hospital or no later than ~~3 months~~ *1 month* after birth.

(2) The department shall adopt rules to:

~~(a) determine the volume of births that would allow a hospital or health care facility to be exempt from providing newborn infant hearing screenings onsite before discharge;~~

~~(b) develop information for and procedures by which health care providers, local health departments, health care clinics, school districts, and other appropriate resources may promote the importance of the screening of newborn infants' hearing and provide information regarding locations where screenings may be accessed for those newborn infants either not born in a hospital or who do not receive a screening in a hospital; and~~

~~(a) ensure that each licensed hospital, health care facility, or health care provider providing obstetric services:~~

~~(i) complete newborn hearing screenings for all infants before discharge or no later than 1 month after birth and report the results to each infant's primary care provider, including any recommendation for audiologic assessment for an infant with two failed hearing screenings; and~~

~~(ii) provide required education regarding hearing screenings and hearing loss;~~

(b) *ensure monitoring of all babies screened in Montana and referred for audiologic assessment to ensure that they receive an audiologic assessment by 3 months of age;*

(c) *establish newborn hearing screening protocols that are objective and physiologically based;*

(d) *establish education protocols;*

~~(e) determine any additional~~ *establish reporting requirements that are related to newborn infant hearing screening, evaluation, audiologic assessment, treatment, and intervention services. recommendation for audiologic assessment, and audiologic assessment results; and*

(f) *ensure the electronic sharing of audiologic evaluation information of infants diagnosed as deaf or hard of hearing with the Montana school for the deaf and blind, pursuant to the school's responsibility for intervention tracking as provided in 20-8-102.*

(3) The department shall assist ~~hospitals~~ *each licensed hospital, health care facility, or health care provider providing obstetric services* in developing systems for reporting and in accessing funds to purchase hearing screening equipment by providing information on funding sources known to the department.

(4) The department may accept contributions, gifts, grants, or endowments from public or private sources for the use and benefit of this program.”

Section 3. Section 53-19-404, MCA, is amended to read:

“53-19-404. Required education — screening — reporting. (1) Each licensed hospital, health care facility, or health care provider that provides obstetric services shall provide education to parents of infants born in the hospital or health care facility of the importance of screening the hearing of newborn infants and *providing* followup care. ~~Education is not considered a substitute for the hearing screening.~~

~~(2) Every licensed hospital, health care facility, or health care provider that provides obstetric services shall report quarterly to the department of public health and human services and to the task force the following information and any other information required by rule:~~

~~(a) the number of infants born in the hospital;~~

~~(b) the number of infants screened;~~

~~(c) the number of infants who passed the screening, if administered;~~

~~(d) the number of infants who did not pass the screening, if administered;~~

~~(e) the number of infants who received followup care; and~~

~~(f) the number of infants with hearing impairment.~~

(2) *Every licensed hospital or health care facility that provides obstetric services shall:*

(a) *perform newborn hearing screenings, including screening of infants transferred into the hospital or health care facility from another hospital or health care facility, unless the transferring facility has already performed the screening;*

(b) *report monthly to the department the following information:*

(i) *the infants born in the hospital or born outside of the hospital and transported or transferred to the hospital or health care facility;*

(ii) *the infants screened, including those infants born outside of the hospital or health care facility and transported or transferred to it from another hospital or health care facility or screened as part of a cooperative agreement with health care providers providing obstetric services in their service area;*

(iii) *the infants not screened and the reason each infant was not screened, in accordance with reporting requirements;*

(iv) *the infants who passed the screening; and*

(v) *the infants who do not pass their screenings and the contact information for the primary care provider who was notified of the screening results for each infant who did not pass the screenings.*

(3) *Every licensed audiologist performing audiologic evaluations of infants identified by hearing screening as needing audiologic assessment shall report monthly to the department the following information:*

(a) *the identity of infants referred to them for audiologic assessment;*

(b) *the referring person or health care facility;*

(c) *the birthing facility in which the infant was born; and*

(d) *the results of the audiologic assessment of each infant referred to them.”*

Section 4. Repealer. Section 53-19-403, MCA, is repealed.

Approved April 26, 2007

CHAPTER NO. 252

[HB 154]

AN ACT REVISING THE LAWS GOVERNING COMMITMENT PROCEEDINGS FOR THE DEVELOPMENTALLY DISABLED TO ALLOW A COURT TO ORDER COMMUNITY TREATMENT AS AN OPTION; DEFINING THE ELEMENTS OF A COMMUNITY TREATMENT PLAN; AND AMENDING SECTIONS 53-20-102, 53-20-112, 53-20-118, 53-20-121, 53-20-125, 53-20-126, 53-20-128, 53-20-129, 53-20-132, 53-20-133, AND 53-20-141, MCA.

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

Section 1. Section 53-20-102, MCA, is amended to read:

“53-20-102. Definitions. As used in this part, the following definitions apply:

(1) (a) *“Available” means:*

(i) *that services of an identified provider or providers have been found to be necessary and appropriate for the habilitation of a specific person by the person’s individual treatment planning team;*

(ii) *that funding for the services has been identified and committed for the person’s immediate use; and*

(iii) *that all providers have offered the necessary services for the person’s immediate use.*

(b) A service is not available simply because similar services are offered by one or more providers in one or more locations to other individuals or because the person has been placed on a waiting list for services or funding.

~~(1)~~(2) “Board” or “mental disabilities board of visitors” means the mental disabilities board of visitors created by 2-15-211.

(3) “Case manager” means a person who is responsible for service coordination, planning, and crisis intervention for persons who are eligible for community-based developmental disability services from the department.

(4) “Community treatment plan” means a comprehensive, individualized plan of care that addresses the habilitation needs of and the risks posed by the behaviors of a respondent who is found to be seriously developmentally disabled.

~~(2)~~(5) “Community-based facilities” or “community-based services” means those facilities and services that are available for the evaluation, treatment, and habilitation of persons with developmental disabilities in a community setting.

~~(3)~~(6) “Court” means a district court of the state of Montana.

~~(4)~~(7) “Developmental disabilities professional” means a licensed psychologist, a licensed psychiatrist, or a person with a master’s degree in psychology, who:

(a) has training and experience in psychometric testing and evaluation;

(b) has experience in the field of developmental disabilities; and

(c) is certified, as provided in 53-20-106, by the department of public health and human services.

~~(5)~~(8) “Developmental disability” means a disability that:

(a) is attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation ~~and that~~;

(b) requires treatment similar to that required by mentally retarded individuals. ~~A developmental disability is a disability that~~;

(c) originated before the individual attained age 18, ~~that~~;

(d) has continued or can be expected to continue indefinitely; ~~and that~~

(e) results in the person having a substantial disability.

~~(6)~~(9) “Habilitation” means the process by which a person who has a developmental disability is assisted in acquiring and maintaining those life skills that enable the person to cope more effectively with personal needs and the demands of the environment and in raising the level of the person’s physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

~~(7)~~(10) “Individual treatment planning team” means the interdisciplinary team of persons involved in and responsible for the habilitation of a resident. The resident is a member of the team.

~~(8)~~(11) “Next of kin” includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

~~(9)~~(12) “Qualified mental retardation professional” means a professional program staff person for the residential facility who the department of public health and human services determines meets the professional requirements necessary for federal certification of the facility.

(10)(13) "Resident" means a person committed to a residential facility.

(11)(14) "Residential facility" or "facility" means the Montana developmental center.

(12)(15) "Residential facility screening team" means a team of persons, appointed as provided in 53-20-133, that is responsible for screening a respondent to determine if the commitment of the respondent to a residential facility or imposition of a community treatment plan is appropriate.

(13)(16) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously developmentally disabled and in need of developmental disability services in for whom the petition requests commitment to a residential facility or imposition of a community treatment plan.

(14)(17) "Responsible person" means a person willing and able to assume responsibility for a person who is seriously developmentally disabled or alleged to be seriously developmentally disabled.

(15)(18) "Seriously developmentally disabled" means a person who:

- (a) has a developmental disability;
- (b) is impaired in cognitive functioning; and
- (c) cannot be safely and effectively habilitated in through voluntary use of community-based services because of:
 - (i) behaviors that pose an imminent risk of serious harm to self or others; or
 - (ii) self-help deficits so severe as to require total care."

Section 2. Section 53-20-112, MCA, is amended to read:

"53-20-112. Procedural rights — appointment of counsel. (1) A respondent has all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of a person who suffers from a mental disorder and who requires commitment, as provided in 53-21-115 through 53-21-118.

(2) In addition, the parents or guardian of a respondent have has the right to:

- (a) be present at any hearing held pursuant to this part;
- (b) be represented by counsel in any hearing;
- (c) offer evidence and cross-examine witnesses in any hearing; and
- (d) have the respondent examined by a professional of their the parents' or guardian's choice when a professional is reasonably available; unless the person chosen is objected to by the respondent or by a responsible person appointed by the court.

(3) Upon receipt of a petition for commitment, recommitment, or emergency commitment, the court shall order the office of the state public defender, provided for in 47-1-201, to assign counsel for the respondent. If the parents are indigent and if the parents request it or if the guardian is indigent and the guardian requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111."

Section 3. Community treatment plan — elements — placement. A court may order a respondent to be placed in a community treatment plan as a

less restrictive alternative to commitment to a residential facility. The plan may include but is not limited to requiring the respondent to:

- (1) participate in a specified set of community-based services;
- (2) participate in services addressing the risk to self or others, including but not limited to group or individual therapy, staff supervision, psychiatric care, or medication; and
- (3) abide by individualized restrictions on the respondent's behavior or other conditions of continued participation that the court finds necessary to protect the respondent or the public, including but not limited to residential requirements, restrictions on access to intoxicants or weapons, productive use of free time, limited financial independence, curfew, or authorization for providers to share information about the respondent with law enforcement.

Section 4. Section 53-20-118, MCA, is amended to read:

"53-20-118. Venue for hearing. (1) ~~Hearings~~ *Except as provided in 53-20-129, hearings held pursuant to this part must be held in the district court for the district in which the respondent resides or in which the residential facility is located to which the respondent is or is to be committed.*

- (a) *the respondent resides; or*
- (b) *the residential facility to which the respondent is committed or is to be committed is located.*

(2) The cost of any hearing held pursuant to this part must be borne by the county where the respondent resides."

Section 5. Section 53-20-121, MCA, is amended to read:

"53-20-121. Petition for involuntary treatment — contents of. (1) A person who believes that there is a person who is seriously developmentally disabled and in need of commitment to a residential facility *or imposition of a community treatment plan* may request the county attorney to file a petition alleging that the person is seriously developmentally disabled and in need of commitment to a residential facility *or imposition of a community treatment plan*.

- (2) The petition must contain:
 - (a) the name and address of the person requesting the petition and the person's interest in the case;
 - (b) the name and address of the respondent;
 - (c) the name and address of the parents or guardian of the respondent and of any other person believed to be legally responsible for the care, support, and maintenance of the respondent;
 - (d) the name and address of the respondent's next of kin, to the extent known;
 - (e) the name and address of any person who the county attorney believes might be willing and able to be appointed as a responsible person; ~~and~~
 - (f) *a description of the relief requested, whether commitment to a residential facility or imposition of a community treatment plan; and*
 - (~~f~~)(g) a statement of the rights of the respondent and the respondent's parents or guardian that must be in conspicuous print and identified by a suitable heading.

(3) *If the petition requests imposition of a community treatment plan, a copy of the proposed community treatment plan must be attached to the petition.*

~~(3)(4)~~ *A copy of the petition must be sent to the residential facility screening team. The county attorney shall immediately mail a copy of the petition to the residential facility screening team, the respondent's parents or guardian, if any, and the respondent's counsel. The county attorney shall ensure that the petition is promptly hand-delivered to the respondent."*

Section 6. Section 53-20-125, MCA, is amended to read:

"53-20-125. Outcome of screening — recommendation for commitment to residential facility or imposition of community treatment plan — hearing. (1) *A court may commit a person may be committed to a residential facility or impose a community treatment plan only if the person:*

(a) *is 18 years of age or older; and*

(b) *is determined to be seriously developmentally disabled and in need of commitment to a residential facility or imposition of a community treatment plan by the residential screening team, as provided in 53-20-133, and by a court, as provided in 53-20-129 or in this section.*

~~(2) If as a result of~~ *After the screening required by 53-20-133, the residential facility screening team concludes that the respondent who has been evaluated is seriously developmentally disabled and recommends that the respondent be committed to a residential facility for treatment and habilitation on an extended basis, the team shall file its written recommendation and report with the court. The report must include the factual basis for the recommendation and must describe any tests or evaluation devices that have been employed in evaluating the respondent. The residential facility screening team shall provide to the court, the county attorney, the respondent's attorney, and any other party requesting it the social and placement information that the team relied upon in making its determination.*

~~(3) At the request of the respondent, the respondent's parents or guardian, or the responsible person, the court shall order the office of state public defender, provided for in 47-1-201, to assign counsel for the respondent. If the parents are indigent and if the parents request it or if a guardian is indigent and requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111.~~

~~(4)(3)~~ *Notice of the determination of the residential facility screening team must be mailed or delivered to:*

(a) *the respondent;*

(b) *the respondent's parents, guardian, or next of kin, if known;*

(c) *the responsible person;*

(d) *the respondent's advocate, if any;*

(e) *the county attorney;*

(f) *the residential facility;*

(g) *the attorney for the respondent, if any; and*

(h) *the attorney for the parents or guardian, if any.*

(5)(4) The respondent, the respondent's parents or guardian, the responsible person, the respondent's advocate, if any, or the attorney for any party may request that a hearing be held on the recommendation of the residential facility screening team. *The request for a hearing must be made in writing within 15 days of service of the report.*

(6)(5) Notice of the hearing must be mailed or delivered to each of the parties listed in subsection (5) (4).

(7)(6) The hearing must be held before the court without jury. The rules of civil procedure apply.

(7) *Upon receiving the report of the residential facility screening team and after a hearing, if one is requested, the court shall enter findings of fact and take one of the following actions:*

(8)(a) *If both the residential facility screening team and the court finds find that the respondent is seriously developmentally disabled and in need of commitment to a residential facility, it the court shall order the respondent committed to a residential facility for an extended course of treatment and habilitation.*

(b) *If both the residential facility screening team and the court find that the respondent is seriously developmentally disabled but either the residential facility screening team or the court finds that a less restrictive community treatment plan has been proposed, the court may impose a community treatment plan that meets the conditions set forth in 53-20-133(4). If the court finds that a community treatment plan proposed by the parties or recommended by the residential facility screening team does not meet the conditions set forth in 53-20-133(4), it may order the respondent committed to a residential facility. The court may not impose a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions of 53-20-133(4)(c) and (4)(d).*

(c) *If either the residential facility screening team or the court finds that the respondent has a developmental disability but is not seriously developmentally disabled, it the court shall dismiss the petition and refer the respondent to the department of public health and human services to be considered for placement in voluntary community-based services according to 53-20-209.*

(d) *If either the residential screening team or the court finds that the respondent does not have a developmental disability or is not in need of developmental disability services, it the court shall dismiss the petition.*

(9)(8) (a) *If the residential facility screening team recommends commitment to a residential facility or imposition of a community treatment plan and none of the parties notified of the recommendation request a hearing within 15 days of service of the screening team's report, the court may:*

(i) *issue an order for the commitment of committing the respondent to the residential facility for an extended period of treatment and habilitation;*

(ii) *issue an order imposing a community treatment plan that the court finds meets the conditions set forth in 53-20-133(4); or the court may*

(iii) *initiate its own inquiry as to whether the an order should be granted.*

(b) *The court may not impose a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions in 53-20-133(4)(c) and (4)(d).*

~~(10)(9)~~ The court may refuse to authorize commitment of a respondent to a residential facility for an extended period of treatment and habilitation if commitment is not in the best interests of the respondent.

~~(11) An order for commitment must be accompanied by findings of fact.~~

~~(12)(10)~~ A court order entered in a proceeding under this part must be provided to the residential facility screening team.”

Section 7. Section 53-20-126, MCA, is amended to read:

“53-20-126. Maximum period of commitment to residential facility or treatment plan. The court order approving the commitment ~~to a residential facility or the imposition of the community treatment plan~~ must specify the maximum period of time for which the person is committed ~~to the residential facility or for which a community treatment plan is imposed~~. The maximum period may not exceed 1 year.”

Section 8. Section 53-20-128, MCA, is amended to read:

“53-20-128. Recommitment — extension of community treatment plan. (1) ~~If the~~ *The* qualified mental retardation professional responsible for a resident’s habilitation determines that the resident continues to be seriously developmentally disabled and in need of commitment to a residential facility beyond the term of the current commitment order, ~~the qualified mental retardation professional shall~~ *or the case manager responsible for habilitation of a person under a community treatment plan may request that the county attorney to file* a petition for recommitment ~~be filed or extension of the order imposing the community treatment plan.~~

(2) A petition for recommitment *or extension* must be filed with the district court before the end of the current period of commitment *or the expiration of the order imposing the current community treatment plan.*

(3) ~~The~~ *A* petition for recommitment *or extension of a community treatment plan must be accompanied by a written report containing the recommendation of the qualified mental retardation professional must be presented in a written report that includes or case manager and a summary of the current habilitation plan or community treatment plan for the resident respondent.*

(4) The ~~resident~~ *petition* must be ~~screened reviewed~~ in accordance with 53-20-133 by the residential facility screening team.

(5) Copies of the petition for recommitment and the report of the qualified mental retardation professional *or case manager* must be sent to:

- (a) the court that issued the current order;
- (b) the residential screening team;
- (c) the resident;
- (d) the resident’s parents or guardian or next of kin, if any;
- (e) the attorney who most recently represented the resident, if any;
- (f) the responsible person appointed by the court, if any; and
- (g) the resident’s advocate, if any.

(6) ~~If the residential facility screening team recommends that the resident be recommitted, the court may enter an order for recommitment without hearing unless a person notified as provided in subsection (5) requests that a hearing be held or the court determines that it would be in the best interest of~~

~~the resident to hold a hearing. The provisions of 53-20-125 apply to a petition for recommitment or extension of an order imposing a community treatment plan.~~

~~(7) If the court sets a hearing, the court shall provide notice to all of the persons notified pursuant to subsection (5).~~

~~(8)(7) A court may order a resident's recommitment to a residential facility if the court determines that the resident continues to be seriously developmentally disabled and in need of continued commitment to the residential facility. If the court finds that the resident is still in need of developmental disabilities services but does not require commitment to a residential facility or if all parties are willing for the resident to participate in a community-based program of habilitation, it shall refer the resident to the department of public health and human services to be considered for placement in community-based services according to 53-20-209. If the resident is either the court or the residential facility screening team finds that the respondent has been placed voluntarily in community-based services or if that the need for developmental disabilities services no longer exists, the court shall dismiss the petition.~~

~~(9)(8) The court may not order recommitment to a residential facility that does not have an individualized habilitation plan for the resident.~~

~~(9) The court may not extend an order imposing a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions set forth in 53-20-133(4)(c) and (4)(d).~~

~~(10) At a hearing, the court may inquire concerning the suitability of continuing a resident's commitment to a residential facility."~~

Section 9. Section 53-20-129, MCA, is amended to read:

"53-20-129. Emergency admission and commitment. (1) A person believed to be seriously developmentally disabled may be admitted ~~in~~ to a residential facility or a temporary court-ordered community treatment plan may be imposed on an emergency basis without notice to the person or approval by the residential facility screening team when necessary to protect the person or others from death or serious bodily ~~harm~~ injury, as defined in 45-2-101.

(2) An emergency admission to a residential facility may be initiated only by a developmental disabilities professional.

(3) An emergency admission to a residential facility may not proceed unless the residential facility and the department of public health and human services are given reasonable notice of the need for placement by the developmental disabilities professional responsible for emergency admission.

(4) A petition for emergency commitment must be filed on the next judicial day after an emergency admission to a residential facility by the county attorney of the county where the ~~person~~ respondent resides.

(5) A petition for imposition of an emergency community treatment plan may be filed by the county attorney of the county where the respondent resides and must include or attach the written report of a case manager. Any temporary community treatment plan must meet the conditions set forth in 53-20-133(4).

~~(5)(6) The residential facility screening team shall report back to the court on the seventh judicial day following the filing of the petition for emergency commitment or imposition of a temporary community treatment plan.~~

(6)(7) Once the report of the residential facility screening team is received by the court, continued placement in the residential facility *or continued imposition of the temporary community treatment plan* may not continue without an order of the court for emergency commitment *or continued imposition of the community treatment plan*.

(7)(8) A court may order an emergency commitment *or continue a temporary community treatment plan* only when *the residential facility screening team has recommended and* the court determines that the emergency commitment *or continued imposition of a community treatment plan* is necessary to protect the respondent or others from death or serious bodily ~~harm~~ *injury, as defined in 45-2-101. Any temporary community treatment plan must meet the conditions set forth in 53-20-133(4).*

(8)(9) An order for emergency commitment *or continued imposition of a temporary community treatment plan* may be entered without a hearing before the court, if the court finds that the record supports the order.

(9)(10) An emergency commitment to a residential facility *or imposition of a temporary community treatment plan* may not continue for longer than 30 days after placement in the residential facility *or imposition of a temporary community treatment plan* unless a petition for an extended commitment to the residential facility *or for imposition of a community treatment plan as provided in 53-20-121* has been filed ~~before the court~~.

~~(10) The residential facility screening team may recommend that the respondent under a petition for emergency commitment be committed by court order to the residential facility on an extended basis."~~

Section 10. Section 53-20-132, MCA, is amended to read:

"53-20-132. Court-ordered placement in community-based services prohibited *except through statutory process*. ~~Nothing in this~~ *This part may not be construed as authorizing the placement of and delivery of services to persons with developmental disabilities in community-based services by court order, except by imposing a community treatment plan pursuant to this part. Placement of persons in voluntary community-based services is governed by 53-20-209."*

Section 11. Section 53-20-133, MCA, is amended to read:

"53-20-133. Residential facility screening team — referral by court — membership — rules. (1) When the district court receives a petition for commitment to a residential facility *or for imposition of a community treatment plan* under this part, the court, prior to proceeding, shall refer the respondent to the residential facility screening team for screening to determine whether ~~placement and habilitation in commitment to a residential facility are or imposition of a community treatment plan is~~ *appropriate for the respondent.*

(2) A court may not commit a respondent to a residential facility *or impose a community treatment plan* under 53-20-125, 53-20-128, or 53-20-129 unless the residential facility screening team determines that ~~placement and habilitation in commitment to a residential facility are or imposition of a community treatment plan is~~ *appropriate for the respondent.*

(3) The residential facility screening team may not determine that ~~placement and habilitation in commitment to a residential facility are or imposition of a community treatment plan is~~ *appropriate on an extended basis unless the residential facility screening team determines that the respondent is seriously developmentally disabled.*

(4) ~~The residential facility screening team shall provide the court and the county attorney with the social and placement information relied upon by the residential facility screening team in making its determination. The residential facility screening team may not recommend commitment to a community treatment plan unless it finds that the proposed plan:~~

(a) provides adequate assurances of safety from the consequences of the behaviors of the respondent for both the respondent and the community;

(b) provides effective habilitation services for the respondent's developmental disability;

(c) is funded from public or private sources that are identified, committed, and available to pay for all of the proposed services to the respondent; and

(d) ensures services from identified, qualified providers that are committed and available to provide all of the proposed services to the respondent.

(5) For purposes of this part, the department of public health and human services shall adopt rules providing for the membership and terms of the members of the residential facility screening team and setting forth the criteria and procedures to govern the determinations made by the residential facility screening team.”

Section 12. Amendment to commitment order or treatment plan — emergency amendment. (1) A community treatment plan ordered pursuant to 53-20-125 or 53-20-128 may be amended with the consensus of the respondent's individual treatment planning team, including the respondent, without further order of the court. The amended plan must meet the conditions set forth in 53-20-133(4).

(2) An order of commitment to a residential facility may be amended to an order imposing a community treatment plan with the consensus of the respondent's individual treatment planning team, including the respondent, and the court shall issue an order imposing the agreed-upon community treatment plan. The community treatment plan must meet the conditions set forth in 53-20-133(4).

(3) Any party may request amendment of a commitment ordered or a community treatment plan imposed under 53-20-125 or 53-20-128 by bringing the matter to the attention of the respondent's individual treatment planning team. If consensus is not reached, any party may request a hearing on a proposed amendment. The court shall request an evaluation of any proposed amendment by the residential facility screening team prior to the hearing.

(4) After a hearing or upon the agreement of the parties on an amendment of a commitment or an order imposing a community treatment plan, the court may make any order which is authorized in 53-20-125, including:

(a) adding, removing, or modifying conditions of a community treatment plan;

(b) substituting commitment to a residential facility for a community treatment plan; or

(c) substituting imposition of a community treatment plan for commitment to a residential facility.

(5) Any community treatment plan imposed as a result of a request for amendment must meet the conditions set forth in 53-20-133(4). The court may not impose a community treatment plan unless the residential facility screening

team certifies that all services in the proposed plan meet the conditions of 53-20-133(4)(c) and (4)(d).

(6) If the court finds probable cause to believe that the respondent or others are in imminent risk of death or serious bodily injury, as defined in 45-2-101, the court may order a temporary amendment to a community treatment plan, for a period of up to 7 calendar days, without notice to the respondent. A hearing must be scheduled within the 7-day period of the temporary amendment. Any temporarily amended community treatment plan must meet the conditions set forth in 53-20-133(4). The court may not amend a community treatment plan for an extended period unless the residential facility screening team certifies that all services in the proposed amended plan meet the conditions of 53-20-133(4)(c) and (4)(d). The court may not order emergency commitment to a residential facility except through the process set forth in 53-20-129.

Section 13. Section 53-20-141, MCA, is amended to read:

“53-20-141. Denial of legal rights. (1) Unless specifically stated in an order by the court, a person ~~admitted~~ *committed* to a residential facility *or for whom a community treatment plan has been imposed* for an extended course of habilitation does not forfeit any legal right or suffer any legal disability by reason of the provisions of this part, ~~except insofar as to the extent that it may be necessary to detain the person for habilitation, evaluation, or care.~~

(2) Whenever a person is admitted to a residential facility *or a community treatment plan is imposed for the person* for a period of more than 30 days ~~for an extended course of habilitation~~, the court ordering the ~~admission~~ *commitment* *or imposing the community treatment plan* may make an order stating specifically any legal rights that are denied ~~the respondent~~ and any legal disabilities that are imposed on ~~him~~ *the respondent*. As part of its order, the court may appoint a person to act as conservator of the respondent’s property. Any conservatorship created pursuant to this section terminates upon the conclusion of the ~~admission~~ *commitment* *or expiration of the order imposing the community treatment plan* if not ~~sooner~~ *previously* terminated by the court. A conservatorship or guardianship extending beyond the period of the ~~admission~~ *commitment* *or order imposing a community treatment plan* may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) A person who has been ~~admitted~~ *committed* to a residential facility *or for whom a community treatment plan has been imposed* pursuant to this part ~~must~~ *is*, upon the termination of the ~~admission~~ *commitment* *or expiration of the order imposing the community treatment plan*, be automatically restored to all of ~~his~~ *the person’s* civil and legal rights that may have been lost when ~~he~~ *the person* was ~~admitted~~ *committed* *or the community treatment plan was imposed*. However, this subsection does not affect any guardianship or conservatorship created independently of the ~~admission~~ proceedings according to the provisions of Montana law relating to the appointment of conservators and guardians generally. ~~A person who leaves a residential facility following a period of evaluation and habilitation must be given~~ *Upon termination of any commitment or order imposing a community treatment plan under this part, the qualified mental retardation professional or case manager in charge of the person’s care shall give the person a written statement setting forth the substance of this subsection.”*

Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is

invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. Codification instruction. [Sections 3 and 12] are intended to be codified as an integral part of Title 53, chapter 20, part 1, and the provisions of Title 53, chapter 20, apply to [sections 3 and 12].

Approved April 26, 2007

CHAPTER NO. 253

[HB 235]

AN ACT EXPANDING BUSINESS IMPROVEMENT DISTRICT PURPOSES TO INCLUDE TOURISM, PROMOTION, AND MARKETING; REVISING OPTIONS FOR ASSESSMENT OF COSTS TO INCLUDE FLAT-FEE OPTIONS; PROVIDING FOR DISTRICTS COMPOSED OF NONCONTIGUOUS AREAS IF PROPERTY IS RELATED BY PURPOSE; ALLOWING CLASSIFICATION CRITERIA TO BE USED IN ASSESSING COSTS; AND AMENDING SECTIONS 7-12-1102, 7-12-1111, 7-12-1121, 7-12-1132, AND 7-12-1133, MCA.

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

Section 1. Section 7-12-1102, MCA, is amended to read:

“7-12-1102. Purpose. The purpose of this part is to provide for the creation of business improvement districts having *one or more of* the purposes and powers provided in this part that will:

- (1) serve a public use; ~~will~~
- (2) promote the health, safety, prosperity, security, and general welfare of the inhabitants ~~thereof of the district~~ and of the people of this state; ~~and will~~
- (3) be of special benefit to the property within the boundaries of any district created pursuant to the provisions of this part; *or*
- (4) *aid in tourism, promotion, and marketing within the district.”*

Section 2. Section 7-12-1111, MCA, is amended to read:

“7-12-1111. Establishment or expansion of district. (1) Upon receipt of a petition signed by the owners of more than 60% of the area of the property proposed in the petition to be included in a district or in the expansion of a district, a governing body shall establish a district or expand a district as provided in this part.

(2) The boundaries of a district must comply with applicable zoning regulations, ~~and the~~.

(3) *The* district may not include areas that are zoned primarily as residential areas.

(4) (a) *A district may be composed of noncontiguous areas if the properties in a district have a common purpose of providing overnight stays at lodging facilities.*

(b) *The boundaries of a district with noncontiguous areas must encompass all properties in the district with the same identified purpose.”*

Section 3. Section 7-12-1121, MCA, is amended to read:

“7-12-1121. Board of trustees — appointment — number — term of office. (1) When the governing body of a local government adopts an ordinance creating a business improvement district, the appointing authority, with the approval of the governing body, shall appoint not less than five or more than seven owners of property, *or their assignees*, within the district to comprise the board of trustees of the district. *The director for a business improvement district created for the purpose of 7-12-1102(4) must be the executive director of a nonprofit convention and visitors bureau, as defined in 15-65-101, if a nonprofit convention and visitors bureau is operating within the governing body’s jurisdiction.*

(2) The number of members of the board, once established, may be changed within these limits from time to time by subsequent resolutions of the governing body of the local government. A resolution to reduce board membership may not require resignation of any member prior to completion of ~~his~~ *the member’s* appointed term.

(3) Three of the members who are first appointed must be designated to serve for terms of 1, 2, and 3 years, respectively, from the date of their appointments, and two must be designated to serve for terms of 4 years from the date of their appointments. For a seven-member commission, there must be two additional appointments for terms of 2 years and 3 years, respectively.

(4) After initial appointment, members must be appointed for a term of office of 4 years, except that a vacancy occurring during a term must be filled for the unexpired term. A member ~~shall hold~~ *holds* office until ~~his~~ *the member’s* successor has been appointed and qualified.”

Section 4. Section 7-12-1132, MCA, is amended to read:

“7-12-1132. Annual budget and work plan — approval — procedure — tax. (1) At a time determined by the governing body, the board shall submit to the governing body for approval a work plan and budget for the ensuing fiscal year.

(2) *A board created for the purpose of 7-12-1102(4) in a municipality or county where a nonprofit convention and visitors bureau, as defined in 15-65-101, is operating shall consult with the nonprofit convention and visitors bureau in developing a work plan and budget for the ensuing fiscal year.*

(2)(3) Following public notice that a work plan and budget have been submitted and that the governing body will levy an assessment to defray the cost of the work plan and budget, the governing body shall hold a public hearing on objections to the work plan and budget. After the hearing, the governing body may modify the work plan and budget as it considers necessary and appropriate.

(3)(4) After approval of the work plan and budget and to defray the cost thereof ~~of the work plan and budget~~ for the next fiscal year, the governing body shall by resolution levy an assessment upon all of the property in the district using as a basis one of the methods prescribed in 7-12-1133.

(4)(5) A copy of the resolution ~~shall~~ *must* be delivered to the treasurer of the local government to be placed on the tax roll and collected in the same manner as other taxes.”

Section 5. Section 7-12-1133, MCA, is amended to read:

“7-12-1133. Assessment of costs — area, lot, taxable valuation, and square footage, and flat-fee options — provisions for property classifications. (1) At the same time *that* the board submits the annual budget

and work plan to the governing body as provided in 7-12-1132, the board shall also recommend to the governing body a method of levying an assessment on the property within the district ~~which~~ *that* will best ensure that the assessment on each lot or parcel is equitable in proportion to the benefits to be received.

(2) The governing body shall annually assess the entire cost of the district against the entire district using a method ~~which~~ *that* best ensures that the assessment on each lot or parcel is equitable in proportion to the benefits to be received. In determining the method of assessment to be used, the governing body shall consider the recommendations of the board. The governing board shall levy the assessment using one of the following methods:

(a) each lot or parcel of land within ~~such~~ *the* district may be assessed for that part of the whole cost ~~which~~ *that* its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places;

(b) if the governing body determines that the benefits derived by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the district without regard to the area of the lot or parcel;

(c) if the governing body determines that benefits derived by each lot or parcel are proportional, the governing body may use a standard criteria, such as individual occupancy or daily use, and make the assessment on a flat-fee basis based on the criteria;

~~(d)~~ each lot or parcel of land, including the improvements ~~thereon~~ *on the lot or parcel*, may be assessed for that part of the whole cost of the district ~~which~~ *that* its taxable valuation bears to the total taxable valuation of the property of the district;

~~(e)~~ each building may be assessed for that part of the whole cost of the district that the occupied or income-producing area of the building above the first floor bears to the area of the entire district; ~~or~~

(f) if the governing body determines that benefits derived by each lot or parcel are disproportional, the governing body may use classification criteria, such as location within the district, economic impact, or any other measurable criteria, in conjunction with methods of assessing fees outlined in this subsection (2). Each classification must have its own rate. There may not be more than six classifications upon which a charge is imposed.

~~(e)~~ by using any combination of the assessment options provided in subsections (2)(a) through ~~(2)(d)~~ (2)(f).

(3) If a district is expanded, the land within the expanded area *or property with a similar purpose in the district* must be assessed as provided for in subsection (2) for the duration of the district."

Approved April 26, 2007

CHAPTER NO. 254

[HB 272]

AN ACT ALLOWING DISSEMINATION OF THE PHOTOGRAPH OF A LEVEL 2 OR 3 SEXUAL OFFENDER; REQUIRING A NEW PHOTOGRAPH OF A LEVEL 2 OR 3 SEXUAL OFFENDER EVERY YEAR DURING THE

REGISTRATION PERIOD; AND AMENDING SECTIONS 46-23-504, 46-23-505, AND 46-23-508, MCA.

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

Section 1. Section 46-23-504, MCA, is amended to read:

“46-23-504. Persons required to register — procedure. (1) A sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within 10 days of entering a county of this state for the purpose of residing or setting up a temporary domicile for 10 days or more or for an aggregate period exceeding 30 days in a calendar year.

(2) Registration under subsection (1)(a) or (1)(c) must be with the chief of police of the municipality or the sheriff of the county if the offender resides in an area other than a municipality. Whichever law enforcement official the offender registers with shall notify the other official of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a) shall verify the offender’s registration status with the appropriate law enforcement agency.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by the department of justice. The chief of police or sheriff shall fingerprint the offender, unless the offender’s fingerprints are on file with the department of justice, and shall photograph the offender. Within 3 days, the chief of police or sheriff shall send copies of the statement, fingerprints, and photographs to the department of justice. *The chief of police or sheriff shall require an offender given a level 2 or level 3 designation to appear before the chief of police or sheriff for a new photograph every year.*

(4) (a) The department of justice shall mail a registration verification form:

(i) ~~each~~ every 90 days to an offender designated as a level 3 offender under 46-23-509; and

(ii) each year to a violent offender or an offender designated as a level 1 or level 2 offender under 46-23-509.

(b) The form must require the offender’s current address and notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the department.

(5) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

(6) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment.”

Section 2. Section 46-23-505, MCA, is amended to read:

“46-23-505. Notice of change of address — duty to inform — forwarding of information. If an offender required to register under this part has a change of address, the offender shall within 10 days of the change give written notification of the new address to the agency with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the department and to the ~~chief of police of the municipality or~~ sheriff of the county *or the chief of police of the municipality* from which the offender is moving. The agency or department shall, within 3 days after receipt of the new address, forward ~~it~~ *the new address* to the department of justice, which shall forward a copy of the new address and photograph to the sheriff having jurisdiction over the new address and to the chief of police of the municipality *of where the new address is located* if the new address is *located* in a municipality. *The sheriff or chief of police shall require an offender given a level 2 or level 3 designation to appear before the sheriff or chief of police for a new photograph every year.*”

Section 3. Section 46-23-508, MCA, is amended to read:

“46-23-508. Dissemination of information. (1) Information maintained under this part is confidential criminal justice information, as defined in 44-5-103, except that:

(a) the name ~~and~~ *and* address of a registered sexual or violent offender are public criminal justice information, as defined in 44-5-103; and

(b) a law enforcement agency shall release any offender registration information relevant to the public if the agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information may protect the public and, at a minimum:

(i) if an offender was given a level 1 designation under 46-23-509, the agency with which the offender is registered shall notify the agency in whose jurisdiction the offense occurred of the registration;

(ii) if an offender was given a level 2 designation under 46-23-509, the agency with which the offender is registered may disseminate the offender’s name *and photograph* to the public with the notation that the offender is a sexual or violent offender and may notify a victim of the offense and any agency, organization, or group serving persons who have characteristics similar to those of a previous victim of the offender of:

(A) the offender’s address;

(B) the type of victim targeted by the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offenses for which the offender is required to register under this part; and

(E) any conditions imposed by the court upon the offender for the safety of the public; and

(iii) if an offender was given a level 3 designation under 46-23-509, the agency shall give the victim and the public notification that includes the information contained in subsection (1)(b)(ii). The agency shall also include the date of the offender’s release from confinement or if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and shall include the community in which the offense occurred.

(c) prior to release of information under subsection (1)(b), a law enforcement agency may, in its sole discretion, request an in camera review by a district court of the determination by the law enforcement agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of the offender from confinement.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a law enforcement agency without the permission of the victim.

(3) A state or local law enforcement agency may use the internet to disseminate the information allowed by this section to the public.”

Section 4. Coordination instruction. If both Senate Bill No. 547 and [this act] are passed and approved, then [section 1 of this act] amending 46-23-504 is void and 46-23-504 as amended by [this act] must read as follows:

“46-23-504. Persons required to register — procedure. (1) A sexual or violent offender:

(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;

(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;

(c) shall register within 10 days of entering a county of this state for the purpose of residing or setting up a temporary domicile for 10 days or more or for an aggregate period exceeding 30 days in a calendar year.

(2) Registration under subsection (1)(a) or (1)(c) must be with the chief of police of the municipality or the sheriff of the county if the offender resides in an area other than a municipality. Whichever law enforcement official the offender registers with shall notify the other official of the registration. The probation officer having supervision over an offender required to register under subsection (1)(a) shall verify the offender’s registration status with the appropriate law enforcement agency.

(3) At the time of registering, the offender shall sign a statement in writing giving the information required by the department of justice. The chief of police or sheriff shall fingerprint the offender, unless the offender’s fingerprints are on file with the department of justice, and shall photograph the offender. Within 3 days, the chief of police or sheriff shall send copies of the statement, fingerprints, and photographs to the department of justice. *The registration agency shall require an offender given a level 2 or level 3 designation to appear before the registration agency for a new photograph every year.*

(4) (a) The department of justice shall mail a registration verification form:

(i) each 90 days to an offender designated as a level 3 offender under 46-23-509; and

(ii) each year to a violent offender or an offender designated as a level 1 or level 2 offender under 46-23-509.

(b) The form must require the offender’s current address and notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the department.

(5) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

(6) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment.”

Section 5. Coordination instruction. If both Senate Bill No. 547 and [this act] are passed and approved, then [section 2 of this act] amending 46-23-505 is void and 46-23-505 as amended by [this act] must read as follows:

“46-23-505. Notice of change of address — duty to inform — forwarding of information. If an offender required to register under this part has a change of address, the offender shall within 10 days of the change give written notification of the new address to the agency with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the department and to the chief of police of the municipality or sheriff of the county registration agency for the county or municipality from which the offender is moving. The agency or department shall, within 3 days after receipt of the new address, forward it to the department of justice, which shall forward a copy of the new address and photograph to the sheriff having jurisdiction over the new address and to the chief of police of the municipality of the new address if the new address is in a municipality. *The registration agency shall require the offender to appear before the registration agency for a new photograph every year.*”

Section 6. Coordination instruction. If both Senate Bill No. 547 and [this act] are passed and approved, then [section 3 of this act] amending 46-23-508 is void.

Approved April 26, 2007

CHAPTER NO. 255

[HB 283]

AN ACT ESTABLISHING THE FINANCIAL ASSISTANCE AMOUNT FOR RESIDENT NONBENEFICIARY STUDENTS; REVISING ELIGIBILITY CRITERIA; AMENDING SECTION 20-25-428, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-25-428, MCA, is amended to read:

“20-25-428. Financial assistance for resident nonbeneficiary students. (1) Subject to a line item appropriation for purposes of this section, the regents shall provide financial assistance to tribally controlled community colleges for enrolled resident nonbeneficiary students who, except as provided in subsection (8), are taking courses for which credit is transferable to another Montana college or university.

(2) Each tribal community college shall apply for this assistance to the regents. Except as provided in subsection (6), the money must be distributed on

a prorated basis according to the eligible resident nonbeneficiary student enrollment in each tribal community college during the previous year. To qualify, a resident nonbeneficiary student must meet the residency requirements as prescribed for the system by the regents and, except as provided in subsection (8), must be enrolled in courses for which credit is transferable to another Montana college or university. The distribution for any student is ~~limited to a maximum of \$3,024~~ *limited to a maximum of \$3,024* each year for each full-time equivalent student.

(3) An expenditure is contingent upon the tribal community college:

(a) being accredited or being a candidate for accreditation by the northwest ~~association of schools and~~ *commission on colleges and universities*;

(b) entering into a contract or a state-tribal cooperative agreement, pursuant to Title 18, chapter 11, with the regents to provide the regents with information relating to eligibility of resident nonbeneficiary students and documentation on the curriculum to ensure that the content and quality of courses offered by the tribal community college are consistent with the standards adopted by the system;

(c) providing the regents with documentation that credits for the courses in which the resident nonbeneficiary students are enrolled, except as provided in subsection (8), will be accepted at another Montana college or university; and

(d) filing with the regents evidence that the college's enrollment of Indian students is at least 51%, as required by the Tribally Controlled Community College Assistance Act of 1978, 25 U.S.C. 1804.

(4) If funding is available pursuant to subsection (1), the legislature intends that the money be an amount in addition to the system budget approved in the general appropriations act.

(5) All funds appropriated under subsection (1) that are unspent revert to the state general fund.

(6) Prior to receiving money pursuant to subsection (1), each tribal community college shall grant to eligible resident nonbeneficiary students who meet the residency requirements, as prescribed for the system by the regents, fee waivers in the same percentage as the number of Indian students who are receiving fee waivers to attend a unit of the system bears to the total enrollment in the system.

(7) The calculation in subsection (6) is not intended to allow the university system to retain the calculated amount of funds. Waivers must be given to eligible students.

(8) The limit of financial assistance to nonbeneficiary students *is limited to students* enrolled in courses for which credit is transferable to another Montana college or university ~~does not apply to a nonbeneficiary student enrolled in a course directly related to a vocational degree program or to a 2- to 4-year degree program or certificate program.~~

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 26, 2007

CHAPTER NO. 256

[HB 291]

AN ACT CLARIFYING THE POWERS OF THE BOARD OF ENVIRONMENTAL REVIEW RELATED TO AIR QUALITY PERMITTING AND RULEMAKING FOR AGRICULTURAL OPERATIONS; AMENDING SECTION 75-2-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 75-2-111, MCA, is amended to read:

“75-2-111. Powers of board. The board shall, subject to the provisions of 75-2-207:

(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant to that section, *except that, for purposes other than agricultural open burning, the board may not adopt permitting requirements or any other rule relating to:*

(a) any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661; or

(b) a commercial operation relating to the activities or equipment referred to in subsection (1)(a) that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will be available to the public at cost.

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits, permit applications, and registrations consistent with this chapter;

(6) have the power to issue orders under and in accordance with 42 U.S.C. 7419.”

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

Approved April 26, 2007

CHAPTER NO. 257

[HB 300]

AN ACT CLARIFYING THE FALSE STATEMENT PROVISIONS BASED ON STATEMENTS MADE BY GOVERNMENTAL SOURCES RELATING TO AN APPLICATION FOR AN ALCOHOLIC BEVERAGE LICENSE; AMENDING

SECTION 16-4-402, 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 16-4-402, MCA, is amended to read:

“16-4-402. Application — investigation. (1) Prior to the issuance of a license under this chapter, the applicant shall file with the department an application containing information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as required by the department.

(2) (a) Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department of justice shall make a thorough investigation of all matters relating to the application. Based on the results of the investigation or on other information, the department shall determine whether:

(i) the applicant is qualified to receive a license;

(ii) the applicant’s premises are suitable for the carrying on of the business; and

(iii) the requirements of this code and the rules promulgated by the department are met and complied with.

(b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or 16-4-204(2), a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a special permit provided in 16-4-301.

(c) For an original license application and an application for transfer of location of a license, the department of justice’s investigation and the department’s determination under this subsection (2) must be completed within 90 days of the receipt of a completed application. If information is requested from the applicant by either department, the time period in this subsection (2)(c) is tolled until the requested information is received by the requesting department. The time period is also tolled if the applicant requests and is granted a delay in the license determination or if the license is for premises that are to be altered, as provided in 16-3-311, or newly constructed. The basis for the tolling of the deadline must be documented.

(3) (a) Upon proof that an applicant made a false statement in any part of the original application, in any part of an annual renewal application, or in any hearing conducted pursuant to an application, the application for the license may be denied, and if issued, the license may be revoked.

(b) *A statement on an application or at a hearing that is based upon a verifiable assertion made by a governmental officer, employee, or agent that an applicant relied upon in good faith may not be used as the basis of a false statement for a denial or revocation of a license.*

(4) The department shall issue a conditional approval letter upon the last occurrence of either:

(a) completion of the investigation and determination provided for in subsection (2) if the department has not received information that would cause the department to deny the application; or

(b) a final agency decision that either denies or dismisses a protest against the approval of an application pursuant to 16-4-207.

(5) The conditional approval letter must state the reasons upon which the future denial of the application may be based. The reasons for denial of the application after the issuance of the conditional approval letter are as follows:

- (a) there is false or erroneous information in the application;
- (b) the premises are not approved by local building, health, or fire officials;

(c) there are physical changes to the premises that if known prior to the issuance of the conditional approval letter would have constituted grounds for the denial of the application or denial of the issuance of the conditional approval; or

(d) a final decision by a court exercising jurisdiction over the matter either reverses or remands the department's final agency decision provided for in subsection (4)."

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

Section 3. Applicability. [This act] applies to license denial or revocation proceedings that have been commenced but have not been finally adjudicated on [the effective date of this act].

Approved April 26, 2007

CHAPTER NO. 258

[HB 310]

AN ACT PROVIDING FOR THE TRANSFER OF REAL PROPERTY BY A BENEFICIARY DEED; PROVIDING A FORM FOR A BENEFICIARY DEED; PROVIDING FOR THE REVOCATION OF A BENEFICIARY DEED; PROVIDING FOR THE RIGHTS OF CREDITORS AND OTHERS; AMENDING SECTION 72-6-111, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Beneficiary deed — form — definitions. (1) A deed that conveys an interest in real property, including any debt secured by a lien on real property, to a grantee beneficiary designated by the owner and that expressly states that the deed is effective on the death of the owner transfers the deceased owner's interest to the grantee beneficiary designated by name in the beneficiary deed effective on the death of the owner, subject to all conveyances, assignments, contracts, mortgages, deeds of trust, liens, security pledges, and other encumbrances made by the owner or to which the owner was subject during the owner's lifetime.

(2) A beneficiary deed may designate multiple grantees who take title as joint tenants with right of survivorship, tenants in common, or any other tenancy that is valid under the laws of this state.

(3) A beneficiary deed may designate a successor grantee beneficiary. If the beneficiary deed designates a successor grantee beneficiary, the deed must state the condition on which the interest of the successor grantee beneficiary would vest.

(4) If real property is owned by persons as joint tenants with the right of survivorship, a deed that conveys an interest in the real property to a grantee beneficiary designated by all of the then surviving owners and that expressly

states that the deed is effective on the death of the last surviving owner transfers the interest to the designated grantee beneficiary effective on the death of the last surviving owner. If a beneficiary deed is executed by fewer than all of the owners of real property owned as joint tenants with right of survivorship, the beneficiary deed is valid if the last surviving owner is one of the persons who executes the beneficiary deed. If the last surviving owner did not execute the beneficiary deed, the transfer lapses and the deed is void. An estate in joint tenancy with right of survivorship is not affected by the execution of a beneficiary deed that is executed by fewer than all of the owners of the real property, and the rights of a surviving joint tenant with right of survivorship prevail over a grantee beneficiary named in a beneficiary deed.

(5) A beneficiary deed is valid only if the deed is executed and recorded, as provided by law, in the office of the county clerk and recorder of the county in which the property is located, before the death of the owner or the last surviving owner. A beneficiary deed may be used to transfer an interest in real property to the trustee of a trust even if the trust is revocable.

(6) A beneficiary deed may be revoked at any time by the owner or, if there is more than one owner, by any of the owners who executed the beneficiary deed. To be effective, the revocation must be executed and recorded, as provided by law, in the office of the county clerk and recorder of the county in which the real property is located, before the death of the owner who executes the revocation. If the real property is owned as joint tenants with right of survivorship and if the revocation is not executed by all the owners, the revocation is not effective unless executed by the last surviving owner.

(7) If an individual who is a recipient of medicaid pursuant to 53-6-131 conveys an interest in real property by means of a beneficiary deed, the department of public health and human services may assert a claim pursuant to 53-6-167 against the property that is the subject of a beneficiary deed to the extent of medical assistance granted by the department.

(8) If an owner executes and records more than one beneficiary deed concerning the same real property, the last beneficiary deed that is recorded before the owner's death is the effective beneficiary deed.

(9) This section does not prohibit other methods of conveying property that are permitted by law and that have the effect of postponing enjoyment of an interest in real property until the death of the owner. This section does not invalidate any deed otherwise effective by law to convey title to the interests and estates provided in the deed that is not recorded until after the death of the owner.

(10) The signature, consent, or agreement of, or notice to, a grantee beneficiary of a beneficiary deed is not required for any purpose during the lifetime of the owner.

(11) A beneficiary deed that is executed, acknowledged, and recorded in accordance with this section is not revoked by the provisions of a will.

(12) The death of an owner of real property must, for the purposes of this section, be proved by affidavit or certificate of death.

(13) A beneficiary deed is sufficient if it complies with other applicable law and if it is in substantially the following form:

Beneficiary Deed

I (we) _____ (owner) hereby convey to _____ (grantee beneficiary) effective on my (our) death the following described real property:

(Legal description)

If a grantee beneficiary predeceases the owner, the conveyance to that grantee beneficiary must either (choose one):

- Become void.
- Become part of the estate of the grantee beneficiary.

(Dated)

(Signature of grantor(s))
(acknowledgment)

(14) An instrument revoking a beneficiary deed is sufficient if it complies with other applicable laws and is in substantially the following form:

Revocation of Beneficiary Deed

The undersigned hereby revokes the beneficiary deed recorded on _____ (date), in docket or book _____ at page _____, or instrument number _____, records of _____ County, Montana, concerning the following described real property:

(Legal description)

Dated: _____

Signature
(acknowledgment)

(15) As used in this section, the following definitions apply:

- (a) "Beneficiary deed" means a deed authorized by this section.
- (b) "Grantee beneficiary" or "grantee" means the person to whom an owner grants an interest in the real property that is the subject of the beneficiary deed.
- (c) "Owner" means a person who executes a beneficiary deed as provided in this section.

Section 2. Rights of creditors and others. (1) If other assets of the estate are insufficient, a transfer resulting from a beneficiary deed, as provided for in [section 1], is not effective against the estate and statutory allowances to the surviving spouse and children.

(2) A surviving party who receives title to real property pursuant to a beneficiary deed is liable to account to the personal representative of the decedent for the value of the property to the extent necessary to discharge the claims and allowances described in subsection (1) remaining unpaid after application of the decedent's estate. A proceeding to assert the liability may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent. The proceeding must be commenced within 1 year after death of the decedent.

(3) A surviving party against whom a proceeding to account is brought may join as a party to the proceeding any other person claiming an interest in the real property.

(4) Sums recovered by the personal representative must be administered as part of the decedent's estate.

Section 3. Section 72-6-111, MCA, is amended to read:

“72-6-111. Nonprobate transfers on death. (1) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, *beneficiary deed, as defined in [section 1]*, marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

(a) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later;

(b) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(c) any property controlled by or owned by the decedent before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later.

(2) This section does not limit rights of creditors under other laws of this state.”

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 72, chapter 6, part 1, and the provisions of Title 72, chapter 6, part 1, apply to [sections 1 and 2].

Section 5. Applicability. [This act] applies to a beneficiary deed filed by an owner, as both are defined in [section 1], who dies after October 1, 2007.

Approved April 26, 2007

CHAPTER NO. 259

[HB 319]

AN ACT PROVIDING CONTRACT INDEMNIFICATION PROVISIONS FOR PUBLIC CONSTRUCTION CONTRACTS AND HIGHWAY CONSTRUCTION CONTRACTS; AND PROVIDING FOR THE PAYMENT OF CONTRACTORS AND SUBCONTRACTORS ON HIGHWAY CONSTRUCTION CONTRACTS.

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 an agreement to supply labor, materials, or equipment for an improvement to real property.

Section 2. Payment of contractors and subcontractors. Unless prohibited by federal law, payment under this part of a contractor or subcontractor for services performed by the contractor or subcontractor is governed by the provisions of Title 28, chapter 2, part 21.

Section 3. Contract indemnification provisions. (1) Except as provided in subsections (2) and (3), a contract subject to the provisions of this part with a 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 contract subject to the provisions of this part 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 contract bond or to an insurer's obligation to its insureds.

(4) As used in this section, "contract" means, with respect to highway construction, an agreement for architectural services, alterations, construction,

demolition, design services, development, engineering services, excavation, maintenance, repair, or other improvement to real property, including an agreement to supply labor, materials, or equipment for an improvement to real property.

Section 4. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 18, chapter 2, and the provisions of Title 18, chapter 2, apply to [section 1].

(2) [Sections 2 and 3] are intended to be codified as an integral part of Title 60, chapter 2, part 1, and the provisions of Title 60, chapter 2, part 1, apply to [sections 2 and 3].

Approved April 26, 2007

CHAPTER NO. 260

[HB 328]

AN ACT CLARIFYING THE DEFINITION OF THE TERM “FACILITY” IN THE MONTANA MAJOR FACILITY SITING ACT; AND AMENDING SECTION 75-20-104, MCA.

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) (a) “Associated facilities” includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility.

(b) The term does not include a transmission substation, a switchyard, voltage support, or other control equipment or 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 compliance 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;

(ii) does not include an electric transmission line 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;

(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), or a wind generation facility, as defined in 15-6-157, 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;

(iv) does not include an upgrade to an existing transmission line to increase that line's capacity within an existing easement or right-of-way; and

(v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;

(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) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions including but not limited to:

- (a) installing larger conductors;
- (b) replacing insulators;
- (c) replacing pole or tower structures; or
- (d) changing structure spacing, design, or guying.

(12) "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."

Approved April 26, 2007

CHAPTER NO. 261

[HB 364]

AN ACT CREATING THE LIVESTOCK LOSS REDUCTION AND MITIGATION BOARD TO ADMINISTER PROGRAMS FOR THE MITIGATION AND REIMBURSEMENT OF LIVESTOCK LOSSES BY WOLVES; ESTABLISHING BOARD MEMBERSHIP, POWERS, DUTIES, AND REPORTING REQUIREMENTS; ESTABLISHING ACCOUNTS AND A TRUST FUND TO FUND THE MITIGATION OF LIVESTOCK LOSSES BECAUSE OF WOLF PREDATION AND TO REIMBURSE LIVESTOCK OWNERS FOR LOSSES RELATED TO PREDATION BY WOLVES; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES.

WHEREAS, wolves are firmly established in Montana, and the long-term presence of wolves depends on implementing a comprehensive program that balances the complex biological, social, economic, and political aspects of wolf management; and

WHEREAS, wolf depredation on livestock has the potential to negatively impact some individual livestock producers; and

WHEREAS, the Montana Wolf Management Plan and Final EIS adopted by the Department of Fish, Wildlife, and Parks called for creation of a program to

reduce the risk of losses of livestock to wolves and to reimburse livestock producers for losses; and

WHEREAS, a working group of more than 30 Montana citizens, state and federal agency personnel, and tribal representatives developed a comprehensive proposal for the "Montana Livestock Loss Reduction and Mitigation Program".

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

Section 1. Livestock loss reduction and mitigation board — purpose, membership, and qualifications. (1) There is a livestock loss reduction and mitigation board. The purpose of the board is to administer the programs called for in the Montana gray wolf management plan and established in [sections 2 through 4], with funds provided through the accounts established in [section 5], in order to minimize losses caused by wolves to livestock producers and to reimburse livestock producers for livestock losses from wolf predation.

(2) The board consists of seven members, appointed by the governor, as follows:

(a) three members from a list of names recommended by the board of livestock;

(b) three members from a list of names recommended by the fish, wildlife, and parks commission; and

(c) one member of the general public.

(3) Each board member must have knowledge of or have experience in at least one of the following:

(a) the raising of livestock in Montana;

(b) livestock marketing, valuations, sales, or breeding associations;

(c) the interaction of wolves with livestock and livestock mortality caused by wolves;

(d) wildlife conservation;

(e) administration; and

(f) fundraising.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the board.

(5) The board is allocated to the department of livestock for administrative purposes only as provided in 2-15-121.

(6) The board shall adopt rules to implement the provisions of [sections 1 through 7].

Section 2. Livestock loss reduction program. The livestock loss reduction and mitigation board shall establish and administer a program to cost-share with individuals or incorporated entities in implementing measures to prevent wolf predation on livestock, including:

(1) eligibility requirements for program participation;

(2) application procedures for program participation and procedures for awarding grants for wolf predation prevention measures, subject to grant priorities and the availability of funds;

(3) criteria for the selection of projects and program participants, which may include establishment of grant priorities based on factors such as chronic depredation, multiple depredation incidents, single depredation incidents, and potential high-risk geographical or habitat location;

(4) grant guidelines for prevention measures on public and private lands, including:

(a) grant terms that clearly set out the obligations of the livestock producer and that provide for a term of up to 12 months subject to renewal based on availability of funds, satisfaction of program requirements, and prioritization of the project;

(b) cost-share for prevention measures, which may be a combination of grant and livestock producer responsibility, payable in cash or in appropriate services, such as labor to install or implement preventive measures, unless the board adjusts the cost-share because of extenuating circumstances related to chronic or multiple depredation; and

(c) proactive preventive measures, including but not limited to fencing, fladry, night penning, increased human presence in the form of livestock herders and riders, guard animals, providing hay and dog food, rental of private land or alternative pasture allotments, delayed turnouts, and other preventive measures as information on new or different successful prevention measures becomes available; and

(5) reporting requirements for program participants to assist in determining the effectiveness of loss reduction relative to each grant.

Section 3. Livestock loss mitigation program — definitions. The livestock loss reduction and mitigation board shall establish and administer a program to reimburse livestock producers for livestock losses caused by wolves, subject to the following provisions:

(1) The board shall establish eligibility requirements for reimbursement, which must provide that all Montana livestock producers are eligible for coverage for losses by wolves to cattle, swine, horses, mules, sheep, goats, and livestock guard animals on state, federal, and private land and on tribal land that is eligible through agreement pursuant to [section 4(2)].

(2) Confirmed and probable livestock losses must be reimbursed at an amount not to exceed fair market value as determined by the board.

(3) Other losses may be reimbursed at rates determined by the board.

(4) A claim process must be established to be used when a livestock producer suffers a livestock loss for which wolves may be responsible. The claim process must set out a clear and concise method for documenting and processing claims for reimbursement for livestock losses.

(5) A process must be established to allow livestock producers to appeal reimbursement decisions. A producer may appeal a staff adjuster's decision by notifying the staff adjuster and the board in writing, stating the reasons for the appeal and providing documentation supporting the appeal. If the documentation is incomplete, the board or a producer may consult with the U.S. department of agriculture wildlife services to complete the documentation. The board may not accept any appeal on the question of whether the loss was or was not a confirmed or probable loss because that final determination lies solely with the U.S. department of agriculture wildlife services and may not be changed by the board. The board shall hold a hearing on the appeal within 90 days of receipt

of the written appeal, allowing the staff adjuster and the producer to present their positions. A decision must be rendered by the board within 30 days after the hearing. The producer must be notified in writing of the board's decision.

(6) As used in this section, the following definitions apply:

(a) "Confirmed" means reasonable physical evidence that livestock was actually attacked or killed by a wolf, including but not limited to the presence of bite marks indicative of the spacing of canine tooth punctures of wolves and associated subcutaneous hemorrhaging and tissue damage indicating that the attack occurred while the animal was alive, feeding patterns on the carcass, fresh tracks, scat, hair rubbed off on fences or brush, eyewitness accounts, or other physical evidence that allows a reasonable inference of wolf predation on an animal that has been largely consumed.

(b) "Fair market value" means:

(i) for commercial sheep more than 1 year old, the average price of sheep of similar age and sex paid at the most recent Billings livestock sale ring or other ring as determined by the board;

(ii) for commercial lambs, the average market weaning value;

(iii) for registered sheep, the average price paid to the specific breeder for sheep of similar age and sex during the past year at public or private sales for that registered breed;

(iv) for commercial cattle more than 1 year old, the average price of cattle of similar age and sex paid at the most recent Billings livestock sale ring or other ring as determined by the board;

(v) for commercial calves, the average market weaning value;

(vi) for registered cattle, the average price paid to the owner for cattle of similar age and sex during the past year at public or private sales for that registered breed;

(vii) for other registered livestock, the average price paid to the producer at public or private sales for animals of similar age and sex. A producer may provide documentation that a registered animal has a fair market value in excess of the average price, in which case the board shall seek additional verification of the value of the animal from independent sources. If the board determines that the value of that animal is greater than the average price, then the increased value must be accepted as the fair market value for that animal.

(viii) for other livestock, the average price paid at the most recent public auction for the type of animal lost or the replacement price as determined by the board.

(c) "Probable" means the presence of some evidence to suggest possible predation but a lack of sufficient evidence to clearly confirm predation by a particular species. A kill may be classified as probable depending on factors including but not limited to recent confirmed predation by the suspected depredating species in the same or a nearby area, recent observation of the livestock by the owner or the owner's employees, and telemetry monitoring data, sightings, howling, or fresh tracks suggesting that the suspected depredating species may have been in the area when the depredation occurred.

Section 4. Additional powers and duties of livestock loss reduction and mitigation board. (1) The livestock loss reduction and mitigation board shall:

- (a) process claims;
- (b) seek information necessary to ensure that claim documentation is complete;
- (c) provide payments authorized by the board for confirmed and probable livestock losses, along with a written explanation of payment;
- (d) submit monthly and annual reports to the board summarizing claims and expenditures and the results of action taken on claims and maintain files of all claims received, including supporting documentation;
- (e) provide information to the board regarding appealed claims and implement any decision by the board;
- (f) prepare the annual budget for the board; and
- (g) provide proper documentation of staff time and expenditures.

(2) The livestock loss reduction and mitigation board may enter into an agreement with any Montana tribe, if the tribe has adopted a wolf management plan for reservation lands that is consistent with the state wolf management plan, to provide that tribal lands within reservation boundaries are eligible for mitigation grants pursuant to [section 2] and that livestock losses on tribal lands within reservation boundaries are eligible for reimbursement payments pursuant to [section 3].

(3) The livestock loss reduction and mitigation board shall:

- (a) coordinate and share information with state, federal, and tribal officials, livestock producers, nongovernmental organizations, and the general public in an effort to reduce livestock losses caused by wolves;
- (b) establish an annual budget for the prevention, mitigation, and reimbursement of livestock losses caused by wolves;
- (c) perform or contract for the performance of periodic program audits and reviews of program expenditures, including payments to individuals, incorporated entities, and producers who receive loss reduction grants and reimbursement payments;
- (d) adjudicate appeals of claims;
- (e) investigate alternative or enhanced funding sources, including possible agreements with public entities and private wildlife or livestock organizations that have active livestock loss reimbursement programs in place;
- (f) meet as necessary to conduct business; and
- (g) report annually to the governor, the legislature, members of the Montana congressional delegation, the board of livestock, the fish, wildlife, and parks commission, and the public regarding results of the programs established in [sections 2 through 4].

Section 5. Livestock loss reduction and mitigation accounts. (1) There are livestock loss reduction and mitigation special revenue accounts administered by the department within the state special revenue fund and the federal special revenue fund established in 17-2-102.

(2) (a) All state proceeds allocated or budgeted for the purposes of [sections 1 through 7], except those appropriated to the department of livestock, must be deposited in the state special revenue account provided for in subsection (1).

(b) Money received by the state in the form of gifts, grants, reimbursements, or allocations from any source intended to be used for the purposes of [sections 2

through 4] must be deposited in the appropriate account provided for in subsection (1).

(c) All federal funds awarded to the state for compensation for wolf depredations on livestock must be deposited in the federal special revenue account provided for in subsection (1) for the purposes of [section 3].

(3) The livestock loss reduction and mitigation board may spend funds in the accounts only to carry out the provisions of [sections 2 through 4].

Section 5. Livestock loss reduction and mitigation trust fund. (1) The legislature shall provide for a fund, to be known as the livestock loss reduction and mitigation trust fund, to be funded with gifts, grants, reimbursements, appropriations, or allocations from any source.

(2) The principal of the livestock loss reduction and mitigation trust fund shall forever remain inviolate in an amount of \$5 million unless appropriated by a vote of three-fourths of the members of each house of the legislature.

(3) The interest and income generated from the livestock loss reduction and mitigation trust fund must be deposited in the livestock loss reduction and mitigation state special revenue account provided for in [section 5]. The interest and income may be appropriated by a majority vote of each house of the legislature and may be used only to fund the livestock loss reduction program and the livestock loss mitigation program as provided in [sections 2 and 3].

(4) (a) Until the principal of the fund reaches \$5 million, at the end of each biennium, any amount of interest and income from the trust fund that is not used for the livestock loss reduction program or the livestock loss mitigation program must be used to reimburse the state general fund up to \$120,000. Any remaining interest and income must be deposited in the trust fund as principal.

(b) After the principal of the trust fund reaches \$5 million, at the end of each biennium, any amount of interest and income that is not used for the livestock loss reduction program or the livestock loss mitigation program must be deposited in the general fund.

Section 6. Funding of programs — contingency. The awarding of grants and reimbursements and the performance of duties pursuant to [sections 2 through 4] are contingent upon the amount of money available in the accounts provided for in [sections 5 and 6].

Section 7. Appropriation. There is appropriated from the general fund to the department of livestock:

(1) \$60,000 in fiscal year 2008 for 1.0 FTE and for operating expenses to establish the livestock loss reduction and mitigation board and board activities; and

(2) \$60,000 in fiscal year 2009 for 1.0 FTE and for board expenses.

Section 8. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 9. Codification instruction. (1) [Sections 1 through 4 and 7] are intended to be codified as an integral part of Title 2, chapter 15, part 31, and the provisions of Title 2, chapter 15, part 31, apply to [sections 1 through 4 and 7].

(2) [Sections 5 and 6] are intended to be codified as an integral part of Title 81, chapter 1, part 1, and the provisions of Title 81, chapter 1, part 1, apply to [sections 5 and 6].

Section 10. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2007.

(2) [Sections 2 and 3] are effective October 1, 2007.

Approved April 26, 2007

CHAPTER NO. 262

[HB 389]

AN ACT REVISING THE POWERS AND DUTIES OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE FISH, WILDLIFE, AND PARKS COMMISSION REGARDING DEVELOPMENT OR IMPLEMENTATION OF THE STATE ELK MANAGEMENT PLAN; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO REQUEST, AS PART OF AN ELK MANAGEMENT PLAN, THAT PUBLIC LANDS AND PUBLIC ROADS REMAIN OPEN TO PUBLIC ACCESS DURING THE BIG GAME HUNTING SEASON; REQUIRING THE FISH, WILDLIFE, AND PARKS COMMISSION TO CONSIDER LANDOWNER TOLERANCE WHEN DECIDING WHETHER TO RESTRICT ELK HUNTING IN A HUNTING DISTRICT; AMENDING SECTIONS 87-1-201 AND 87-1-301, 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. 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, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is 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, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state

treasurer to be credited to the fish and game account in the state special revenue fund.

(6) The department may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) 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.;

(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; and

(iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. *In implementing an elk management plan, the department shall, as necessary to achieve harvest and population objectives, request that land management agencies open public lands and public roads to public access during the big game hunting season.*

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) Any management plan developed by the department pursuant to this subsection (9) is subject to the requirements of Title 75, chapter 1, part 1.

(d) This subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

(10) The department shall publish an annual game count, estimating to the department's best ability the numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative regions of the state. In preparing the publication, the department may incorporate field observations, hunter reporting statistics, or any other suitable method of determining game numbers. The publication must include an explanation of the basis used in determining the game count."

Section 2. Section 87-1-301, MCA, is amended to read:

"87-1-301. Powers of commission. (1) The commission:

(a) shall set the policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) shall establish the hunting, fishing, and trapping rules of the department;

(c) shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) must have the power within the department to establish wildlife refuges and bird and game preserves;

(e) shall approve all acquisitions or transfers by the department of interests in land or water, except as provided in 87-1-209(4);

(f) shall review and approve the budget of the department prior to its transmittal to the budget office;

(g) shall review and approve construction projects that have an estimated cost of more than \$1,000 but less than \$5,000; and

(h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. *In developing or implementing an elk management plan, the commission shall consider landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or documented verbal opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting district where a restriction on elk hunting on public property is proposed.*

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth and persons with disabilities.

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders:

(i) for the biologically sound management of big game populations of elk, deer, and antelope;

(ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

(iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321 through 87-1-325.

(5) The commission may adopt rules establishing license preference systems to distribute hunting licenses and permits:

(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission.

(6) (a) The commission may adopt rules to:

(i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

(ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting districts.

(b) The commission shall consider, but is not limited to consideration of, the following factors:

(i) harvest of lions by resident and nonresident hunters;

(ii) history of quota overruns;

(iii) composition, including age and sex, of the lion harvest;

(iv) historical outfitter use;

(v) conflicts among hunter groups;

(vi) availability of public and private lands; and

(vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters."

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

Approved April 26, 2007

CHAPTER NO. 263

[HB 414]

AN ACT PROVIDING THAT RECORDS OF PERSONS WITH DEVELOPMENTAL DISABILITIES WHO ARE COMMITTED TO A RESIDENTIAL FACILITY BE MAINTAINED SEPARATELY.

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

Section 1. Court records to be kept separate — sealed — names omitted. Records and papers in proceedings under this part must be maintained separately by each clerk of court. Five days prior to the release of a respondent or resident committed to a residential facility, the facility shall notify the appropriate clerk of court, and the clerk shall immediately seal the record in the case and omit the name of the respondent or resident from the index or indexes of cases in the court unless the court orders the record opened for good cause shown.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 20, part 1, and the provisions of Title 53, chapter 20, part 1, apply to [section 1].

Approved April 26, 2007

CHAPTER NO. 264

[HB 415]

AN ACT REMOVING THE PROVISION THAT A PARK DEDICATION MAY NOT BE REQUIRED FOR A MINOR SUBDIVISION; MAKING PARK DEDICATION FOR A MINOR SUBDIVISION DISCRETIONARY; 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), and (6) through ~~(8)~~ (9) 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);

(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).

(8) A local governing body may, at its discretion, require a park dedication for a minor subdivision. A local governing body that chooses to require a park dedication shall specify in regulations the circumstances under which a park dedication will be required.

~~(8)~~(9) Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided

in subsection (1) to a school district, adequate to be used for school facilities or buildings.

(9)(10) 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.

(10)(11) A land donation under this section may be inside or outside of the subdivision.”

Approved April 26, 2007

CHAPTER NO. 265

[HB 428]

AN ACT ALLOWING A VEHICLE THAT IS PERMANENTLY REGISTERED TO BE DETERMINED TO BE A JUNK VEHICLE IF IT MEETS ALL OTHER CRITERIA FOR DETERMINING JUNK VEHICLE STATUS; AND AMENDING SECTION 75-10-501, MCA.

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

Section 1. Section 75-10-501, MCA, is amended to read:

“75-10-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) “Board” means the board of environmental review provided for in 2-15-3502.

(2) “Component part” means any identifiable part of a discarded, ruined, wrecked, or dismantled motor vehicle, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions, frames, axles, wheels, tires, and passenger compartment fixtures.

(3) “Department” means the department of environmental quality provided for in 2-15-3501.

(4) (a) “Junk vehicle” means a *motor vehicle, including component parts:*

(i) *that is discarded, ruined, wrecked, or dismantled motor vehicle, including component parts,;*

(ii) *that, except as provided in subsection (4)(b), is not lawfully and validly licensed; and*

(iii) *that remains inoperative or incapable of being driven.*

(b) *If a vehicle is permanently registered under 61-3-562 and meets the criteria for a junk vehicle under subsection (4)(a), the vehicle is a junk vehicle.*

(5) “Motor vehicle graveyard” means a collection point established by a county for junk motor vehicles prior to their disposal.

(6) “Motor vehicle wrecking facility” means:

(a) a facility buying, selling, or dealing in four or more vehicles per year, of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle; or

(b) a facility that buys or sells component parts, in whole or in part, and deals in secondhand motor vehicle parts. A facility that buys or sells component parts of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification. The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

(7) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(8) "Public view" means any point 6 feet above the surface of the center of a public road from which junk vehicles can be seen.

(9) "Shielding" means the construction or use of fencing or manmade or natural barriers to conceal junk vehicles from public view."

Approved April 26, 2007

CHAPTER NO. 266

[HB 435]

AN ACT AMENDING STATUTES REGARDING THE ABILITY OF A VICTIM OR DEPENDENT OF A DECEASED VICTIM TO RECOVER MONEY GAINED AS A DIRECT RESULT OF A HOMICIDE OR CERTAIN OTHER CRIMINAL OFFENSES; PROHIBITING CERTAIN PERSONS FROM SELLING CONFIDENTIAL CRIMINAL JUSTICE INFORMATION AND PROVIDING A PENALTY; REVISING THE STATUTE OF LIMITATIONS FOR CERTAIN WRONGFUL DEATH ACTIONS; AMENDING SECTIONS 27-2-204 AND 53-9-104, 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 27-2-204, MCA, is amended to read:

"27-2-204. Tort actions — general and personal injury. (1) Except as provided in 27-2-216 and 27-2-217, the period prescribed for the commencement of an action upon a liability not founded upon an instrument in writing is within 3 years.

(2) The period prescribed for the commencement of an action to recover damages for the death of one caused by the wrongful act or neglect of another is within 3 years, *except when the wrongful death is the result of a homicide, in which case the period is within 10 years.*

(3) The period prescribed for the commencement of an action for libel, slander, assault, battery, false imprisonment, or seduction is within 2 years."

Section 2. Section 53-9-104, MCA, is amended to read:

"53-9-104. Powers and duties of office. (1) The office shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual ~~formally charged with or~~ convicted of a qualifying crime for any ~~rendition, interview, statement, book, photograph, movie, television production, or play, or article relating to~~ prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, ~~if the individual is convicted of the crime,~~ to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for in 47-1-201, for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or \$5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be deposited in the state general fund.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program.”

Section 3. Sale of confidential criminal justice information prohibited — penalty. (1) An individual convicted of a qualifying crime may not sell or exchange confidential criminal justice information, as defined in 44-5-103.

(2) The office shall require that any funds obtained in violation of subsection (1) be deposited into the escrow fund, provided for in 53-9-104, for the benefit of a victim of a qualifying crime, to be held as provided in 53-9-104.

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 53, chapter 9, part 1, and the provisions of Title 53, chapter 9, part 1, apply to [section 3].

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 on passage and approval.

Section 7. Applicability. (1) [Section 1] applies to a death occurring after October 1, 2007.

(2) [Section 2] applies to a contract entered into after October 1, 2007.

Approved April 26, 2007

CHAPTER NO. 267

[HB 456]

AN ACT REMOVING REFERENCES TO MOBILE HOMES, MOBILE HOME OWNERS, AND MOBILE HOME PARKS FROM THE MONTANA RESIDENTIAL LANDLORD AND TENANT ACT OF 1977; CREATING THE MONTANA RESIDENTIAL MOBILE HOME LOT RENTAL ACT; PROVIDING REQUIREMENTS FOR MOBILE HOME LOT RENTAL AGREEMENTS; ESTABLISHING RIGHTS, OBLIGATIONS, AND REMEDIES FOR MOBILE HOME LOT TENANTS AND LANDLORDS; AMENDING SECTIONS 70-24-103, 70-24-305, 70-24-314, 70-24-422, 70-24-431, AND 70-24-441, MCA; AND REPEALING SECTIONS 70-24-313, 70-24-315, 70-24-432, AND 70-24-436, MCA.

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

Section 1. Section 70-24-103, MCA, is amended to read:

“70-24-103. General definitions. Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) “Action” includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) “Case of emergency” means an extraordinary occurrence beyond the tenant’s control requiring immediate action to protect the premises or the tenant. A case of emergency may include the interruption of essential services, including heat, electricity, gas, running water, hot water, and sewer and septic system service, or life-threatening events in which the tenant or landlord has reasonable apprehension of immediate danger to the tenant or others.

(3) “Court” means the appropriate district court, justice’s court, or city court.

(4) “Dwelling unit” means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household. Dwelling unit, in the case of a person who rents space in a mobile home park ~~but does not rent and rents the mobile home, means the space rented and not the mobile home itself.~~

(5) “Good faith” means honesty in fact in the conduct of the transaction concerned.

(6) “Landlord” means:

(a) the owner, lessor, or sublessor of:

(i) the dwelling unit or the building of which it is a part; or

(ii) a mobile home park; or

(b) a manager of the premises who fails to disclose the managerial position.

~~(7) "Mobile home owner" means the owner of a manufactured mobile home dwelling unit entitled under a rental agreement to occupy a mobile home park space in a mobile home park.~~

~~(8) "Mobile home park" means a trailer court as defined in 50-52-101.~~

(9)(7) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, or partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(10)(8) "Owner" means one or more persons, jointly or severally, in whom is vested all or part of:

(a) the legal title to property; or

(b) the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

~~(11)(9) "Person" includes an individual or organization.~~

(12)(10) "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances in the structure, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

~~(13)(11) "Rent" means all payments to be made to the landlord under the rental agreement.~~

(14)(12) "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-24-311 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(15)(13) "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of which are used in common by occupants in the structure.

~~(16)(14) "Single-family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a A dwelling unit that shares one or more walls with another dwelling unit, it is a single-family residence if it has direct access to a street or thoroughfare and shares neither does not share heating facilities, hot water equipment, nor or any other essential facility or service with another dwelling unit.~~

(17)(15) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others."

Section 2. Section 70-24-305, MCA, is amended to read:

"70-24-305. Transfer of premises by tenant. (1) A tenant who vacates a dwelling unit during the term of a tenancy may not allow the possession of the property to be transferred to a third person or sublet the property unless the landlord or the landlord's agent has consented in writing.

~~(2) The sale or rental of a mobile home located upon a rental lot does not entitle the purchaser or renter to retain rental of the lot unless the purchaser or renter enters into a rental agreement with the owner of the lot.~~

~~(3) A mobile home owner who owns the mobile home but rents the lot space has the exclusive right to sell the mobile home without interference or conditions by the landlord. The new purchaser shall make suitable arrangements with the landlord in order to become a tenant on the mobile home lot. The purchase of the mobile home does not automatically entitle the purchaser to rent the mobile home lot.~~

Section 3. Section 70-24-314, MCA, is amended to read:

“70-24-314. Resident associations — meetings. (1) The membership of a resident association may elect officers of the association at a meeting at which a majority of the members are present. All residents may attend meetings, ~~but the mobile home park landlord and the landlord’s employees may not be members and may not attend meetings unless specifically invited by the tenant association.~~

~~(2) The mobile home park landlord may not prohibit meetings by a tenant association or tenants relating to mobile home living.”~~

Section 4. 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), 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).

(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 (6), if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

(6) Treble damages may not be recovered for the tenant's early termination of the tenancy.

~~(7) Subsections (3) through (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.~~

~~(8)(7) 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 5. Section 70-24-431, MCA, is amended to read:

"70-24-431. Retaliatory conduct by landlord prohibited. (1) Except as provided in this section, a landlord may not retaliate by increasing rent, by decreasing services, or by bringing or threatening to bring an action for possession after the tenant:

(a) has complained of a violation applicable to the premises materially affecting health and safety to a governmental agency charged with responsibility for enforcement of a building or housing code;

(b) has complained to the landlord in writing of a violation under 70-24-303; or

(c) has organized or become a member of a tenant's union, ~~mobile home park tenant association,~~ or similar organization.

(2) If the landlord acts in violation of subsection (1) of this section, the tenant is entitled to the remedies provided in 70-24-411 and has a defense in any retaliatory action against ~~him~~ *the tenant* for possession.

(3) In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. For purposes of this section, "rebuttable presumption" means that the trier of fact ~~must~~ *is required to find* the existence of the fact presumed unless and until evidence is introduced ~~which that~~ would support a finding of its nonexistence.

(4) ~~Notwithstanding subsections~~ *Subsections* (1), (2), and (3) of this section, *do not prevent* a landlord ~~may bring from bringing~~ an action for possession if:

(a) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of the tenant's family, or *any* other persons on the premises with ~~his~~ *the tenant's* consent;

(b) the tenant is in default in rent; or

(c) compliance with the applicable building or housing code requires alteration, remodeling, or demolition ~~which that~~ would effectively deprive the tenant of use of the dwelling unit.

(5) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under 70-24-405(2)."

Section 6. Section 70-24-441, MCA, is amended to read:

"70-24-441. Termination by landlord or tenant — applicability. (1) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least 7 days before the termination date specified in the notice.

(2) The landlord or the tenant may terminate a month-to-month tenancy by giving to the other at any time during the tenancy at least 30 days' notice in writing prior to the date designated in the notice for the termination of the tenancy.

(3) The tenancy terminates on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

~~(4) The provisions of this section do not apply to a tenant who rents space for a mobile home in a mobile home park but does not rent the mobile home."~~

Section 7. Short title. [Sections 7 through 51] may be cited as "The Montana Residential Mobile Home Lot Rental Act".

Section 8. Purpose — liberal construction. (1) [Sections 7 through 51] must be liberally construed and applied to promote the underlying purposes and policies of [sections 7 through 51].

(2) The underlying purposes and policies of [sections 7 through 51] are to:

(a) simplify and clarify the law governing the rental of land to owners of mobile homes and manufactured homes and the rights and obligations of landlords and tenants concerning lot rentals; and

(b) encourage landlords and tenants to maintain and improve the quality of housing.

Section 9. Definitions. Unless the context clearly requires otherwise, in [sections 7 through 51] the following definitions apply:

(1) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Case of emergency" means an extraordinary occurrence beyond the tenant's control requiring immediate action to protect the premises or the tenant. A case of emergency may include the interruption of essential services, including electricity, gas, running water, and sewer and septic system service, or life-threatening events in which the tenant or landlord has reasonable apprehension of immediate danger to the tenant or others.

(3) "Court" means the appropriate district court, justice's court, or city court.

(4) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(5) "Landlord" means:

(a) the owner, lessor, or sublessor of:

(i) space or land, including a lot, that is rented to a tenant for a mobile home; or

(ii) a mobile home park; or

(b) a manager of the premises who fails to disclose the managerial position.

(6) "Lot" means the space or land rented and not a mobile home itself.

(7) "Mobile home" has the same meaning as provided in 15-1-101 and includes manufactured homes as defined in 15-1-101.

(8) "Mobile home owner" means the owner of a mobile home entitled under a rental agreement to occupy a lot.

(9) "Mobile home park" means a trailer court as defined in 50-52-101.

(10) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(11) "Person" includes an individual or organization.

(12) "Premises" means a lot and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

(13) "Rent" means all payments to be made to a landlord under a rental agreement.

(14) "Rental agreement" means all agreements, written or oral, and valid rules adopted under [section 22] embodying the terms and conditions concerning the use and occupancy of the premises.

(15) "Tenant" means a person entitled under a rental agreement to occupy a lot to the exclusion of others.

Section 10. Applicability. (1) [Sections 7 through 51] apply to landlord-tenant relationships in which the landlord is renting a lot to the tenant for placement of the tenant's mobile home. [Sections 7 through 51] apply to land rental in a mobile home park as well as to the rental of individual parcels of land not in a mobile home park that are for the placement of a tenant's mobile home.

(2) Unless created to avoid the application of [sections 7 through 51], the following arrangements are not governed by [sections 7 through 51]:

(a) occupancy under a contract of sale of a lot if the occupant is the purchaser or a person who succeeds to the purchaser's interest;

(b) occupancy under a rental agreement covering premises used by the occupant primarily for commercial or agricultural purposes;

(c) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises;

(d) occupancy outside a municipality under a rental agreement that includes hunting, fishing, or agricultural privileges along with the use of the lot; and

(e) any rental premises that are governed by the Montana Residential Landlord and Tenant Act of 1977, Title 70, chapter 24.

(3) The combined rental of the lot and mobile home, when the landlord owns both, are covered by the Montana Residential Landlord and Tenant Act of 1977.

Section 11. Supplementary principles of law. Unless superseded by the provisions of [sections 7 through 51], the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes, supplement the provisions of [sections 7 through 51].

Section 12. Notice. (1) A person has notice of a fact if:

(a) the person has actual knowledge of the fact;

(b) in the case of a landlord, the notice is delivered at the place of business of the landlord through which the rental agreement was made; or

(c) in the case of a landlord or tenant, the notice is personally delivered to the landlord or tenant or mailed with a certificate of mailing or by certified mail to the place held out by the landlord or tenant as the place for receipt of the communication or, in the absence of a designation, to the landlord's or tenant's last-known address. When notice is made by certificate of mailing or certified mail, the service of the notice must be considered to have been made 3 days after the date of mailing.

(2) Notice received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction on behalf of the organization and, in any event, from the time the notice would have been brought to the individual's attention if the organization had exercised reasonable diligence.

Section 13. Obligation of good faith. Every duty under [sections 7 through 51] and every act that must be performed as a condition precedent to the exercise of a right or remedy under [sections 7 through 51] imposes an obligation of good faith in its performance or enforcement.

Section 14. Rental agreements. (1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by [sections 7 through 51] or other rule or law.

(2) Unless the rental agreement provides otherwise:

(a) the tenant shall pay as rent the fair rental value for the use and occupancy of the lot as determined by the landlord;

(b) rent is payable at the landlord's address;

(c) periodic rent is payable at the beginning of a term that is a month or less and otherwise in equal monthly installments at the beginning of each month;

(d) rent is uniformly apportionable from day to day; and

(e) the tenancy is from month to month.

(3) Rent is payable without demand or notice at the time and place agreed upon by the parties or as provided by subsection (2).

Section 15. Prohibited provisions in rental agreements. (1) A rental agreement may not require a party to:

(a) waive or forego rights or remedies under [sections 7 through 51];

(b) authorize any person to confess judgment on a claim arising out of the rental agreement; or

(c) agree to the exculpation or limitation of liability resulting from the other party's purposeful misconduct or negligence or to indemnify the other party for that liability or related costs or attorney fees.

(2) A rental agreement or a related document may not permit the receipt of rent free of the obligation to comply with the provisions of [section 19].

Section 16. Effect of unsigned or undelivered rental agreement. (1) If the landlord does not sign and deliver a written rental agreement signed and delivered to the landlord by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

(2) If the tenant does not sign and deliver a written rental agreement signed and delivered to the tenant by the landlord, acceptance of possession of the premises and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.

(3) If a rental agreement given effect by the operation of this section provides for a term longer than 1 year, it is effective for only 1 year.

Section 17. Duty to disclose name of person responsible. (1) A landlord or a person authorized to enter into a rental agreement on a landlord's behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

(a) the person authorized to manage the premises; and

(b) the owner of the premises or a person authorized to act for the owner for the purpose of service of process and receiving notices and demands.

(2) The information required to be furnished by this section must be kept current and in writing, and this section is enforceable against any successor landlord, owner, or manager.

(3) A person, other than the landlord, who fails to comply with subsection (1) becomes an agent of each person who is a landlord for the purpose of:

(a) service of process and receiving notices and demands; and

(b) performing the obligations of the landlord under [sections 7 through 51] and under the rental agreement and for expending or making available for the purpose of performing those obligations all rent collected from the premises.

Section 18. Landlord to deliver possession of premises. (1) At the commencement of the rental term, a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and [section 19]. A landlord may bring an action for possession against a person wrongfully in possession.

(2) If a landlord accepts rent or a deposit from a person intending to occupy the premises, the landlord is considered to have given consent for the person to take possession of the property and to have created a landlord-tenant relationship.

Section 19. Landlord to maintain premises — agreement that tenant perform duties. (1) A landlord shall:

(a) comply with the requirements of applicable building and housing codes materially affecting health and safety;

(b) make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(c) keep all common areas of the premises in a clean and safe condition;

(d) for the premises, 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) 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 lot and arrange for their removal; and

(f) supply running water at all times, unless the lot is not required by law to be equipped for that purpose or the running water is generated by an installation within the exclusive control of the tenant.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(f), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(e) and (1)(f) but only if the agreement is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant 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.

Section 20. Transfer of premises or termination of management — relief from liability. (1) Unless otherwise agreed, a landlord who conveys premises subject to a rental agreement, in a good faith sale to a bona fide purchaser, is relieved of liability under the rental agreement and [sections 7 through 51] as to events occurring after written notice to the tenant of the conveyance. The landlord remains liable to the tenant for all security recoverable by the tenant pursuant to Title 70, chapter 25, and all prepaid rent.

(2) Unless otherwise agreed, a manager of premises subject to a rental agreement is relieved of liability under the rental agreement and [sections 7 through 51] as to events occurring after written notice to the tenant of the termination of the manager's management duties.

Section 21. Transfer of premises by tenant. (1) A tenant who vacates a lot during the term of a tenancy may not allow the possession of the property to be transferred to a third person or sublet the property unless the landlord or the landlord's agent has consented in writing.

(2) The sale or rental of a mobile home located upon a lot does not entitle the purchaser or renter to retain rental of the lot unless the purchaser or renter enters into a rental agreement with the owner of the lot.

(3) A mobile home owner who owns the mobile home but rents the lot has the exclusive right to sell the mobile home without interference or conditions by the landlord. The new purchaser shall make suitable arrangements with the landlord in order to become a tenant on the mobile home lot. The purchase of the mobile home does not automatically entitle the purchaser to rent the mobile home lot.

Section 22. Landlord authorized to adopt rules. (1) A landlord may adopt a rule concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if:

(a) its purpose is to promote the convenience, safety, or welfare of the occupants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(b) it is reasonably related to the purpose for which it is adopted;

(c) it applies to all occupants in the premises in a fair manner;

(d) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant shall or may not do to comply;

(e) it is not for the purpose of evading the obligations of the landlord; and

(f) the tenant has notice of the rule at the time that the tenant enters into the rental agreement or when the rule is adopted.

(2) A rule adopted by a landlord must be in writing and must be given to each tenant residing on the premises and to each new tenant upon arrival.

(3) If a rule is adopted after a tenant enters into a rental agreement that involves a substantial modification of the rental agreement, it is not valid until after 30 days' written notice in the case of month-to-month tenancies.

Section 23. Access to premises by landlord. (1) A tenant may not unreasonably withhold consent to the landlord or the landlord's agent to enter the lot in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the lot to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) A landlord may enter the lot without consent of the tenant in case of emergency.

(3) A landlord may not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least 24 hours' notice of the intent to enter and may enter only at reasonable times.

(4) A landlord has no other right of access except:

(a) pursuant to court order;

(b) as permitted by [section 42] and [section 43(1)(b)]; or

(c) when the tenant has abandoned or surrendered the premises.

(5) A tenant may not remove a lock or replace or add a lock not supplied by the landlord to the premises without the written permission of the landlord. If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises, the tenant shall provide the landlord with a key to ensure that the landlord will have the right of access as provided by [sections 7 through 51].

Section 24. Lot rules. (1) A landlord may adopt a rule concerning the rental occupancy of a lot and the use of common areas and facilities in accordance with [section 22]. A rule may not be unreasonable, and a rule that does not apply uniformly to all tenants of a similar class creates a rebuttable presumption, as defined in [section 48(3)], that the rule is unfair.

(2) Each common area facility must be open or available to residents at all reasonable hours, and the hours of a common recreational facility must be posted at the facility.

Section 25. Resident associations — meetings. (1) The membership of a resident association may elect officers of the association at a meeting at which a majority of the members are present. All residents may attend meetings, but the landlord and the landlord's employees may not be members and may not attend meetings unless specifically invited by the tenants' resident association.

(2) The landlord may not prohibit meetings by a resident association or tenants relating to mobile home living.

Section 26. Road maintenance obligations. In addition to the obligations imposed by [section 19], the mobile home park landlord shall maintain common roads within the mobile home park in a safe condition, including arranging for snow plowing as is reasonable to keep the roads passable.

Section 27. Tenant to maintain lot. (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 lot all ashes, garbage, rubbish, and other waste in a clean and safe manner;

(d) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;

(e) 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

(f) use the parts of the premises in a reasonable manner considering the purposes for which they were designed and intended.

(2) 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, if the landlord has consented in writing. The landlord may not unreasonably withhold consent if the limited business or cottage industry is operated within reasonable rules of the landlord.

(3) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so.

(4) 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 28. Notice of extended absence. The rental agreement may require that the tenant notify the landlord of an anticipated extended absence from the premises in excess of 7 days not later than the first day of the extended absence.

Section 29. Administration of remedies — enforcement — agreement. (1) The remedies provided by [sections 7 through 51] must be administered so that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

(2) A right or obligation declared by [sections 7 through 51] is enforceable by action unless the provision declaring it specifies a different and limited effect.

(3) Rules and regulations that are not a part of [sections 7 through 51] and that affect the relationship between the landlord and tenant must be uniformly and fairly applied and enforced.

(4) A claim or right arising under [sections 7 through 51] or on a rental agreement, if disputed in good faith, may be settled by agreement.

Section 30. Prohibited provisions — damages. (1) A provision prohibited by [section 15] that is included in a rental agreement is unenforceable.

(2) If one party purposefully uses a rental agreement containing provisions known by that party to be prohibited, the other party may recover, in addition to actual damages, an amount up to 3 months' rent.

Section 31. Unconscionability — court discretion. (1) If the court, as a matter of law, finds that:

(a) a rental agreement or any provision of the rental agreement is unconscionable, the court in order to avoid an unconscionable result may refuse to enforce the agreement or may enforce the remainder of the agreement without the unconscionable provision result; or

(b) a settlement in which a party waives or agrees to forego a claim or right under [sections 7 through 51] or under a rental agreement is unconscionable, the court in order to avoid an unconscionable result may refuse to enforce the settlement, may enforce the remainder of the settlement without the unconscionable provision, or may limit the application of any unconscionable provision.

(2) If unconscionability is put into issue by a party or by the court upon its own motion, the parties must be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making its determination.

Section 32. Landlord's failure to deliver premises — tenant's remedies. (1) If the landlord fails to deliver possession of the lot to the tenant as provided in [section 18], rent abates until possession is delivered and the tenant may:

(a) terminate the rental agreement upon at least 5 days' written notice to the landlord and, upon termination, the landlord shall return all prepaid rent and security; or

(b) demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the lot against the landlord or a person wrongfully in possession and recover the actual damages sustained by the tenant.

(2) If a person's failure to deliver possession is purposeful and not in good faith, an aggrieved party may recover from that person an amount of not more than 3 months' rent or treble damages, whichever is greater.

Section 33. Landlord's failure to maintain premises — tenant's remedies. (1) Unless otherwise provided in [sections 7 through 51], if there is a noncompliance with [section 19] affecting health and safety, the following procedures apply:

(a) The tenant may deliver a written notice to the landlord specifying the nature of the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days. If the noncompliance results in a case of emergency and the landlord fails to remedy the situation within 3 working days after written notice by the tenant of the situation and the tenant's intention to terminate the rental agreement, the tenant may terminate the rental agreement. The rental agreement terminates as provided in the notice subject to the following exceptions:

(i) if the breach is remediable by repairs, the payment of damages, or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate by reason of the breach;

(ii) if substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within 6 months, the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement;

(iii) the tenant may not terminate the rental agreement for a condition caused by the tenant, a member of the tenant's family, or any other persons on the premises with the tenant's consent.

(b) (i) The tenant may make repairs that do not cost more than 1 month's rent and deduct the cost from the rent if the tenant has given the landlord notice and the landlord has not made the repairs within a reasonable time. If the repair is required in a case of emergency and the landlord has not made the repairs, the tenant may have repairs made only by a person qualified to make the repairs.

(ii) If the landlord fails to comply with the rental agreement or [section 19] and the reasonable cost of compliance is less than 1 month's rent, the tenant may recover damages for the breach under subsection (2).

(2) Unless otherwise provided in [sections 7 through 51], the tenant may recover actual damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or [section 19].

(3) The remedy provided in subsection (2) is in addition to a right of the tenant arising under subsection (1).

(4) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant pursuant to Title 70, chapter 25.

Section 34. Landlord's failure to provide essential services — tenant's remedies. (1) If contrary to the rental agreement or [section 19] the landlord purposefully or negligently fails to supply running water, electric, gas, or other essential services, the tenant may give written notice to the landlord specifying the breach and may:

(a) procure reasonable amounts of running water, electricity, gas, and other essential services during the period of the landlord's noncompliance and deduct the actual and reasonable cost from the rent;

(b) recover damages based upon the diminution in the fair rental value of the lot; or

(c) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) A tenant proceeding under this section may not proceed under [section 33] for a landlord's failure to provide essential services.

(3) The rights of a tenant under this section do not arise until the tenant has given notice to the landlord and the landlord has had a reasonable opportunity to correct the conditions.

(4) A tenant does not have rights under this section if the conditions were caused by the act or omission of the tenant, a member of the tenant's family, or any other person on the premises with the tenant's consent.

Section 35. Fire or casualty damage — rights and obligations of tenant. (1) (a) If the lot or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the lot is substantially impaired, the tenant may immediately vacate the premises and notify the landlord in writing within 14 days of vacating the premises that it is the tenant's intention to terminate the rental agreement.

(b) If the tenant complies with the provisions of subsection (1)(a), the rental agreement terminates as of the date the tenant vacates the premises.

(2) If the rental agreement is terminated pursuant to subsection (1), the landlord shall return any prepaid rent and all security recoverable pursuant to Title 70, chapter 25. Accounting or apportionment for rent in the event of termination must be made as of the date of the fire or casualty.

(3) If the tenant's mobile home is damaged or destroyed by fire or casualty to an extent that enjoyment of the mobile home is substantially impaired and [section 47] does not apply, it is the obligation of the mobile home owner to remove the mobile home from the lot within 30 days of the damage or destruction.

(4) All terms and conditions of the rental agreement remain in effect until the mobile home is removed from the premises and all required cleanup is completed.

Section 36. Unlawful or unreasonable entry by landlord — tenant's remedies. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry that is otherwise lawful but has the effect of unreasonably harassing the tenant, the tenant may either obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages.

Section 37. Unlawful ouster, exclusion, or diminution of services — tenant’s remedies. (1) If a landlord unlawfully removes or excludes the tenant from the premises or purposefully diminishes services to the tenant by interrupting or causing the interruption of running water, electricity, gas, or other essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount of not more than 3 months’ periodic rent or treble damages, whichever is greater.

(2) If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to Title 70, chapter 25, and any prepaid rent.

Section 38. Action for nonpayment of rent — tenant’s counterclaim. (1) (a) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount recoverable under the rental agreement or [sections 7 through 51].

(b) (i) The court may order the tenant to pay into court all or part of the rent accrued and afterwards accruing, and the court shall determine the amount due to each party.

(ii) A party to whom a net amount is owed must be paid first from the money paid into court, and the balance must be paid by the other party.

(iii) The court may at any time release money paid into the court to any party if the parties agree or if the court finds a party is entitled to the money.

(c) If there is no rent remaining due after application of this section, judgment must be entered for the tenant in an action for possession.

(2) In an action for rent when the tenant is not in possession, the tenant may counterclaim as provided in subsection (1) but may not be required to pay any rent into court.

Section 39. Noncompliance of tenant generally — landlord’s right of termination — damages — injunction. (1) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of [section 27(3)], the landlord may terminate the rental agreement upon giving 3 days’ written notice specifying the noncompliance under the provisions of [section 27(3)].

(2) 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 or charged with an act that violates the provisions of [section 27(4)], the landlord may terminate the rental agreement upon giving 3 days’ written notice specifying the violation and noncompliance under the provisions of [section 27(4)].

(3) Except as otherwise provided in [sections 7 through 51], the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or [section 27]. Except as provided in subsection (4) of this section, if the tenant’s noncompliance is purposeful, the landlord may recover treble damages.

(4) Treble damages may not be recovered for the tenant’s early termination of the tenancy.

Section 40. Waiver of landlord’s right to termination. (1) Acceptance by the landlord of full payment of rent due is a waiver of a claimed breach of a rental agreement only when the claimed breach is the nonpayment of rent.

(2) Acceptance of full payment of rent due when a claimed breach is something other than the nonpayment of rent does not constitute a waiver of any right.

(3) The acceptance of partial payment of rent due does not constitute a waiver of any right.

Section 41. Refusal of access — landlord's remedies. (1) If the tenant refuses to allow lawful access, the landlord may either obtain injunctive relief to compel access or terminate the rental agreement. In either case, the landlord may recover actual damages.

(2) If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises and fails to provide a key as required by [section 23(5)], the landlord may either obtain injunctive relief or terminate the rental agreement.

Section 42. Tenant's failure to maintain lot — landlord's right to enter and repair. If there is noncompliance by the tenant with [section 27] affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the tenant fails to comply as promptly as conditions require in case of emergency or within 14 days after written notice by the landlord specifying the breach and requesting that the tenant remedy the breach within that period of time, the landlord may enter the lot and cause the work to be done in a competent manner and submit an itemized bill for the actual and reasonable cost, the fair and reasonable cost, or the fair and reasonable value of the work as rent on the next date rent is due or, if the rental agreement has terminated, for immediate payment.

Section 43. Remedies for absence or abandonment. (1) (a) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of 7 days, as provided for in [section 28], and the tenant fails to do so, the landlord may recover actual damages from the tenant.

(b) During an absence of the tenant in excess of 7 days, the landlord may enter the lot when reasonably necessary.

(2) (a) If the tenant abandons the lot, the landlord shall make reasonable efforts to rent the lot at a fair rental. If the landlord rents the lot for a term beginning before the expiration of the rental agreement, the rental agreement terminates as of the date of the new tenancy.

(b) If the landlord fails to use reasonable efforts to rent the lot at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is terminated by the landlord as of the date the landlord has notice of the abandonment.

(c) If the tenancy is from month to month or week to week, the term of the rental agreement for the purposes of this subsection (2) is a month or a week, as appropriate.

Section 44. 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) (a) 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 [section 27(4)], the action must be heard within 5 business days after the tenant's appearance or the answer date stated in the summons.

(b) 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 [section 27(4)], 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.

Section 45. Landlord's recovery of possession limited. Except in the case of abandonment or surrender or as permitted in [sections 7 through 51], a landlord may not recover or take possession of the lot by action or otherwise, including purposeful diminution of services to the tenant by interrupting or causing the interruption of running water, electricity, gas, or other essential services.

Section 46. Holdover remedies — consent to continued occupancy.

(1) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or other termination of the rental agreement, the landlord may bring an action for possession. If the tenant's holdover is purposeful and not in good faith, the landlord may recover an amount of not more than 3 months' rent or treble damages, whichever is greater.

(2) In an action for possession or unlawful holdover, the provisions of Title 25, chapter 23, apply, except that the time for filing an answer under Rule 4C(2)(b) is 10 days after service of summons and complaint, exclusive of the date of service.

(3) If the landlord consents to the tenant's continued occupancy [section 14(2)(e)] applies.

Section 47. Disposition of abandoned personal property. (1) If a tenancy terminates in any manner except by court order, if the landlord reasonably believes that the tenant has abandoned all personal property that the tenant has left on the premises, and if at least 5 days has elapsed since the occurrence of the events upon which the landlord has based the belief of abandonment, the landlord may remove the property from the premises.

(2) The landlord shall inventory and store all personal property of the tenant in a place of safekeeping and shall exercise reasonable care for the property. The landlord may charge a reasonable storage and labor charge if the property is stored by the landlord, plus the cost of removal of the property to the place of storage. The landlord may store the property in a commercial storage company, in which case the storage cost includes the actual storage charge plus the cost of removal of the property to the place of storage.

(3) After complying with subsections (1) and (2), the landlord shall:

(a) make a reasonable attempt to notify the tenant in writing that the property must be removed from the place of safekeeping;

(b) notify the local law enforcement office of the property held by the landlord;

(c) make a reasonable effort to determine if the property is secured or otherwise encumbered; and

(d) send a notice by certified mail to the last-known address of the tenant and each known party having a lien or encumbrance of record, stating that at a specified time, not less than 15 days after mailing the notice, the property will be disposed of if not removed.

(4) The landlord may dispose of the property after complying with subsection (3) by:

(a) selling all or part of the property at a public or private sale; or

(b) destroying or otherwise disposing of all or part of the property if the landlord reasonably believes that the value of the property is so low that the cost of storage or sale exceeds the reasonable value of the property.

(5) (a) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the landlord on or before the day specified in the notice that the tenant intends to remove the property and does not do so within 7 days after delivery of the tenant's response, the tenant's property is conclusively presumed to be abandoned.

(b) If the tenant removes the property, the landlord is entitled to storage costs for the period that the property remains in safekeeping, plus the cost of removal of the property to the place of storage. Reasonable storage costs are allowed to a landlord who stores the property, and actual storage costs are allowed to a landlord who stores the property in a commercial storage company. A landlord is entitled to payment of the storage costs allowed under this subsection before the tenant may remove the property.

(6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is caused by the landlord's purposeful or negligent act, in which case the landlord is liable for actual damages.

(7) (a) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, labor, and sale and, subject to any prior security interest of record, any delinquent rent or damages owing on the premises. The landlord shall remit to the tenant the remaining proceeds, if any, together with an itemized accounting.

(b) If the tenant cannot after due diligence be found, the remaining proceeds must be deposited with the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, must revert to the general fund of the county.

Section 48. Retaliatory conduct by landlord prohibited. (1) Except as provided in this section, a landlord may not retaliate by increasing rent, by decreasing services, or by bringing or threatening to bring an action for possession after the tenant:

(a) has complained of a violation applicable to the premises materially affecting health and safety to a governmental agency charged with responsibility for enforcement of a building or housing code;

(b) has complained to the landlord in writing of a violation under [section 19]; or

(c) has organized or become a member of a tenant's union, mobile home park resident association, or similar organization.

(2) If the landlord acts in violation of subsection (1), the tenant is entitled to the remedies provided in [section 37] and has a defense in any retaliatory action against the tenant for possession.

(3) In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. For purposes of this subsection, "rebuttable presumption" means that the trier of fact is required to find the existence of the fact presumed unless evidence is introduced that would support a finding of its nonexistence.

(4) Subsections (1), (2), and (3) do not prevent a landlord from bringing an action for possession if:

(a) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of the tenant's family, or any other persons on the premises with the tenant's consent;

(b) the tenant is in default in rent; or

(c) compliance with the applicable building or housing code requires alteration, remodeling, or demolition that would effectively deprive the tenant of use of the lot.

(5) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under [section 32(2)].

Section 49. Disposition of abandoned mobile home. (1) If a tenancy terminates, if the landlord reasonably believes that the tenant has abandoned a mobile home occupying a mobile home lot, and if at least 5 days has elapsed since the occurrence of events upon which the landlord has formed the belief that the mobile home has been abandoned, the landlord may remove the mobile home from the premises or keep the mobile home stored on the premises.

(2) If the landlord does not keep the mobile home stored on the premises, the landlord shall store the mobile home in a place of safekeeping and in either case shall exercise reasonable care for the mobile home. The landlord may charge the mobile home owner reasonable removal and storage charges.

(3) Regardless of where the landlord stores the mobile home, the landlord shall:

(a) notify the local law enforcement office of the storage;

(b) make a reasonable effort to determine if the mobile home is secured or otherwise encumbered; and

(c) send a notice by certified mail to the last-known address of the mobile home owner and to any person or entity the landlord determines has an interest referred to in subsection (3)(b), stating that at a specified time, not less than 15 days after mailing the notice, the mobile home will be disposed of if the mobile home owner does not respond and remove the mobile home.

(4) If the mobile home owner, within 15 days after receipt of the notice provided for in subsection (3)(c), responds in writing to the landlord that the owner intends to remove the mobile home from where it is stored and does not do so within 20 days after delivery of the owner's response, the mobile home may be conclusively presumed to be abandoned. A landlord is entitled to payment of the

removal and storage costs allowed under subsection (2) before the owner may remove the mobile home.

(5) The landlord may dispose of the mobile home after complying with subsection (3) by:

(a) selling the mobile home at a public or private sale; or

(b) destroying or otherwise disposing of the mobile home if the landlord reasonably believes that the value of the mobile home is so low that the cost of a sale would exceed the reasonable value of the mobile home. Disposal may include having the mobile home removed to an appropriate disposal site.

(6) A public or private sale authorized by this section must be conducted under the provisions of 30-9A-610 or the sheriff's sale provisions of Title 25, chapter 13, part 7.

(7) The landlord has a lien on the mobile home and the proceeds of a sale conducted pursuant to subsection (6) for the reasonable costs of removal, storage, notice, sale, or delinquent rent or damages owing on the premises. The sale proceeds are subject to any prior security interest of record. A writing or recording is not necessary to create the lien provided for in this section. In the case of a sheriff's sale, the sheriff shall conduct the sale upon receipt of an affidavit from the landlord stating facts sufficient to warrant a sale under this section. After satisfaction of the lien, the landlord shall remit to the mobile home owner the remaining proceeds, if any. If the owner cannot after due diligence be found, the remaining proceeds must be deposited in the general fund of the county in which the sale occurred and, if not claimed within 3 years, are forfeited to the county.

Section 50. Grounds for termination of rental agreement. (1) If there is a noncompliance by the tenant with the rental agreement or with a provision of [section 27], the landlord may deliver a written notice to the tenant pursuant to [section 12] specifying the acts or omissions constituting the noncompliance and stating that the rental agreement will terminate upon the date specified in the notice that may not be 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 for one or more of the following reasons and subject to the following conditions:

(a) nonpayment of rent, late charges, or common area maintenance fees as established in the rental agreement, for which the notice period is 7 days;

(b) a violation of a rule other than provided for in subsection (1)(a) that does not create an immediate threat to the health and safety of any other tenant or the landlord or manager, for which the notice period is 14 days;

(c) a violation of a rule that creates an immediate threat to the health and safety of any other tenant or the landlord or manager, for which the notice period is 24 hours;

(d) late payment of rent, late charges, or common area maintenance fees, as established in the rental agreement, three or more times within a 12-month period if written notice is given by the landlord after each failure to pay, as required by subsection (1)(a), for which the notice period for termination for the final late payment is 30 days;

(e) a violation of a rule that creates an immediate threat to the health and safety of any other tenant or the landlord or manager whether or not notice was

given pursuant to subsection (1)(c) and the violation was remedied as provided in subsection (3), for which the notice period is 14 days;

(f) two or more violations within a 12-month period of the same rule for which notice has been given for each prior violation, as provided in subsection (1)(a), (1)(b), or (1)(c), for which the notice period for the final violation is 30 days;

(g) two or more violations of [section 27(1)] within a 12-month period, for which the notice period for the final violation is 14 days;

(h) any violation of [section 27(3)], for which the notice period is as provided in [section 39(1)];

(i) disorderly conduct that results in disruption of the rights of others to the peaceful enjoyment and use of the premises, for which the notice period is 30 days;

(j) any other noncompliance or violation not covered by subsections (1)(a) through (1)(i) that endangers other tenants or mobile home park personnel or the landlord or manager or causes substantial damage to the premises, for which the notice period is 14 days;

(k) conviction of the mobile home owner or a tenant of the mobile home owner of a violation of a federal or state law or local ordinance, when the violation is detrimental to the health, safety, or welfare of other tenants or the landlord or manager or the landlord's documentation of a violation of the provisions of Title 45, chapter 9, for which the notice period is 14 days;

(l) changes in the use of the land if the requirements of subsection (2) are met, for which the notice period is 180 days;

(m) any legitimate business reason not covered elsewhere in this subsection (1) if the landlord meets the following requirements:

(i) the termination does not violate a provision of this section or any other state statute; and

(ii) the landlord has given the mobile home owner or tenant of the mobile home owner a minimum of 90 days' written notice of the termination.

(2) If a landlord plans to change the use of all or part of the premises from mobile home lot rentals to some other use, each affected mobile home owner must receive notice from the landlord as follows:

(a) The landlord shall give the mobile home owner and a tenant of the mobile home owner at least 15 days' written notice that the landlord will be appearing before a unit of local government to request permits for a change of use of the premises.

(b) After all required permits requesting a change of use have been approved by the unit of local government, the landlord shall give the mobile home owner and a tenant of the mobile home owner 6 months' written notice of termination of tenancy. If the change of use does not require local government permits, the landlord shall give the written notice at least 6 months prior to the change of use. In the notice the landlord shall disclose and describe in detail the nature of the change of use.

(c) Prior to entering a rental agreement during the 6-month notice period referred to in subsection (2)(b), the landlord shall give each prospective mobile home owner, and any tenant of the mobile home owner whose identity and address have been provided to the landlord, written notice that the landlord is

requesting a change in use before a unit of local government or that a change in use has been approved.

(3) Subject to the right to terminate in subsections (1)(d) through (1)(k), if the noncompliance described in subsections (1)(a) through (1)(c) 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 as a result of that noncompliance.

(4) For purposes of calculating the total number of notices given within a 12-month period under subsection (1)(d), only one notice for each violation per month may be included in the calculation.

Section 51. Attorney fees — costs. In an action on a rental agreement or arising under [sections 7 through 51], reasonable attorney fees, together with costs and necessary disbursements, may be awarded to the prevailing party notwithstanding an agreement to the contrary.

Section 52. Repealer. Sections 70-24-313, 70-24-315, 70-24-432, and 70-24-436, MCA, are repealed.

Section 53. Codification instruction. [Sections 7 through 51] are intended to be codified as an integral part of Title 70, and the provisions of Title 70 apply to [sections 7 through 51].

Approved April 26, 2007

CHAPTER NO. 268

[HB 459]

AN ACT REQUIRING THE RESPECTFUL TRANSPORTATION AND DELIVERY OF A FETUS WHEN AN AUTOPSY IS REQUIRED; AND AMENDING SECTION 46-4-123, MCA.

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

Section 1. Section 46-4-123, MCA, is amended to read:

“46-4-123. Inquiry report. The coroner shall make a full report of the facts discovered in all human deaths requiring an inquiry under the provisions of 46-4-122. *In the case of a fetal death inquiry under 46-4-122, the department of justice shall adopt rules for respectful transportation and delivery of the fetus to the place where the autopsy will be performed. The rules must require that a fetus be transported in a crush-proof container and be labeled with the words “fragile—human remains inside”.* The report must be made in triplicate on a form provided by the division of forensic sciences of the department of justice. The coroner and the medical examiner shall each retain one copy and shall deliver the other copy to the county attorney. If the coroner orders an autopsy during the course of an inquiry, ~~he~~ *the coroner* shall also provide the medical examiner with a copy of the autopsy report. The forms must be completed and distributed as provided in this section as promptly as practicable.”

Approved April 26, 2007

CHAPTER NO. 269

[HB 460]

AN ACT REVISING THE METAL MINE RECLAMATION LAWS; CLARIFYING RECLAMATION PLAN REQUIREMENTS; REQUIRING A TEMPORARY RECLAMATION BOND FOR CERTAIN UNANTICIPATED CIRCUMSTANCES; PROVIDING A PROCESS FOR DETERMINING THE TEMPORARY BOND AMOUNT; AMENDING SECTION 82-4-338, 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 82-4-338, MCA, is amended to read:

“82-4-338. Performance bond. (1) (a) An applicant for an exploration license or operating permit shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than \$200 for each acre or fraction of an acre of the disturbed land, conditioned upon the faithful performance of the requirements of this part, the rules of the board, and the permit. In lieu of a bond, the applicant may file with the department a cash deposit, an assignment of a certificate of deposit, an irrevocable letter of credit, or other surety acceptable to the department. The bond may not be less than the estimated cost to the state to ensure compliance with Title 75, chapters 2 and 5, this part, the rules, and the permit, including the potential cost of department management, operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment, until full bond liquidation can be effected.

(b) A public or governmental agency may not be required to post a bond under the provisions of this part.

(c) A blanket performance bond covering two or more operations may be accepted by the department. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

(d) (i) For an exploration license or operating permit authorizing activities on federal land within the state, the department may accept a bond payable to the state of Montana and the federal agency administering the land. The bond must provide at least the same amount of financial guarantee as required by this part.

(ii) The bond must provide that the department may forfeit the bond without the concurrence of the federal land management agency. The bond may provide that the federal land management agency may forfeit the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable to the department and may also be payable to the federal land management agency. If the bond is payable to the department and the federal land management agency, the department, before accepting the bond, shall enter into an agreement or memorandum of understanding with the federal land management agency providing for administration of the bond funds in a manner that will allow the department to provide for compliance with the requirements of this part, the rules adopted under this part, and the permit.

(iii) The department may not enter into an agreement or memorandum of understanding with a federal land management agency that would require the department to impose requirements on an operator that are more stringent than state law and rules.

(2) (a) The department may calculate one or more reclamation plan components within its jurisdiction with the assistance of one or more third-party contractors selected jointly by the department and the applicant and compensated by the applicant when, based on relevant past experience, the department determines that additional expertise is necessary to calculate the bond amount for reclamation plan components. The department may contract for assistance pursuant to this subsection in determining bond amounts for the initial bond and for any subsequent bond review and adjustment. The mine owner is responsible for the first \$5,000 in contractor services provided under this subsection. The mine owner and the department are each responsible for 50% of any amount over \$5,000.

(b) To select a third-party contractor as authorized in subsection (2)(a), the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(3) (a) The department shall conduct an overview of the amount of each bond annually and shall conduct a comprehensive bond review at least every 5 years. The department may conduct additional comprehensive bond reviews if, after modification of a reclamation or operation plan, an annual overview, or an inspection of the permit area, the department determines that an increase of the bond level may be necessary. The department shall consult with the licensee or permittee if a review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of compliance with this part, the rules, and the permit, the department shall modify the bonding requirements of that permit or license. The licensee or permittee must have 60 days to negotiate the preliminary bond determination with the department, at the end of which time period the department shall issue the proposed bond determination. The department shall give the licensee or permittee a copy of the bond calculations that form the basis for the proposed bond determination and, for operating permits, publish notice of the proposed bond determination in a newspaper of general circulation in the county in which the operation is located. The department shall issue a final bond determination in 30 days. Unless the licensee or permittee requests a hearing under subsection (3)(b), the licensee or permittee shall post bond with the department in the amount represented by the final bond determination no later than 30 days after issuance of the final bond determination. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a 30-day extension of the deadline.

(b) The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing before the board under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, on the final bond determination by filing with the department, within 30 days of the issuance of the final bond determination, a written request for hearing stating the reason for the request. The request for hearing must specify the amount of bond increase, if any, that the licensee or permittee considers appropriate and state the reasons that the licensee or permittee considers the department's final bond determination to be excessive. As a condition precedent to any right to request a hearing, the licensee or permittee shall post bond with

the department in the amount of the bond increase that the licensee or permittee has stated is appropriate in the request for hearing or the amount that is one-half of the increase contained in the department's final bond determination, whichever amount is greater. If the board determines that additional bond is necessary, the licensee or permittee shall post bond in the amount determined by the board within 30 days of receipt of the board's decision. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a reasonable extension of the deadline.

(c) If a licensee or permittee fails to post bond in accordance with subsection (3)(a) or (3)(b) in the required amounts by the required deadlines, the license or permit is suspended by operation of law and the licensee or permittee shall immediately cease mining and exploration operations until the required bond is posted with and approved by the department.

(4) A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

(5) A bond filed for an operating permit obtained under 82-4-335 may not be released or decreased until the public has been provided an opportunity for a hearing and a hearing has been held if requested. The department shall provide reasonable statewide and local notice of the opportunity for a hearing, including but not limited to publishing the notice in newspapers of general daily circulation.

(6) ~~All~~ *Except as provided in subsection (7), all* bonds required in accordance with the provisions of this section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply with conditions of an operating permit or license. Bonds may be required only for anticipated activities as described in subsection (1). Only those activities that themselves or in conjunction with other activities have a reasonable possibility of occurring may be bonded. Bond calculations, including calculations for the initial bond or for subsequent bond reviews and adjustments, may not include amounts for any occurrence or contingency that is not a reasonably foreseeable result of any activity conducted by the applicant.

(7) (a) *If the department determines, based on unanticipated circumstances that are discovered following the issuance of a mining permit, that a substantial and imminent danger to public health, public safety, or the environment exists or that there is a reasonable probability that a violation of water quality standards will occur, the department may require an operator to submit an amended reclamation plan to address the danger and to post a temporary bond to guarantee the performance of the amended portion of the reclamation plan. The temporary bond may only be required if the anticipated costs associated with the plan amendment would increase the total bond amount for the current plan by more than 10%, as determined in subsection (7)(b).*

(b) (i) *In determining the need for the temporary bond and the amount of the temporary bond under subsection (7)(a), the department shall select a third-party contractor in consultation with the operator pursuant to subsection (7)(b)(ii) to provide:*

(A) *a technical engineering analysis and report on the substantial and imminent danger to public health, public safety, or the environment identified in subsection (7)(a); and*

(B) the estimated costs of addressing the potential danger in order to establish the amount of the temporary bond.

(ii) The department shall provide the operator with a list of at least four qualified third-party contractors. The operator shall select two qualified third-party contractors from that list. The department shall select its contractor from the list provided by the operator. The operator shall reimburse the department for the reasonable costs of the third-party contractor.

(c) An approved interim amended reclamation plan and interim bond must remain in effect until the earlier of:

(i) the date that a revised reclamation plan is approved pursuant to 82-4-337 and a permanent bond for the revised reclamation plan is submitted and accepted pursuant to this section; or

(ii) 2 years following the date of submission of a complete application pursuant to 82-4-337 to modify the reclamation plan provision or remedy the conditions that created the need to amend the reclamation plan unless the department approves or denies the complete application within 2 years of submission. The applicant may agree to an extension of this deadline.

(d) Except as provided in subsection (8), the process provided for in this subsection (7) is not subject to the provisions of Title 75, chapter 1.

(8) (a) In determining whether to require amendment of a reclamation plan under subsection (7)(a), the department shall prepare or require the permittee to prepare a written analysis of changes in the reclamation plan that may eliminate or mitigate to an acceptable level the environmental condition. The analysis must include an assessment of the effectiveness of the changes and any potential negative environmental impacts of the changes. The department shall prepare an environmental impact statement pursuant to Title 75, chapter 1, only if the department determines that the changes would not mitigate the condition to an acceptable level or may have potentially significant negative environmental impacts.

(b) If the department determines that preparation of an environmental impact statement is necessary, the permittee shall pay the department's costs pursuant to 75-1-205.

(7)(9) At the applicant's discretion, bonding in addition to that required by this section may be posted. These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section.

(8)(10) (a) If the department determines that there exists at an area permitted or licensed under this part an imminent danger to public health, public safety, or the environment caused by a violation of this part, the rules adopted pursuant to this part, or the permit or license and if the permittee or licensee fails or refuses to expeditiously abate the danger, the department may immediately suspend the permit or license, enter the site, and abate the danger. The department may thereafter institute proceedings to revoke the license or permit, declare the permittee or licensee in default, and forfeit a portion of the bond, not to exceed \$150,000 or 10% of the bond, whichever is less, to be used to abate the danger. The department shall notify the surety of the forfeiture and the forfeiture amount by certified mail, and the surety shall pay the forfeiture amount to the department within 30 days of receipt of the notice. The department shall, as a condition of any termination of the suspension and revocation proceedings, require that the permittee or licensee reimburse the surety, with interest, for any amount paid to and expended by the department

pursuant to this subsection ~~(8)~~ (10) and for the actual cost of the surety's expenses in responding to the department's forfeiture demand.

(b) If the department is unable to permanently abate the imminent danger using the amount forfeited under subsection ~~(8)(a)~~ (10)(a), the department may forfeit additional amounts under the procedure provided in subsection ~~(8)(a)~~ (10)(a).

(c) The department shall return to the surety any money received from the surety pursuant to this subsection (10) and not used by the department to abate the imminent danger. The amount not returned to the surety must be credited to the surety and reduces the penal amount of the bond on a dollar-for-dollar basis.

(d) Any interest accrued on bond proceeds that is not required to abate the imminent danger determined in subsection ~~(8)(a)~~ (10)(a) must be returned to the surety, unless otherwise agreed to in writing by the surety.

~~(9)(11)~~ If a bond is terminated as a result of the action or inaction of a licensee or permittee or is canceled or otherwise terminated by the surety issuing the bond and the licensee or permittee fails to post a new bond for the entire amount of the terminated bond within 30 days following the notice of termination provided to the department, then the license or permit must be immediately suspended without further action by the department."

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

Section 3. Applicability. [This act] does not apply to a reclamation plan amendment for backfill of a pit required by or as a result of a court judgment entered prior to January 1, 2007, or by a subsequent judgment requiring backfill of the same pit at the same facility.

Approved April 26, 2007

CHAPTER NO. 270

[HB 467]

AN ACT REVISING THE MONTANA MEDICAL LEGAL PANEL ACT; CLARIFYING THAT CLAIMS AGAINST HEALTH CARE PROVIDERS IN CERTAIN GOVERNMENTAL INFIRMARIES ARE NOT SUBJECT TO THE PROVISIONS OF THE ACT; INCLUDING TELEMEDICINE PHYSICIANS UNDER THE PROVISIONS OF THE ACT; AMENDING SECTION 27-6-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 27-6-103, MCA, is amended to read:

"27-6-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Dentist" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the assessment:

(i) has as the individual's principal residence or place of dental practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of dentistry; or

(b) for all other purposes, a person licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as the principal residence or place of dental practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render dental services and whose shareholders, partners, or owners were individual dentists licensed to practice dentistry under the provisions of Title 37, chapter 4.

(2) (a) “Health care facility” means a facility, ~~other than a governmental infirmary but including a university or college infirmary,~~ licensed as a health care facility under Title 50, chapter 5.

(b) For the purposes of this chapter, a health care facility does not include:

(i) an end-stage renal dialysis facility,;

(ii) a home infusion therapy agency, ~~or~~;

(iii) a residential care facility; or

(iv) a governmental infirmary, except a university or college infirmary.

(3) “Health care provider” means a physician, a dentist, a podiatrist, or a health care facility.

(4) “Hospital” means a hospital as defined in 50-5-101.

(5) “Malpractice claim” means a claim or potential claim of a claimant against a health care provider for medical or dental treatment, lack of medical or dental treatment, or other alleged departure from accepted standards of health care that proximately results in damage to the claimant, whether the claimant’s claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

(6) “Panel” means the Montana medical legal panel provided for in 27-6-104.

(7) “Physician” means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the assessment:

(i) has as the individual’s principal residence or place of medical practice the state of Montana *or practices telemedicine as defined in 37-3-342*;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of medicine; or

(b) for all other purposes, a person licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as the principal residence or place of medical practice the state of Montana *or practiced telemedicine as defined in 37-3-342* and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render medical services and

whose shareholders, partners, or owners were individual physicians licensed to practice medicine under the provisions of Title 37, chapter 3.

(8) "Podiatrist" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice podiatry under the provisions of Title 37, chapter 6, who at the time of the assessment:

(i) has as the individual's principal residence or place of podiatric practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of podiatry; or

(b) for all other purposes, a person licensed to practice podiatry under the provisions of Title 37, chapter 6, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as the principal residence or place of podiatric practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render podiatric services and whose shareholders, partners, or owners were individual podiatrists licensed to practice podiatry under the provisions of Title 37, chapter 6."

Section 2. Section 27-6-105, MCA, is amended to read:

"27-6-105. What claims panel to review — exceptions. The panel shall review all malpractice claims or potential claims against health care providers covered by this chapter except:

(1) those claims subject to a valid arbitration agreement allowed by law or upon which suit has been filed prior to April 19, 1977; and

(2) *a claim brought by an inmate of a correctional facility against a health care provider arising from a health care service provided by the health care provider within the facility.*"

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

Approved April 26, 2007

CHAPTER NO. 271

[HB 468]

AN ACT PROVIDING THAT THE PROCEEDINGS AND RECORDS OF THE MONTANA STATE BOARD OF MEDICAL EXAMINERS' PROGRAM TO ASSIST PHYSICIANS ARE CONFIDENTIAL.

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

Section 1. Confidentiality of information — physician assistance program. (1) The proceedings and records of the program created by the board pursuant to 37-3-203(4) relating to a physician who has received assistance from the program are considered to be proceedings and records of a professional standards review committee under 37-2-201 and are not subject to discovery or introduction into evidence in any administrative or judicial proceeding, except

that the proceedings and records of the program, as they pertain to a physician, are subject to discovery or introduction into evidence in a disciplinary proceeding before the board against the physician.

(2) Proceedings and records of the program created by the board pursuant to 37-3-203(4) do not include health care information, as defined in 50-16-803, maintained by a health care provider in the provision of health care services to a physician who is receiving or has received assistance from the program. The health care information is subject to discovery from the physician or health care provider and to introduction into evidence in an administrative or judicial proceeding as may otherwise be allowed by law.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 3, part 2, and the provisions of Title 37, chapter 3, part 2, apply to [section 1].

Approved April 26, 2007

CHAPTER NO. 272

[HB 487]

AN ACT INCREASING THE AMOUNT OF REVENUE OR FINANCIAL ASSISTANCE RECEIVED BY A LOCAL GOVERNING ENTITY THAT IS NECESSARY TO REQUIRE THAT AN AUDIT BE CONDUCTED; AND AMENDING SECTION 2-7-503, MCA.

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

Section 1. Section 2-7-503, MCA, is amended to read:

“2-7-503. Financial reports and audits of local government entities.

(1) The governing body or managing or executive officer of a local government entity, other than a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, be in a form prescribed by the department, and be completed within 6 months of the end of the reporting period. The local government entity shall submit the financial report to the department for review.

(2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The superintendent of public instruction shall prescribe the reporting requirements for school districts.

(3) (a) The governing body or managing or executive officer of each local government entity receiving revenue or financial assistance in the period covered by the financial report in excess of ~~\$200,000~~ *the threshold dollar amount established by the director of the office of management and budget pursuant to 31 U.S.C. 7502(a)(3), but regardless of the source of revenue or financial assistance*, shall cause an audit to be made at least every 2 years. The audit must cover the entity's preceding 2 fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to the department for review within 1 year from the close of the last fiscal year covered by the audit.

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection (3)(a) shall at least once every 4 years, if directed by the department, or, in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.

(4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance audit of an individual financial assistance program that a local government is required to conduct under any other state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency with the information that it requires to carry out its responsibilities under state or federal law or regulation, the state agency shall rely upon and use that information to plan and conduct its own audits or reviews in order to avoid a duplication of effort.

(5) In addition to the audits required by this section, the department may at any time conduct or contract for a special audit or review of the affairs of any local government entity referred to in this part. The special audit or review must, to the extent practicable, build upon audits performed pursuant to this part.

(6) The fee for the special audit or review must be a charge based upon the costs incurred by the department in relation to the special audit or review. The audit fee must be paid by the local government entity to the department of revenue and must be deposited in the enterprise fund to the credit of the department.”

Approved April 26, 2007

CHAPTER NO. 273

[HB 520]

AN ACT GENERALLY REVISING ELECTION LAWS; REVISING TERMINOLOGY; AMENDING PROVISIONS RELATED TO PUBLIC NOTICE, OFFICE HOURS, WRITE-IN CANDIDATES, CANDIDATE VACANCIES, FILING PROCEDURES, BALLOTS, PRECINCT REGISTERS, THE ELIGIBILITY OF POLITICAL PARTIES TO HOLD PRIMARY ELECTIONS, AND VOTE-COUNTING SYSTEMS; AMENDING TIMELINES FOR NOMINATION OF PRESIDENTIAL AND VICE PRESIDENTIAL ELECTORS; REVISING WHEN BALLOTS ARE AVAILABLE FOR ABSENTEE VOTING; REVISING THE INFORMATION INCLUDED IN THE VOTER INFORMATION PAMPHLET; AMENDING SECTIONS 13-1-101, 13-1-108, 13-1-111, 13-1-202, 13-2-304, 13-10-204, 13-10-209, 13-10-211, 13-10-301, 13-10-311, 13-10-326, 13-10-503, 13-10-601, 13-12-205, 13-12-207, 13-13-117, 13-13-201, 13-13-205, 13-13-213, 13-13-214, 13-13-241, 13-15-107, 13-15-201, 13-15-206, 13-15-209, 13-15-301, 13-17-103, 13-17-211, 13-17-212, 13-25-101, AND 13-27-401, MCA; AND REPEALING SECTIONS 13-13-203, 13-16-414, 13-17-206, AND 13-17-305, MCA.

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

Section 1. Section 13-1-101, MCA, is amended to read:

“13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Active elector” means an elector 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 pursuant to 13-2-220.

(3) “Anything of value” means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) “Application for voter registration” means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, submitted to the election administrator, and contains voter registration information subject to verification as provided by law.

(5) “Ballot” means:

~~(a) a paper ballot used with a paper-based system~~ *counted manually or a paper ballot counted by a machine*, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots; ~~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.~~

(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.

(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 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.

(8) "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(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.

(10) "Elector" means an individual qualified to vote under state law.

(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 (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.

(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.

(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).

(14) "Inactive elector" means an individual who failed to vote in the preceding federal general election and whose name was placed on an inactive list pursuant to 13-2-220.

(15) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220.

(16) "Individual" means a human being.

(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.

(18) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

(19) "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 (6).

(20) "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.

(21) "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.

(22) "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.

(23) "Provisional ballot" means a ballot cast by an elector whose identity and eligibility to vote have not been verified as provided by law.

(24) "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.

(25) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(26) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(27) "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.

(28) "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

(29) "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.

(30) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

(31) "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ~~or nonpaper~~ ballot."

Section 2. Section 13-1-108, MCA, is amended to read:

"13-1-108. Notice of special elections. Notice of any special election ~~shall~~ *must* be published at least ~~once a week for the 3 successive weeks before the election~~ *three times in the 4 weeks immediately preceding the close of registration* on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the jurisdiction where the election will be held. *The provisions of this section are fulfilled upon the third publication.*"

Section 3. Section 13-1-111, MCA, is amended to read:

"13-1-111. Qualifications of voter. (1) ~~No A person may be entitled to not~~ *vote at elections unless he has the following qualifications the person is:*

(a) ~~He must be~~ registered as required by law.;

(b) ~~He must be~~ 18 years of age or older.;

(c) ~~He must be~~ a resident of the state of Montana and of the county in which ~~he~~ *the person* offers to vote for at least 30 days, *except as provided in 13-2-514; and*

(d) ~~He must be~~ a citizen of the United States.

(2) ~~No A person convicted of a felony has~~ *does not have* the right to vote while ~~he~~ *the person* is serving a sentence in a penal institution.

(3) ~~No A person adjudicated to be of unsound mind has~~ *does not have* the right to vote; unless ~~he~~ *the person* has been restored to capacity as provided by law."

Section 4. Section 13-1-202, MCA, is amended to read:

"13-1-202. Forms and rules prescribed by secretary of state — consultation. (1) In carrying out 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 chapter 35, 36, or 37 of this title.

(2) The secretary of state may prescribe the design of any election form required by law. The secretary of state shall 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 5. Section 13-2-304, MCA, is amended to read:

“13-2-304. Late registration — late changes — nonapplicability for school elections. (1) Except as provided in subsections (2) and (3), the following provisions apply:

(a) An elector may register or change the elector’s voter registration information after the close of regular registration in 13-2-301 and vote in the election if the election administrator in the county where the elector resides receives and verifies the elector’s voter registration information prior to the close of the polls on election day.

(b) *Late registration is closed from noon to 5 p.m. on the day before the election.*

(c) Except as provided in 13-2-514(2)(a), an elector who registers or changes the elector’s voter information pursuant to this section may vote in the election only if the elector votes at the county election administrator’s office.

(2) If an elector has already been sent an absentee ballot for the election, the elector may change the elector’s voter registration information only with respect to the next election.

(3) The provisions of subsection (1) do not apply with respect to an elector’s registration to vote in a school election held pursuant to Title 20.”

Section 6. Section 13-10-204, MCA, is amended to read:

“13-10-204. Write-in nominations. (1) An individual nominated by having the individual’s name written in and counted as provided in 13-15-206(5) or otherwise placed on the primary ballot and desiring to accept the nomination may not have the individual’s name appear on the general election ballot unless 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 acceptance of the nomination;~~

(2) ~~pays the required filing fee or, if indigent, complies with 13-10-203;~~

(3) ~~(a) received at least 5% of the total votes cast for the successful candidate for the same office at the last general election;~~

(b) ~~files with the secretary of state or election administrator, no later than 10 days after the official canvass, a written declaration indicating acceptance of the nomination; and~~

(4) ~~(c) complies with the provisions of 13-37-126.~~

(2) *A write-in candidate who was exempt from filing a declaration of intent under 13-10-211 shall, at the time of filing the declaration of acceptance, pay the filing fee specified in 13-10-202 or, if indigent, file the appropriate documents described in 13-10-203.”*

Section 7. Section 13-10-209, MCA, is amended to read:

“13-10-209. Arrangement and preparing of primary ballots. (1) (a) Ballots for a primary election must be arranged and prepared in the same manner and number as provided in chapter 12 for general election ballots,

except that there must be separate ballots for each political party entitled to participate. The name of the political party must appear at the top of the separate ballot for that party and need not appear opposite each candidate's name.

(b) Nonpartisan offices and ballot issues may be prepared on separate ballots or may appear on the same ballot as partisan offices if:

- (i) each section is clearly identified as separate;
- (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 prepare a primary ballot for a political party if:

- (a) the party does not have candidates for more than half of the offices to appear on the ballot; or
- (b) no more than one candidate files for nomination by that party for any of the offices to appear on the ballot.

(3) If, pursuant to subsection (2), a primary ballot for a political party is not 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 have the same appearance. Each set of party ballots must bear the same number. If prepared as a separate ballot, the nonpartisan ballot ~~must~~ *may* have a different appearance than the party ballots but 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 have a different appearance than the other ballots in the election but must be numbered in the same order.

(6) Each elector must receive a set of ballots that includes the party, nonpartisan, and ballot issue choices."

Section 8. Section 13-10-211, MCA, is amended to read:

"13-10-211. Declaration of intent for write-in candidates. (1) Except as provided in subsection (7), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. 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~~

(e) 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) 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.

(6) 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.

(7) The requirements in subsection (1) do not apply if:

(a) an election is held;

(b) a person's name is written in on the ballot;

(c) the person is qualified for and seeks election to the office for which the person's name was written in; and

(d) no other candidate has filed a declaration or petition for nomination or a declaration of intent."

Section 9. 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 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 cast votes on only one of the party ballots, preparing the ballot as provided in 13-13-117. After casting votes on any other ballots received other than the party ballots, the elector shall ensure the proper disposition of the ballots in accordance with instructions provided pursuant to 13-13-112.

(3) ~~The election judge shall handle the elector's ballot~~ *must be handled* as prescribed in 13-13-117.”

Section 10. Section 13-10-311, MCA, is amended to read:

“13-10-311. Election judges’ duties when preparing for count. (1) Except as otherwise provided in this section, election judges at the primary election shall prepare for a count of votes ~~east 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;

(b) 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 must be handled as provided in 13-15-201.

(c) list each party’s candidates separately in the tally books; and

(d) bundle the voted ballots for each party separately for return to the election administrator. The unvoted ballots must be bundled 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 13-17-211.”~~

Section 11. Section 13-10-326, MCA, is amended to read:

“13-10-326. Vacancy prior to primary election. (1) If a candidate for nomination for a partisan office dies or withdraws 75 days or more before the primary election, the affected political party may appoint someone to replace the candidate by the procedure provided in 13-10-327.

(2) ~~If the death or withdrawal occurs~~ *a candidate for nomination for a partisan office dies* less than 75 days before the primary, the affected political party shall appoint a candidate after the primary as provided in 13-10-327 if a candidate for that office for that party was not nominated at the primary election.

(3) This section does not allow a political party to appoint a candidate for an office if no candidate for nomination by that party filed for the office before the primary election.”

Section 12. Section 13-10-503, MCA, is amended to read:

“13-10-503. Filing deadlines. (1) A petition for nomination and the affidavits of circulation required by 13-27-302, ~~accompanied by the required filing fee, must be filed with the same officer with whom other nominations for the office sought are filed.~~ Petitions must be submitted, at least 1 week before the deadline for filing *provided in subsection (2)(b)*, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306. In the event there are insufficient signatures on the petition, additional signatures may be submitted before the deadline for filing.

(2) (a) *If sufficient signatures are verified and certified pursuant to 13-10-502, the county election administrator shall file the petition for nomination with the same officer with whom other nominations for the office sought are filed.*

(b) Except as provided in 13-10-504, each petition for nomination, accompanied by the required filing fee, must be filed by 5 p.m. on the day before the scheduled primary election or by 5 p.m. on the day of the filing deadline for the special or general election if a primary election is not scheduled.”

Section 13. Section 13-10-601, MCA, is amended to read:

“13-10-601. Parties eligible for primary election — petitions by minor parties. (1) Each political party that had a candidate for a statewide office in either of the last two general elections who received a total vote that was 5% or more of the total votes cast for the most recent successful candidate for governor in either of the last two general elections shall nominate its candidates for public office, except for presidential electors, by a primary election as provided in this chapter.

(2) (a) A political party that does not qualify to hold a primary election under subsection (1) may qualify to nominate its candidates by primary election by presenting a petition, in a form prescribed by the secretary of state, requesting the primary election and.

(b) *The petition must be signed by a number of registered voters equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election or 5,000 electors, whichever is less, which number must include the registered voters in more than one-third of the legislative districts equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election in those districts or 150 electors in those districts, whichever is less.*

(c) ~~The~~ *At least 1 week before the filing deadline provided in subsection (2)(d), the petition and the affidavits of circulation required by 13-27-302 must be presented to the election administrator of the county in which the signatures were gathered to be verified under the procedures provided in 13-27-303 through 13-27-306.*

(d) The election administrator shall forward the verified petition to the secretary of state at least 75 days before the date of the primary. ~~The petition must be submitted to the election administrator at least 1 week before the deadline for submitting the verified petition to the secretary of state.”~~

Section 14. Section 13-12-205, MCA, is amended to read:

“13-12-205. Arrangement of names — rotation on ballot. (1) The candidates’ names 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 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 *the names of the candidates* 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 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 must be considered as a group.

(e) No more than one of the sets may be used in 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 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 unless more than 5% of the electors voting in the precinct in the last preceding general election voted using 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 15. Section 13-12-207, MCA, is amended to read:

"13-12-207. Order of placement. (1) The order on the ballot for state and ~~national~~ *federal* offices must be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a heavy black line must be the names and spaces for voting for candidates for president and vice president. The names of candidates for president and vice president for each political party must be grouped together.

(b) United States senator;

(c) United States representative;

(d) governor and lieutenant governor;

(e) secretary of state;

(f) attorney general;

(g) state auditor;

(h) ~~public service commissioners~~ *state superintendent of public instruction*;

(i) ~~state superintendent of public instruction~~ *public service commissioners*;

(j) clerk of the supreme court;

(k) chief justice of the supreme court;

(l) justices of the supreme court;

(m) district court judges;

(n) state senators;

(o) members of the house of representatives.

(2) The following order of placement must be observed for county offices:

(a) clerk of the district court;

- (b) county commissioner;
- (c) county clerk and recorder;
- (d) sheriff;
- (e) coroner;
- (f) county attorney;
- (g) county superintendent of schools;
- (h) county auditor;
- (i) public administrator;
- (j) county assessor;
- (k) county treasurer;
- (l) surveyor;
- (m) justice of the peace.

(3) The secretary of state shall designate the order for placement on the ballot of any offices not on the above lists, except that the election administrator shall designate the order of placement for municipal, charter, or consolidated local government offices and district offices when the district is part of only one county.

(4) Constitutional amendments must be placed before statewide referendum and initiative measures. Ballot issues for a county, municipality, school district, or other political subdivision must follow statewide measures in the order designated by the election administrator.

(5) If any offices are not to be elected they may not be listed, but the order of the offices to be filled must be maintained.

(6) If there is a short-term and a long-term election for the same office, the long-term office must precede the short-term.”

Section 16. 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~~ After marking the precinct register pursuant to 13-13-115 ~~and receiving a ballot,~~ an elector shall immediately retire to a voting station and prepare the elector’s ballot in the manner prescribed in the instructions provided pursuant to 13-13-112.

(b) An elector who spoils the elector’s ballot must be provided with another ballot in place of the spoiled ballot.

(2) (a) After the elector has completed voting, 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~~ An election judge or voting system shall place the ballot in the ballot box immediately without opening or examining allowing anyone to examine the ballot. ~~Only an election judge may put a ballot in a ballot box, and nothing~~ Nothing other than a ballot may be put in a ballot box.”

Section 17. Section 13-13-201, MCA, is amended to read:

“13-13-201. Voting by absentee ballot — procedures. (1) A 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 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 envelope;
- (d) executing the affidavit printed on the return envelope; and
- (e) returning the return envelope with all appropriate enclosures by regular mail, postage ~~prepaid~~ *paid*, or by delivering it to the election administrator ~~of or, pursuant to 13-13-229, to the special absentee election board established pursuant to 13-13-225.~~

(3) ~~(a)~~ A provisionally registered elector may also enclose in the outer return envelope a copy of the elector's photo identification showing the elector's name; ~~including. The photo identification may be~~ but is not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification. If the provisionally registered elector does not enclose a photo identification, the elector may 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) An elector's absentee ballot must be handled as provided in 13-13-241."~~

Section 18. 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:

- (a) 30 days prior to an election for those elections held in compliance with 13-1-107(1);
- (b) 20 days prior to an election for those elections held in compliance with 13-1-104(2) and (3) and 13-1-107(2); and
- (c) 45 days prior to an election held in conjunction with a federal general election in compliance with 13-1-104(1).

(2) A ballot may not be provided to an elector for absentee voting sooner than 30 days before an election, except that an absentee ballot requested pursuant to Title 13, chapter 21, may be sent to the elector as soon as the ballot is printed.

~~(2) If paper 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 19. Section 13-13-213, MCA, is amended to read:

"13-13-213. Transmission of application to election administrator — delivery of ballot. (1) All absentee ballot application forms must be addressed to the appropriate election official.

(2) Except as provided in subsection (4), the elector may mail the application directly to the election administrator or deliver the application in person to the election administrator. An agent designated pursuant to 13-1-116 or a third party may collect the elector's application and forward it to the election administrator.

(3) The election administrator shall compare the signature on the application with the applicant's signature on the registration card. If convinced

that 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, *subject to 13-13-205*.

(4) In lieu of the requirement provided in subsection (2), an elector who requests an absentee ballot pursuant to 13-13-212(2) 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, *subject to 13-13-205*.”

Section 20. 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, *no sooner than authorized in 13-13-205,* ~~immediately 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 under 13-13-211 and 13-13-212 whatever official ballots are necessary.

(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 or pursuant to 13-1-116;

(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 form prescribed by the secretary of state that allows the elector to request absentee ballots for each subsequent federal election only or for all subsequent elections, as provided for in 13-13-212(4);

(b) a secrecy envelope, free of any marks that would identify the voter; and

(c) an envelope for the return of the ballots. 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 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) 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.

(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 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 requests a voter information pamphlet.”

Section 21. Section 13-13-241, MCA, is amended to read:

“13-13-241. Examination of absentee ballot return envelopes — deposit of absentee and unvoted ballots. (1) (a) ~~As soon as~~ *After* an absentee ballot is received, an election administrator shall compare the signature of the elector on the absentee ballot request with the signature on the absentee ballot return envelope.

(b) If the elector is legally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall handle the ballot as a regular ballot.

(c) (i) If the elector is provisionally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall open the outer return envelope and determine whether the elector’s voter identification information, if enclosed pursuant to 13-13-201, is sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.

(ii) If the voter identification information is sufficient to legally register the elector, the ballot must be handled as a regular ballot.

(iii) If voter identification information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.

(2) 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.

(3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes.

(4) If an elector’s ballot is to be handled as a provisional ballot, 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.

(5) If the signature on the absentee ballot return envelope does not match the signature on the absentee ballot request form, the absentee ballot must be rejected. The election administrator, without opening the absentee ballot return envelope, shall mark across it the reason for rejection. Unopened rejected

absentee ballot return envelopes must be handled in the same manner as provided for rejected ballots in 13-15-108(1).

(6) After receiving an absentee ballot secrecy envelope, without opening the secrecy envelope, the election judges shall on election day place the secrecy envelope in the proper ballot box.”

Section 22. Section 13-15-107, MCA, is amended to read:

“13-15-107. Handling and counting provisional and challenged ballots. (1) To verify eligibility to vote, a provisionally registered 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);~~

~~(c) mail a nonreturnable 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.~~

~~(d) if applicable, the information to respond to a challenge under 13-13-301 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 no later than the day after the election.~~

(2) (a) If a legally registered elector casts a provisional ballot because the elector failed to provide sufficient identification as required pursuant to 13-13-114(1)(a), the election administrator shall compare the elector’s signature on the affirmation required under 13-13-601 to the elector’s signature on the elector’s voter registration card.

(b) If the signatures match, the election administrator shall handle the ballot as provided in subsection (6).

(c) If the signatures do not match, the ballot must be rejected and handled as provided in 13-15-108.

~~(3) 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.~~

(4)(3) A provisional ballot must be counted if the election administrator verifies the elector’s eligibility pursuant to rules adopted under 13-13-603. However, if the election administrator cannot verify the elector’s eligibility under the rules, the elector’s provisional ballot must be rejected and handled as provided in 13-15-108. If the ballot is provisional because of a challenge and the challenge was made on the grounds that the elector is of unsound mind or serving a felony sentence in a penal institution, the elector’s provisional ballot

must be counted unless the challenger provides documentation by 5 p.m. on the day after the election that a court has established that the elector is of unsound mind or that the elector has been convicted and sentenced and is still serving a felony sentence in a penal institution.

(5)(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.

(6)(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 23. Section 13-15-201, MCA, is amended to read:

“13-15-201. Preparation for count. (1) (a) 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 13-15-112 or, if appointed, the absentee counting board shall take ballots out of the box unopened to determine whether each ballot is single.

(b) If an absentee ballot counting board has been appointed pursuant to 13-15-112, 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. (2) An absentee ballot must be rejected and handled as provided in 13-15-108 if in the envelope there is more than one voted ballot for each election.

(c)(3) The counting board shall count all ballots to ensure that the total number of ballots corresponds with the total number of names in the pollbook.

(d)(4) If the counting board cannot reconcile the total number of ballots with the pollbook, 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. Each judge on the board shall sign the report.

(e)(5) A ballot that is not marked as official is void and may not be counted unless all judges on the counting board agree that the marking is missing because of an error by election officials, in which case the ballot must be marked “unmarked by error” on the back and must be initialed by all judges.

(f)(6) 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 counting board shall compare the count with the pollbooks, and if a majority believes that the ballots folded together were voted by one elector, the ballots must be rejected and handled as provided in 13-15-108, 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 13-17-211.”

Section 24. Section 13-15-206, MCA, is amended to read:

“13-15-206. 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 or recount 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 vote must be considered questionable and the entire ballot must be set aside and votes on the ballot must be handled 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) When a voting system is ~~tabulating a vote cast on a nonpaper ballot counting votes:~~

(i) if a vote is recognized and counted by the system, it is a valid vote;

(ii) if a vote 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) When a voting system is tabulating a vote cast on a paper ballot:~~

~~(i) if the voting system recognizes and counts the vote, it is a valid vote;~~

~~(ii) if~~

~~(b) If the voting system cannot process the ballot because of the ballot's condition or if the voting system registers an *unvoted ballot* or an overvote or *undervote*, which must be considered a questionable vote, the entire ballot must be set aside and the votes on the ballot must be counted as provided in subsection (4).~~

(c) If an election administrator or counting board has reason to believe that a voting system is not functioning correctly, the election administrator shall follow the procedures prescribed in 13-15-209.

~~(d) 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) (i) Before being counted, each questionable vote on a ~~paper~~ ballot set aside under subsection (2)(a) or (3)(b) must be reviewed by the counting board. The counting board shall evaluate each questionable vote according to rules adopted by the secretary of state.

(ii) If a majority of the counting board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.

(iii) If a majority of the counting board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

(b) If a ballot was set aside under subsection (3)(b) because it could not be processed by the voting system due to the ballot's condition, the counting board shall transfer all valid votes to a new ballot that can be processed by the voting system.

(5) A write-in vote may be counted if:

(a) the write-in vote identifies an individual by a designation filed pursuant to 13-10-211(1)(a); or

(b) pursuant to 13-10-211(7), a declaration of nomination was not filed and the write-in vote identifies an individual who is qualified for the office.

(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 25. Section 13-15-209, MCA, is amended to read:

"13-15-209. Handling voting system error during count. (1) During a count of ~~paper or nonpaper ballots~~ in which votes are being ~~automatically tabulated~~ counted by a voting system, if the election administrator or counting board has reason to believe that the voting system is not operating correctly, the count must be halted and the system must be tested in accordance with rules adopted by the secretary of state pursuant to 13-17-211.

(2) If the test does not show any errors, the count must proceed using the voting system.

(3) If the test shows errors and the errors cannot be corrected or if a majority of the counting board agrees that the system may not be functioning correctly,:

(a) votes cast on paper ballots must be counted manually in accordance with 13-15-206(2);

~~(b) votes cast on a nonpaper ballot must be counted as provided in rules adopted under 13-17-211."~~

Section 26. Section 13-15-301, MCA, is amended to read:

"13-15-301. Disposition of items by election administrator. (1) The election administrator shall file the envelopes or packages containing the precinct registers, pollbooks, tally sheets, certificates of registration, and oaths of election officers. *He Except as provided in subsection (2), the election administrator shall keep them unopened until the county board of canvassers meets to canvass the returns. The board shall open the envelopes or packages.*

(2) The election administrator may open a package containing a precinct register to resolve questions concerning provisional ballots.

~~(2)(3)~~ Immediately after the returns are canvassed, the election administrator shall file the pollbooks, election records, and the papers delivered to the board of canvassers with the unopened packages of ballots and ballot stubs."

Section 27. Section 13-17-103, MCA, is amended to read:

"13-17-103. Required specifications for voting systems. (1) A voting system may not be approved under 13-17-101 unless the voting system:

(a) allows an elector to vote in secrecy;

(b) prevents an elector from voting for any candidate or on any ballot issue more than once;

(c) prevents an elector from voting on any office or ballot issue for which the elector is not entitled to vote;

(d) allows an elector to vote only for the candidates of the party selected by the elector in the primary election;

(e) allows an elector to vote a split ticket in a general election if the elector desires;

(f) allows each valid vote cast to be registered and recorded within the performance standards adopted pursuant to subsection ~~(3)~~ (2);

(g) may be protected from tampering for a fraudulent purpose;

(h) prevents an individual from seeing or knowing the number of votes registered for any candidate or on any ballot issue during the progress of voting;

(i) allows write-in voting;

(j) will, if purchased by a jurisdiction within the state, be provided with a guarantee that the training and technical assistance will be provided to election officials under the contract for purchase of the voting system;

~~(k) uses a paper ballot that allows votes to be manually counted, except as provided in subsection (2); and~~

(l) allows auditors to access and monitor any software program while it is running on the system to determine whether the software is running properly.

~~(2) A direct recording electronic system that does not mark a paper ballot may be used to facilitate voting by a disabled voter pursuant to the Help America Vote Act of 2002, 42 U.S.C. 15301, et seq., if:~~

~~(a) (i) a direct recording electronic system that uses a paper ballot has not yet been certified by the federal election assistance commission; or~~

~~(ii) a direct recording electronic system that marks a paper ballot has not yet been approved by the secretary of state pursuant to 13-17-101; and~~

~~(b) the system records votes in a manner that will allow the votes to be printed and manually counted or audited if necessary.~~

~~(3)(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 28. Section 13-17-211, MCA, is amended to read:

"13-17-211. 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 *testing and* certification under 13-17-212;

(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)(c) the procedures to be followed if the comparison under 13-15-206(2)(b) reveals discrepancies;~~

~~(e)(d) how to operate and test the system during counts or recounts; and~~

~~(f)(e) 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~~

~~(g) testing and certification of voting systems pursuant to 13-17-212."~~

Section 29. Section 13-17-212, MCA, is amended to read:

"13-17-212. Performance *testing and* certification of voting systems prior to election. (1) No more than 30 days prior to an election in which a voting system is used, the election administrator shall *publicly* test and certify that the system is performing properly.

(2) The secretary of state shall ensure that at least 10% of all voting systems in the state have been randomly tested and certified at least once every calendar year.

(3) If any type of direct recording electronic voting system is approved pursuant to 13-17-101 after meeting the requirements of 13-17-103, provision must be made to ensure that, at a minimum, each system is tested and certified as follows:

- (a) upon delivery;
- (b) no more than 30 days prior to the election; and
- (c) on election day.

(4) The provisions of this section must be implemented according to rules adopted by the secretary of state pursuant to 13-17-211.”

Section 30. Section 13-25-101, MCA, is amended to read:

“13-25-101. Nomination of electors — ballot. (1) ~~Each~~ *In the manner and number provided by law, each* political party qualified under 13-10-601 shall nominate presidential electors for this state and file *with the secretary of state* certificates of nomination for these candidates ~~with the secretary of state~~ in a form *and by the date* 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 *after a certificate of nomination has been filed,* a new candidate for president or vice president, or both, may be nominated for the affected political party and ~~certificates a new certificate of election nomination~~ may be filed with the secretary of state ~~less than 76 days before a general election by the date prescribed by the secretary of state.~~

(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 appear on the ballot.”

Section 31. Section 13-27-401, MCA, is amended to read:

“13-27-401. Voter information pamphlet. (1) The secretary of state shall prepare for printing a voter information pamphlet containing *information relevant to the election, including but not limited to* the following information for each ballot issue to be voted on at an election, as applicable:

- (a) ballot title, fiscal statement if applicable, and complete text of the issue;
- (b) the form in which the issue will appear on the ballot;
- (c) arguments advocating approval and rejection of the issue; and
- (d) rebuttal arguments.

(2) The pamphlet must also contain a notice advising the recipient *as to* where additional copies of the pamphlet may be obtained.

(3) Whenever more than one ballot issue is to be voted on at a single election, the secretary of state may publish a single pamphlet for all of the ballot issues. The secretary of state may arrange the information in the order ~~which~~ *that* seems most appropriate, but the information for all issues in the pamphlet must be presented in the same order.

(4) The secretary of state may prescribe by rule the format and manner of submission of the arguments concerning the ballot issue.”

Section 32. Repealer. Sections 13-13-203, 13-16-414, 13-17-206, and 13-17-305, MCA, are repealed.

Approved April 26, 2007

CHAPTER NO. 274

[HB 524]

AN ACT REVISING THE REQUIREMENTS FOR INCORPORATING A CITY OR TOWN; PROVIDING THAT ANY WARD OF A PROPOSED CITY OR TOWN MUST HAVE AT LEAST 200 INHABITANTS PER SQUARE MILE OF LAND AREA; REQUIRING THE PROPOSED AREA TO HAVE A POST OFFICE; AND AMENDING SECTION 7-2-4101, MCA.

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

Section 1. Section 7-2-4101, MCA, is amended to read:

“7-2-4101. Petition to organize municipalities city or town. (1) Whenever the inhabitants of any part of a county desire to ~~be organized into~~ *organize as a city or town*, ~~they the inhabitants~~ may apply by petition ~~in writing~~, signed by not less than *300 registered electors or two-thirds of the registered electors, whichever is less, but not more than 300 such electors*, who are residents of the state and residing within the limits of the proposed ~~incorporation city or town~~, to the board of county commissioners of the county in which the ~~territory proposed area~~ is situated.

(2) (a) The petition must describe the limits of the proposed city or town and ~~of the several wards thereof of the proposed city or town, each of which shall A proposed ward must~~ contain 50 or more registered electors and ~~must not exceed 1 square mile for each 500 must have at least 200 inhabitants resident therein. for each square mile of land area.~~

(b) *The proposed city or town must contain a post office within the proposed area of the city or town.*

~~(b)~~(c) The petitioners ~~must shall annex attach~~ to the petition a map of the proposed ~~territory area~~ to be incorporated and state the name of the *proposed city or town*.

(3) The petition and map must be filed in the office of the election administrator.”

Approved April 26, 2007

CHAPTER NO. 275

[HB 537]

AN ACT REVISING STATE HAIL INSURANCE LAWS; CLARIFYING THAT HAIL INSURANCE MAY BE ISSUED FOR ANY CROP OR OTHER AGRICULTURAL OR HORTICULTURAL PRODUCT SUBJECT TO INJURY OR DESTRUCTION BY HAIL; CLARIFYING REFERENCES TO CROPS; INCREASING THE AMOUNT OF ACTUAL INSURANCE THAT MAY BE WRITTEN FOR CROPS ON IRRIGATED AND NONIRRIGATED LANDS; AMENDING SECTIONS 80-2-203, 80-2-207, 80-2-208, 80-2-209, 80-2-227, 80-2-231, AND 80-2-244, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 80-2-203, MCA, is amended to read:

“80-2-203. Participation in program — fee. (1) A person or an association of persons engaged in the growing of crops ~~other than those specified in this part~~ or other agricultural or horticultural products subject to injury or destruction by hail may, by individual or joint election filed with and approved by the board of hail insurance, accept the provisions of this part and elect to become subject to this part. The risks may be classified by the board, and suitable fees may be imposed as agreed upon by the board and the persons. The persons are entitled to the benefits and protection afforded by the insurance provisions of this part.

(2) Each person who signifies a desire to become subject to the provisions of this part shall file with the department of revenue the properly filled out form not later than August 15. The person is chargeable with the fee provided for on lands growing crops subject to injury or destruction by hail and shall share in the protection and benefits under the hail insurance provisions of this part. The application for hail insurance is in full force and effect at 12:01 a.m. *on* the day immediately following the acceptance of the application by the department of revenue.

(3) This part may not be construed to empower anyone except the actual owner of the land to make the land subject to the hail fee provided in this part.”

Section 2. Section 80-2-207, MCA, is amended to read:

“80-2-207. Delinquent fees — application by delinquent — crop lien.

(1) An owner of land who has more than 1 year’s delinquent fees on the land may not be allowed hail insurance under the provisions of this part, unless the owner’s application is accompanied by a cash payment for the amount that would be due on the application for that year.

(2) Any ~~grain~~ grower *who is* unable to secure state hail insurance under the provisions of this part because of delinquent fees or for other reasons may make an application to the department of revenue, and the department of revenue may receive and accept the application when the applicant furnishes a sufficient crop lien that is subject only to a seed lien. The crop lien may be accepted only under rules and requirements that may be prescribed by the board of hail insurance and under the provision that the board may cancel any hail insurance accepted in violation of the rules and requirements. Upon receipt of the application, the department of revenue shall make a record of the application and shall file the original in the office of the clerk and recorder of the county. The department of revenue shall also send a bill to the ~~grain~~ grower for the proper amount due for hail insurance under the provisions of this part.

(3) A tenant who has delinquent hail insurance that was secured by a crop lien and was not secured by real estate may not be allowed another policy in any succeeding year until the delinquent amount is paid or until the tenant pays cash for the current hail insurance.

(4) If a tenant becomes delinquent for hail insurance after having failed to apply for relief as provided by the board under 80-2-229, the tenant may apply to the board for a reduction. If the reasons for requesting a reduction are approved by the board, the board may reduce the charge to not less than one-half the original amount charged.”

Section 3. Section 80-2-208, MCA, is amended to read:

“80-2-208. Maximum insurance. When the reserve fund is determined actuarially sound, as provided in 80-2-228, the board may write not more than ~~\$40~~ ~~\$50~~ insurance on each acre of ~~grain crops that is~~ on nonirrigated land and not more than ~~\$56~~ ~~\$76~~ on each acre on irrigated land. When more than one party desires hail insurance on the same crop, each party is entitled to the share of the maximum provided on each acre as represented by that person’s interest in the crop. Either party may insure the party’s share in the crop for any amount up to and including the maximum on each acre if the others waive their right to insure.”

Section 4. Section 80-2-209, MCA, is amended to read:

“80-2-209. Reinsurance. Because of the unusual or unexpected variation in the severity of damage to ~~grain~~ crops that occurs from year to year and in order to enable the hail insurance board to spread the effect of these variations more evenly over all years, the board may negotiate for and secure reinsurance of a part of the risk in any year when the need for reinsurance appears advisable to the board. The board ~~is~~ may use money from hail insurance fees for the purchase of reinsurance whenever it appears to the board that reinsurance is necessary and advisable.”

Section 5. Section 80-2-227, MCA, is amended to read:

“80-2-227. Hail insurance secured by crop lien only. When any hail insurance issued under this part is secured by a crop lien only, ~~said~~ ~~the~~ crop lien is ~~hereby declared~~ a first lien on the insured crop, ~~except~~ ~~only~~ for any crop lien ~~which~~ ~~that~~ may have been given to secure the purchase price for the seed ~~which~~ ~~that~~ was bought and used to plant and produce the insured ~~grain crop~~.”

Section 6. Section 80-2-231, MCA, is amended to read:

“80-2-231. Foreclosure of lien. If the person receiving hail insurance secured by a crop lien fails to pay the fee for insurance to the department of revenue by December 1 of the year in which the crop is grown, the department shall on that day or as soon as possible after that day deliver to the sheriff of the county a full, true, and correct copy of the lien on file in the office of the clerk and recorder and the sheriff shall immediately demand from the person or persons signing the lien payment of the amount due. If the fee is not paid to the sheriff upon demand being made, the sheriff shall seize and sell in the manner provided by law for the sale of personal property under execution a sufficient amount of ~~grain crops~~ belonging to the person to pay the amount due for hail insurance, together with interest and costs and expenses of ~~the~~ seizure and sale.”

Section 7. Section 80-2-244, MCA, is amended to read:

“80-2-244. Payment of losses. (1) The board of hail insurance shall, as soon as practicable after the loss has been sustained, arrange for the payment of the loss in the following manner. From the amount of the loss as adjusted for each claimant, the board shall deduct the amount that the claimant then owes as a delinquent hail insurance fee and the maximum amount assessed as a hail insurance fee for the current year.

(2) The board shall on or before November 1 order payment ~~for the amount deducted. The payment must be remitted to the county treasurer of the county in which the fee was imposed. The board shall then order payment~~ for the balance of the adjustment to be sent to the claimant, provided that the payment for loss may not exceed the maximum amounts established in 80-2-208. A claimant may not receive payment for any loss incurred if the loss does not equal or exceed 5% of the total value of the crop insured. If the losses in any year

exceed the current fees plus the reserve, then the payment of all losses must be prorated among all ~~grain~~ growers having loss claims adjusted and approved, and the unpaid balance of the losses must be paid out of the reserve without interest in the order that the board directs; when in the judgment of the board, there is sufficient money to provide for the payment of the claims and other items payable out of the reserve. In any year, the board may by resolution authorize its presiding officer and secretary to borrow money that the board may consider necessary for the purpose of paying all warrants as issued.

(3) For any money borrowed under the provisions of this part, the board shall cause warrants to be drawn. The warrants must bear interest at a rate not to exceed 6% a year, and the warrants and the interest on the warrants must be paid out of funds from the state hail insurance program as they are collected ~~from the various counties in the state~~. The board may not at any time borrow a total sum greater than the amount of the fees imposed for the current year, together with delinquent fees that remain unpaid ~~on the books of the county treasurer.~~”

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

Approved April 26, 2007

CHAPTER NO. 276

[HB 630]

AN ACT PROVIDING THAT FRAUDULENT ELECTRONIC MISREPRESENTATION, “PHISHING”, IS THE CRIME OF A THEFT OF IDENTITY; AND AMENDING SECTIONS 30-14-1701 AND 30-14-1702, MCA.

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

Section 1. Fraudulent electronic misrepresentation — penalties — exemption. (1) An individual or business that, by means of a website, an electronic mail message, or otherwise through the internet, solicits, requests, or takes an action to induce another individual or business to provide personal information by purporting to be a third-party individual or a business without the authority or approval of the third-party individual or business is guilty of a theft of identity, as provided in 45-6-332(1). This crime of fraudulent electronic misrepresentation is commonly known as “phishing”.

(2) An individual or a business that is adversely affected by a violation of subsection (1) has a private right of action, as provided in [section 2].

(3) The attorney general or a county attorney in a county where the violation under subsection (1) is reported may bring a criminal action against an individual or a business accused of engaging in a pattern and practice of violating subsection (1) and, in addition to bringing a criminal action, may request a court of competent jurisdiction to issue a temporary injunction against the continued use of a website, an electronic mail message, or the internet by the individual or business served with the injunction.

(4) An internet services provider may not be held liable for identifying, removing, or disabling access to an internet website or other online location if the internet services provider believes that the internet website or other online location is being used to engage in a violation of this section.

Section 2. Remedies for fraudulent electronic misrepresentation.

(1) A business, including the owner of a website or the owner of a trademark, that is adversely affected by a violation of [section 1(1)] may bring an action to recover the greater of actual damages or \$500,000.

(2) An individual who is adversely affected by a violation of [section 1(1)] may bring an action against an individual or a business that has directly violated [section 1(1)] for the greater of three times actual damages or \$5,000 for each violation.

Section 3. Section 30-14-1701, MCA, is amended to read:

“30-14-1701. Purpose. The purpose of 30-14-1701 through 30-14-1705 *and sections 1 and 2*] is to enhance the protection of individual privacy and to impede identity theft as prohibited by 45-6-332.”

Section 4. Section 30-14-1702, MCA, is amended to read:

“30-14-1702. Definitions. As used in 30-14-1701 through 30-14-1705 *and sections 1 and 2*], unless the context requires otherwise, the following definitions apply:

(1) (a) “Business” means a sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit, including a financial institution organized, chartered, or holding a license or authorization certificate under the law of this state, any other state, the United States, or any other country or the parent or the subsidiary of a financial institution. The term includes an entity that destroys records. The term also includes industries regulated by the public service commission or under Title 30, chapter 10.

(b) The term does not include industries regulated under Title 33.

(2) “Customer” means an individual who provides personal information to a business for the purpose of purchasing or leasing a product or obtaining a service from the business.

(3) *“Electronic mail message” means a message sent to a unique destination, commonly expressed as a string of characters, consisting of a unique user name or electronic mailbox and a reference to an internet domain, whether or not displayed, to which an electronic message can be sent or delivered.*

~~(3)~~(4) “Individual” means a natural person.

(5) *“Internet” has the meaning provided in 2-17-551.*

(6) *“Internet services provider” has the meaning provided in 2-17-602.*

~~(4)~~(7) “Personal information” means an individual’s name, signature, address, or telephone number, in combination with one or more additional pieces of information about the individual, consisting of the individual’s passport number, driver’s license or state identification number, insurance policy number, bank account number, credit card number, debit card number, passwords or personal identification numbers required to obtain access to the individual’s finances, or any other financial information as provided by rule. A social security number, in and of itself, constitutes personal information.

~~(5)~~(8) (a) “Records” means any material, regardless of the physical form, on which personal information is recorded.

(b) The term does not include publicly available directories containing personal information that an individual has voluntarily consented to have publicly disseminated or listed, such as name, address, or telephone number.

(9) “*Website*” means an electronic location that has a single uniform resource locator or other single location with respect to the internet.”

Section 5. Fraudulent electronic misrepresentation — penalties — exemption. (1) An individual or a business that, by means of a website, an electronic mail message, or otherwise through the internet, solicits, requests, or takes an action to induce another individual or business to provide personal information, as defined in 33-19-321, by purporting to be a licensee or insurance-support organization that conducts business in Montana without the authority or approval of the represented licensee or insurance-support organization that conducts business in Montana is guilty of a theft of identity, as provided in 45-6-332(1). This crime of fraudulent electronic misrepresentation is commonly known as “phishing”.

(2) An individual or a business that is adversely affected by a violation of subsection (1) has a private right of action.

(3) The attorney general or a county attorney in a county where the violation under subsection (1) is reported may bring a criminal action against an individual or a business accused of engaging in a pattern and practice of violating subsection (1) and, in addition to bringing a criminal action, may request a court of competent jurisdiction to issue a temporary injunction against the continued use of a website, an electronic mail message, or the internet by the individual or business served with the injunction.

(4) An internet services provider may not be held liable for identifying, removing, or disabling access to an internet website or other online location if the internet services provider believes that the internet website or other online location is being used to engage in a violation of this section.

Section 6. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 30, chapter 14, part 17, and the provisions of Title 30, chapter 14, part 17, apply to [sections 1 and 2].

(2) [Section 5] is intended to be codified as an integral part of Title 33, chapter 19, and the provisions of Title 33, chapter 19, apply to [section 5].

Approved April 26, 2007

CHAPTER NO. 277

[HB 633]

AN ACT REVISING THE LAWS RELATING TO THE TRANSFER OF ALL-BEVERAGES LIQUOR LICENSES TO A QUOTA AREA PURSUANT TO A DEPARTMENT-CONDUCTED LOTTERY; PROVIDING THAT THE OWNER OF A LOTTERY-TRANSFERRED ALL-BEVERAGES LIQUOR LICENSE IS NOT ELIGIBLE TO OFFER GAMBLING; ALLOWING A PERSON TO APPLY FOR A LOTTERY ALL-BEVERAGES LIQUOR LICENSE TRANSFER ONLY ONCE IN EVERY 12-MONTH PERIOD; REQUIRING A LETTER OF CREDIT TO ACCOMPANY AN ALL-BEVERAGE LIQUOR LICENSE LOTTERY TRANSFER APPLICATION; PROVIDING THAT AN APPLICANT OR A PERSON WITH AN OWNERSHIP INTEREST IN AN APPLICANT MAY NOT HAVE AN OWNERSHIP INTEREST IN AN ALL-BEVERAGES LIQUOR LICENSE; REQUIRING THAT A SUCCESSFUL APPLICANT FOR A LOTTERY-AWARDED ALL-BEVERAGES LIQUOR LICENSE COMMENCE BUSINESS WITHIN 1 YEAR; AMENDING

SECTIONS 16-4-204 AND 23-5-119, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 16-4-204, MCA, is amended to read:

“16-4-204. Transfer — catering endorsement. (1) (a) Except as provided in subsection ~~(1)(b)~~ ~~(1)(d)~~, 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; ~~and~~

(iv) *an applicant for the new ownership to be awarded on a lottery basis by the department has met the following criteria:*

(A) *the applicant had not made another application under this subsection (1)(a) for a lottery-awarded license within the previous 12 months;*

(B) *the applicant has provided with the application an irrevocable letter of credit from a financial institution that guarantees the applicant’s ability to pay \$100,000; and*

(C) *the applicant or, if the applicant is not an individual, a person with an ownership interest in the applicant does not have an ownership interest in an all-beverages license.*

(b) *A license transferred pursuant to subsection (1)(a) that was issued pursuant to a lottery is not eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6.*

(c) *A successful lottery applicant shall commence business within 1 year of the lottery unless the department grants an extension because a delay was caused by circumstances beyond the control of the applicant.*

~~(b)(d)~~ 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.

~~(e)(e)~~ For ~~3~~ 5 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)(f) 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)(g) 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 2. Section 23-5-119, MCA, is amended to read:

"23-5-119. Appropriate alcoholic beverage license for certain gambling activities. (1) Except as provided in subsection (3), to be eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6, an applicant shall own in the applicant's name:

(a) a retail all-beverages license issued under 16-4-201, *but a license transferred after July 1, 2007, to a quota area pursuant to a department-conducted lottery under 16-4-204(1)(a) is not eligible to offer gambling;*

(b) except as provided in subsection (1)(c), a license issued prior to October 1, 1997, under 16-4-105, authorizing the sale of beer and wine for consumption on the licensed premises;

(c) a beer and wine license issued in an area outside of an incorporated city or town as provided in 16-4-105(1)(e). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6;

(d) a retail beer and wine license issued under 16-4-109;

(e) a retail all-beverages license issued under 16-4-202; or

(f) a retail all-beverages license issued under 16-4-208.

(2) For purposes of subsection (1)(b), a license issued under 16-4-105 prior to October 1, 1997, may be transferred to a new owner or to a new location or transferred to a new owner and location by the department of revenue pursuant to the applicable provisions of Title 16. The owner of the license that has been transferred may offer gambling if the owner and the premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(3) Lessees of retail all-beverages licenses issued under 16-4-208 or beer and wine licenses issued under 16-4-109 who have applied for and been granted a gambling operator's license under 23-5-177 are eligible to offer and may be granted permits for gambling authorized under Title 23, chapter 5, part 3, 5, or 6.

(4) A license transferee or a qualified purchaser operating pending final approval under 16-4-404(6) who has been granted a gambling operator's license under 23-5-177 may be granted permits for gambling under Title 23, chapter 5, part 3, 5, or 6."

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved April 26, 2007

CHAPTER NO. 278

[HB 634]

AN ACT INCREASING THE AMOUNT OF BONDS AND NOTES THAT THE FACILITY FINANCE AUTHORITY MAY ISSUE; AMENDING SECTION 90-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 90-7-302, MCA, is amended to read:

"90-7-302. Bonds and notes of authority. (1) The authority may in each biennium borrow money and issue bonds and notes in an aggregate principal amount not to exceed ~~\$250~~ \$500 million, exclusive of bonds or notes issued to refund outstanding bonds or notes.

(2) Bonds must be authorized. The authority may specify that the bonds must be dated and must mature, except that a bond may not mature more than 40 years from the date of its issue. Bonds must:

(a) bear interest at a rate or rates,;

(b) be in denominations,;

(c) be in the proper registered or bearer form,;

(d) be executed in a manner,;

- (e) be payable in a medium of payment and at a place or places, and
- (f) be subject to terms of redemption that the authority may provide.

(3) All bonds, regardless of form or character, are negotiable instruments for all purposes of the Uniform Commercial Code, subject to requirements as to registration.

(4) All bonds may be sold at public or private sale in the manner, for the price or prices, and at the time or times that the authority may determine.

(5) Before the issuance of any bonds, the authority shall make provisions, by lease or other agreement, regarding the eligible facility or facilities being financed by the issue of the bonds, for rentals or other considerations sufficient, in the judgment of the authority, to:

- (a) pay the principal of and interest on the bonds as they become due;
- (b) create and maintain the reserves for payment of the principal and interest;
- (c) meet all obligations in connection with the lease or other agreement; and
- (d) meet all costs necessary to service the bonds unless the lease or agreement provides that the obligations are to be met or costs are to be paid by a party other than the authority.

(6) The authority, before issuing any bonds, shall certify that an applicant has submitted a statement that indicates that any contract let for a public project costing more than \$25,000 and financed from the proceeds of bonds issued under this part will 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) The authority may combine, for the purposes of a single offering, bonds financing more than one eligible facility under this chapter.”

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

Approved April 26, 2007

CHAPTER NO. 279

[HB 672]

AN ACT REVISING SCHOOL DISTRICT DEBT LIMITATIONS; CLARIFYING ANB CALCULATIONS FOR FACILITY-GUARANTEED MILL VALUE PURPOSES; AMENDING SECTIONS 20-9-406 AND 20-9-407, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. 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, registered warrants, outstanding

obligations under 20-9-471 and 20-9-502, and any other loans or notes payable that are held as general obligations of the district, is ~~45%~~ 50% 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, registered warrants, outstanding obligations under 20-9-471 and 20-9-502, and any other loans or notes payable that are held as general obligations of the district, is up to ~~90%~~ 100% 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%~~ 50% of the taxable value of the property for elementary school program purposes and ~~45%~~ 50% 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 facility guaranteed mill value per elementary ANB or high school ANB under 20-9-366 may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471 and 20-9-502, and any other loans or notes payable that are held as general obligations of the district, is ~~45%~~ 50% of the corresponding facility guaranteed 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%~~ 50% of the sum of the facility guaranteed mill value per elementary ANB times 1,000 times the elementary ANB of the district and the facility guaranteed mill value per high school ANB times 1,000 times the high school ANB of the district. *For the purpose of calculating ANB under this subsection, a district may use the greater of the current year ANB or the 3-year ANB calculated under 20-9-311.*

(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. *For the purpose of calculating ANB under this subsection, a district may use the greater of the current year ANB or the 3-year ANB calculated under 20-9-311.*

(2) The maximum amounts determined in subsection (1) 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.

(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.

(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 2. Section 20-9-407, MCA, is amended to read:

"20-9-407. Industrial facility agreement for bond issue in excess of maximum. (1) In a school district within which a new major industrial facility ~~which that~~ seeks to qualify for taxation as class five property under 15-6-135 is being constructed or is about to be constructed, the school district may require, as a precondition of the new major industrial facility qualifying as class five property, that the owners of the proposed industrial facility enter into an agreement with the school district concerning the issuing of bonds in excess of the ~~45%~~ 50% limitation prescribed in 20-9-406. Under such an agreement, the school district may, with the approval of the voters, issue bonds ~~which that~~ exceed the limitation prescribed in this section by a maximum of ~~45%~~ 50% of the estimated taxable value of the property of the new major industrial facility subject to taxation when completed. The estimated taxable value of the property of the new major industrial facility subject to taxation ~~shall~~ *must* be computed by the department of revenue when requested to do so by a resolution of the board of trustees of the school district. A copy of the department's statement of estimated taxable value ~~shall~~ *must* be printed on each ballot used to vote on a bond issue proposed under this section.

(2) Pursuant to the agreement between the new major industrial facility and the school district and as a precondition to qualifying as class five property, the new major industrial facility and its owners shall pay, in addition to the taxes imposed by the school district on property owners generally, ~~so~~ *as* much of the principal and interest on the bonds provided for under this section as represents payment on an indebtedness in excess of the limitation prescribed in 20-9-406. After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in this section, the new major industrial facility ~~shall be~~ *is* entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of no more than 20 years. The credit ~~shall~~ *must* as a total amount be equal to the amount ~~which that~~ the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.

(3) A major industrial facility is a facility subject to the taxing power of the school district, whose construction or operation will increase the population of the district, imposing a significant burden upon the resources of the district and

requiring construction of new school facilities. A significant burden is an increase in ANB of at least 20% in a single year.”

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved April 26, 2007

CHAPTER NO. 280

[HB 688]

AN ACT CREATING A COAL AND URANIUM MINE PERMITTING AND RECLAMATION PROGRAM ACCOUNT; ALLOCATING COAL SEVERANCE TAXES TO THE COAL AND URANIUM MINE PERMITTING AND RECLAMATION PROGRAM ACCOUNT; PROVIDING THAT THE MONEY IN THE ACCOUNT BE USED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR THE ADMINISTRATION AND ENFORCEMENT OF COAL AND URANIUM MINE PERMITTING AND RECLAMATION; AMENDING SECTION 15-35-108, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY 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) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for 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) The amount of 2.9% must be credited to the oil, gas, and coal natural resource account established in 90-6-1001.

(8) *After the allocations are made under subsections (2) through (7), \$250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in [section 2].*

(8)(9) (a) Subject to subsection (8)(b) (9)(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 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. (Terminates June 30, 2010—sec. 6, Ch. 481, L. 2003.)

15-35-108. (Effective July 1, 2010) 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) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for 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) The amount of 2.9% must be credited to the oil, gas, and coal natural resource account established in 90-6-1001.

(8) *After the allocations are made under subsections (2) through (7), \$250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in [section 2].*

(8)(9) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.”

Section 2. Coal and uranium mine permitting and reclamation program account. (1) There is a coal and uranium mine permitting and reclamation program account within the special revenue fund established in 17-2-102.

(2) Each fiscal year, there must be deposited in the account the proceeds from the coal severance tax, as provided in 15-35-108, to be appropriated by the legislature to the department for the administration and enforcement of this part.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 82, chapter 4, part 2, and the provisions of Title 82, chapter 4, part 2, apply to [section 2].

Section 4. Effective date. [This act] is effective July 1, 2007.

Section 5. Applicability. [This act] applies to severance tax collections from coal produced after June 30, 2007.

Approved April 26, 2007

CHAPTER NO. 281

[HB 690]

AN ACT REVISING THE SUSPENSION PROCEDURE FOR MUNICIPAL FIREFIGHTERS TO PROVIDE FOR AN OPTIONAL HEARING BEFORE A CITY COUNCIL OR CITY COMMISSION; AND AMENDING SECTION 7-33-4124, MCA.

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

Section 1. Section 7-33-4124, MCA, is amended to read:

“7-33-4124. Suspension procedure. (1) ~~In all cases of suspension any case in which a member of the municipal fire department is suspended from duty, the person suspended must be furnished with a copy of the charge against him, in writing, setting forth the reasons for the suspension. Such~~ *Subject to subsection (2), the suspended member of the fire department may request in writing that the charges must be presented to the next meeting of the council or commission and*

for a hearing had thereon, when. *The hearing must be held within 30 days of the request. The suspended member may invoke the right of privacy to request a closed hearing. At the hearing, the suspended member of the fire department may appear in person or by counsel and make his provide a defense to said against the charges.*

(2) If the suspended member of the fire department does not request a hearing by the council or commission within 5 business days of receiving the suspension charge, the suspended member forfeits the option of requesting a hearing by the council or commission.

~~(2)(3) Should~~ *If the charges are not be presented to the next meeting of before the council or commission after the suspension or should within 30 days of the request for a hearing or if the charges be found not proven by the council or commission determines the charges to be unfounded, the suspended person shall must be reinstated and be is entitled to his the person's usual compensation for the time so suspended of the suspension.*

~~(3)(4) If such~~ *the charges are found proven by the council or commission, the council or commission, by a vote of a majority of the whole council or commission, may impose such a penalty as it shall determine commensurate to its determination of what the offense warrants, including either in the continuation of the suspension for a limited time or in the removal of the suspended person from the fire department."*

Approved April 26, 2007

CHAPTER NO. 282

[HB 742]

AN ACT PROVIDING FOR THE ADMISSIBILITY OF HEARSAY STATEMENTS TO PROVE THE OCCURRENCE OF, OR THE IDENTITY OF THE ABUSER, IN CASES OF PHYSICAL OR SEXUAL ABUSE OF AN INDIVIDUAL WITH A DEVELOPMENTAL DISABILITY; AND PROVIDING AN APPLICABILITY DATE.

WHEREAS, physical or sexual abuse of an individual with a developmental disability is an abhorrent phenomenon that should not be tolerated in any society; and

WHEREAS, physical or sexual abuse of an individual with a developmental disability is sometimes hard to prove because no one except the abuser and the individual are present and the individual is sometimes incapable of expressing in language the circumstances of the abuse sufficiently to allow for criminal prosecution of the abuser and because testimony of another individual on behalf of the developmentally delayed individual could be excluded by various provisions of the Montana Rules of Evidence, especially the rule governing exceptions to the rule against the admissibility of hearsay evidence, contained in Rule 804 of the Montana Rules of Evidence, adopted by the Montana Supreme Court in 1976; and

WHEREAS, Rule 802 of the Montana Rules of Evidence adopted by the Montana Supreme Court allows the Legislature to provide exceptions to the rule against admission of hearsay statements into evidence because Rule 802 provides that hearsay is inadmissible except as provided by statute; and

WHEREAS, the Legislature therefore believes that it is appropriate for the Legislature to adopt, using as a guide the guidelines on child hearsay adopted by the Montana Supreme Court in *State v. J.C.E.*, 235 Mont. 264, 767 P.2d 309 (1988), and applied in such opinions as *State v. Osborne*, 1999 MT 149, 295 Mont. 54, 982 P.2d 1045 (1999), a statute allowing the admission into evidence of testimony of third persons under circumstances in which there are sufficient guarantees of trustworthiness to render the testimony of the third person probative and valuable to the trial court or jury.

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

Section 1. Testimony of third person in cases of abuse of individual with developmental disability. (1) Otherwise inadmissible hearsay may be admitted into evidence in a criminal proceeding, as provided in subsections (2) and (3), if:

(a) the declarant of the out-of-court statement is an individual with a developmental disability 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 individual with a developmental disability is unavailable as a witness;

(d) the 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 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 testimony.

(3) When deciding the admissibility of offered hearsay testimony under subsections (1) and (2), a court shall consider the following:

(a) the attributes of the hearsay declarant, including:

(i) the individual's age;

(ii) the individual's ability to communicate verbally;

(iii) the individual's ability to comprehend the statements or questions of others;

(iv) the individual's ability to tell the difference between truth and falsehood;

(v) the individual's motivation to tell the truth, including whether the individual understands the general obligation to speak truthfully and not fabricate stories;

(vi) whether the individual possessed sufficient mental capacity at the time of the alleged incident to create an accurate memory of the incident; and

(vii) whether the individual possesses sufficient memory to retain an independent recollection of the events at issue;

(b) information regarding the witness who is relating the individual's hearsay statement, including:

(i) the witness's relationship to the individual;

(ii) whether the relationship between the witness and the individual has an impact on the trustworthiness of the individual's hearsay statement;

(iii) whether the witness has a motive to fabricate or distort the individual's statement; and

(iv) the circumstances under which the witness heard the individual's statement, including the timing of the statement in relation to the incident at issue and the availability of another person in whom the individual could confide;

(c) information regarding the individual's statement, including:

(i) whether the statement contains knowledge not normally attributed to an individual of the declarant's age;

(ii) whether the statement was spontaneous;

(iii) the suggestiveness of statements by other persons to the individual at the time that the individual made the statement;

(iv) if statements were made by the individual to more than one person, whether those statements were consistent;

(v) the nearness in time of the statement to the incident at issue; and

(vi) whether the statement is testimonial or nontestimonial in character; and

(d) other considerations that in the judge's opinion may bear on the admissibility of the individual's hearsay testimony.

(4) As used in this section, "developmental disability" has the meaning provided in 53-20-102.

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. 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. Applicability. [This act] applies to criminal proceedings begun on or after October 1, 2007.

Approved April 26, 2007

CHAPTER NO. 283

[HB 743]

AN ACT ADDING CHRONIC DISEASE PROGRAMS TO THE DEFINITION OF "PROGRAMS FOR TOBACCO DISEASE PREVENTION"; AMENDING SECTIONS 17-6-602 AND 17-6-606, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 17-6-602, MCA, is amended to read:

"17-6-602. Definitions. As used in this part, the following definitions apply:

(1) "Benefits, services, or coverage of health care needs" means the provision of health care to persons by the state through any program of benefits, services, or coverage, including income tax incentives.

(2) "Health care" has the meaning provided in 50-16-504.

(3) (a) "Programs for tobacco disease prevention" means programs of services administered by the state for the purposes of informing individuals of the health risks of tobacco use and exposure to secondhand tobacco smoke, assisting persons in the avoidance of tobacco products use, and assisting individuals in cessation of tobacco use.

(b) Programs for tobacco disease prevention include:

(i) community-based education programs;

(ii) American Indian community tobacco education programs;

(iii) general public awareness and education programs;

(iv) tobacco cessation services;

(v) *chronic disease programs*;

~~(vi)~~(vi) a tobacco use resource center;

~~(vii)~~(vii) special education and cessation programs to reach youth and women of childbearing age;

~~(viii)~~(viii) smokeless tobacco user programs; and

~~(ix)~~(ix) advertising issue programs.

(4) "Tobacco products" means a substance intended for human use that contains tobacco and includes but is not limited to cigarettes, cigars, smoking tobacco, and tobacco intended for use in an oral or nasal cavity.

(5) "Trust fund" means the Montana tobacco settlement trust fund authorized by Article XII, section 4, of the Montana constitution and implemented through this part."

Section 2. Section 17-6-606, MCA, is amended to read:

"17-6-606. Tobacco settlement accounts — purpose — uses. (1) The purpose of this section is to dedicate a portion of the tobacco settlement proceeds to fund a statewide ~~comprehensive programs for~~ *programs for* tobacco disease prevention ~~program~~ designed to:

(a) discourage children from starting use of tobacco;

(b) assist adults in quitting use of tobacco;

- (c) provide funds for the children's health insurance program; and
- (d) provide funds for the comprehensive health association programs.

(2) An amount equal to 32% of the total yearly tobacco settlement proceeds received after June 30, 2003, must be deposited in a state special revenue account. Subject to subsection (5), the funds referred to in this subsection may be used only for funding a statewide *programs for tobacco disease prevention program* designed to prevent children from starting tobacco use and to help adults who want to quit tobacco use. The department of public health and human services shall manage the tobacco *disease prevention program programs* and shall adopt rules to implement the *program programs*. In adopting rules, the department shall consider the standards contained in Best Practices for Comprehensive Tobacco Control Programs—August 1999 or its successor document, published by the U.S. department of health and human services, centers for disease control and prevention.

(3) An amount equal to 17% of the total yearly tobacco settlement proceeds received after June 30, 2003, must be deposited in a state special revenue account. Subject to subsection (5), the funds referred to in this subsection may be used only for:

(a) matching funds to secure the maximum amount of federal funds for the Children's Health Insurance Program Act provided for in Title 53, chapter 4, part 10; and

(b) programs of the comprehensive health association provided for in Title 33, chapter 22, part 15, with funding use subject to 33-22-1513.

(4) Funds deposited in a state special revenue account, as provided in subsection (2) or (3), that are not appropriated within 2 years after the date of deposit must be transferred to the trust fund.

(5) The legislature shall appropriate money from the state special revenue accounts provided for in this section for *programs for tobacco disease prevention*, for the programs referred to in the subsection establishing the account, and for funding the tobacco prevention advisory board.

(6) Programs funded under this section that are private in nature may be funded through contracted services."

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

Approved April 26, 2007

CHAPTER NO. 284

[HB 744]

AN ACT REVISING CERTAIN SCHOOL LAWS; REVISING TERRITORY TRANSFER LAWS RELATED TO K-12 DISTRICTS; AMENDING SECTION 20-6-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-6-105, MCA, is amended to read:

"20-6-105. Transfer of territory from one district to another — hearing on effects of proposed transfer — burden of proof — standard of proof — appeal to district court. (1) (a) Except as provided in 20-6-214, 20-6-215, 20-6-308, and 20-6-322, and subsection (1)(b) of this section, a petition

to transfer territory from one school district to another may be presented to the county superintendent if:

(a)(i) the petition is signed by 60% of the registered electors qualified to vote at general elections in the territory proposed for transfer;

(b)(ii) the territory to be transferred is contiguous to the district to which it is to be attached, includes taxable property, and has school-age children living in it;

(c)(iii) the territory to be transferred is not located within 3 miles, over the shortest practicable route, of an operating school in the district from which it is to be transferred; and

(d)(iv) the board of trustees of the school district that would receive the territory has approved the proposed transfer by a resolution adopted by a majority of the members of the board of trustees at a meeting for which proper notice was given.

(b) *A petition to transfer territory to or from a K-12 district may not be presented to a county superintendent unless both school boards and the county superintendents have agreed in writing.*

(2) ~~On or after March 27, 2003, once~~ Once a petition to transfer territory has been filed, an additional petition to transfer that territory may not be filed for 4 years.

(3) The petition for a transfer of territory must be delivered to the county superintendent and must:

(a) provide a legal description of the territory that is requested to be transferred and a description of the district to which the territory is to be transferred;

(b) state the reasons why the transfer is requested; and

(c) state the number of school-age children residing in the territory.

(4) If both the trustees of the receiving and transferring school districts have approved the proposed territory transfer in writing, the county superintendent shall grant the transfer.

(5) For any petition that meets the criteria specified in subsection (1) and contains the information required by subsection (3) but that has not been approved in writing by the board of trustees of the school district that would transfer the territory, the county superintendent shall:

(a) not more than 40 days after receipt of the petition, set a place, date, and time for a hearing to consider the petition; and

(b) give notice of the place, date, and time of the hearing. The notice must be posted in the districts affected by the petition for the transfer of territory in the manner prescribed in this title for notices for school elections, with at least one notice posted in the territory to be transferred. Notice must also be delivered to the board of trustees of the school district from which the territory is to be transferred.

(6) The county superintendent shall conduct a hearing as scheduled, and any resident, taxpayer, or representative of the receiving or transferring district must, upon request, be heard. At the hearing, the petitioners have the initial burden of presenting evidence on the proposed transfer's effect on:

(a) the educational opportunity for the students in the receiving and transferring districts, including but not limited to:

- (i) class size;
- (ii) ability to maintain demographic diversity;
- (iii) local control;
- (iv) parental involvement; and
- (v) the capability of the receiving district to provide educational services;

(b) student transportation, including but not limited to:

- (i) safety;
- (ii) cost; and
- (iii) travel time of students;

(c) the economic viability of the proposed new districts, including but not limited to:

(i) the existence of a significant burden on the taxpayers of the district from which the territory will be transferred;

(ii) the significance of any loss in state funding for the students in both the receiving and transferring districts;

(iii) the viability of the future bonding capacity of the receiving and transferring districts, including but not limited to the ability of the receiving district and the transferring district to meet minimum bonding requirements;

(iv) the ability of the receiving district and the transferring district to maintain sufficient reserves; and

(v) the cumulative effect of other transfers of territory out of the district in the previous 8 years on the taxable value of the district from which the territory is to be transferred. In cases where the cumulative effect of other transfers of territory out of the district in the previous 8 years is equal to or greater than 25% of the district's taxable value, the following additional factors must be considered and weighed in the decision:

(A) the district's rate of passage of discretionary levies placed before the voters over the previous 8 years;

(B) the district's reduction or elimination of instructional staff or programs over the previous 8 years; and

(C) any increase in district taxes over the previous 8 years and the likely increase in district taxes if the transfer is granted.

(7) After receiving evidence from both the proponents and opponents of the proposed territory transfer on the effects described in subsection (6), the county superintendent shall, within 30 days after the hearing, issue findings of fact, conclusions of law, and an order.

(8) If, based on a preponderance of the evidence, the county superintendent determines that the evidence on the effects described in subsection (6) supports a conclusion that a transfer of the territory is in the best and collective interest of students in the receiving and transferring districts and does not negatively impact the ability of the districts to serve those students, the county superintendent shall grant the transfer. If the county superintendent determines that, based on a preponderance of the evidence presented at the hearing, a transfer of the territory is not in the best and collective interest of

students in the receiving and transferring districts and will negatively impact the ability of the districts to serve those students, the county superintendent shall deny the territory transfer.

(9) The decision of the county superintendent is final 30 days after the date of the decision unless it is appealed to the district court by a resident, taxpayer, or representative of either district affected by the petitioned territory transfer. The county superintendent's decision must be upheld unless the court finds that the county superintendent's decision constituted an abuse of discretion under this section.

(10) Whenever a petition to transfer territory from one district to another district creates a joint district or affects the boundary of an existing joint district, the petition to transfer territory must be delivered to the county superintendent of the county in which the territory proposed to be transferred is located. The county superintendent shall notify any other county superintendents of counties with districts affected by the petition, and the duties prescribed in this section for the county superintendent must be performed jointly. If the number of county superintendents involved is an even number, the county superintendents shall jointly appoint an additional county superintendent from an unaffected county to join them in conducting the hearing required in subsection (6) and in issuing the decision required in subsection (8). The decision issued under subsection (8) must be made by a majority of the county superintendents.

(11) A petition seeking to transfer territory out of or into a K-12 district must propose the transfer of territory for both elementary and high school purposes. In the case of a proposed transfer out of or into a K-12 district, a petition that fails to propose the transfer of territory for both elementary and high school purposes is invalid for the purposes of this section."

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

Approved April 26, 2007

CHAPTER NO. 285

[HB 771]

AN ACT GENERALLY REVISING ACTUARIAL VALUATION AND REPORTING REQUIREMENTS RELATED TO THE INVESTMENTS AND BENEFITS OF THE STATEWIDE PUBLIC EMPLOYEES' RETIREMENT SYSTEMS; AMENDING SECTIONS 5-11-210, 19-2-405, 19-2-407, 19-2-408, 19-20-201, AND 19-20-719, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Reports on retirement system trust fund investments and benefits. (1) As soon as practical after the end of each calendar year, the board of investments shall publish a report on each retirement system trust fund invested by the board. The report may be part of an annual report required pursuant to Article VIII, section 13, of the Montana constitution or 17-5-1650 but must summarize the following with respect to each retirement system trust fund:

- (a) asset allocation;
- (b) past and expected investment performance;

(c) investment goals and strategies; and

(d) Montana public employees' retirement system investments and performance compared with the public employees' retirement system investments and performance in other states.

(2) The board of investments shall annually at a public meeting present the report described in subsection (1) to the public employees' retirement board provided for in 2-15-1009 and the teachers' retirement board provided for in 2-15-1010. The board shall also provide the report to the legislature pursuant to 5-11-210.

Section 2. Presentation to board of investments. The board shall annually at a public meeting present to the board of investments established in 2-15-1808 a financial and actuarial report of the retirement systems administered by the board and brief the board of investments on any benefit changes being considered by the board that may affect trust fund obligations.

Section 3. Presentation to board of investments. The retirement board shall annually at a public meeting present to the board of investments established in 2-15-1808 a financial and actuarial report of the retirement system and brief the board of investments on any benefit changes being considered by the retirement board that may affect trust fund obligations.

Section 4. Section 5-11-210, MCA, is amended to read:

“5-11-210. Clearinghouse for reports to legislature. (1) For the purposes of this section, “report” means a report required by law to be given to or filed with the legislature.

(2) On or before September 1 of each year preceding the convening of a regular session of the legislature, an entity required to report to the legislature shall provide, in writing, to the appropriate interim or statutory committee:

(a) the final title of the report;

(b) an abstract or description of the contents of the report, not to exceed 100 words;

(c) a recommendation on how many copies of the report should be provided to the legislature;

(d) the reasons why the number of copies recommended is, in the opinion of the reporting entity, the appropriate number of copies; and

(e) an estimated cost for each copy of the report.

(3) After considering all of the information available about the report, including the number of legislators requesting copies of the report pursuant to subsection (7), the appropriate interim or statutory committee shall, in writing, direct the reporting entity to provide a specific number of copies. The number of copies required is at the sole discretion of the appropriate interim or statutory committee. The appropriate interim or statutory committee may require the reporting entity to mail the copies of the report.

(4) The appropriate interim or statutory committee may require that the report be submitted in an electronic format usable on the legislature's current computer hardware, in a microform, such as microfilm or microfiche, or in a CD-ROM format, meaning compact disc read-only memory.

(5) Costs of preparing and distributing a report to the legislature, including writing, printing, postage, distribution, and all other costs, accrue to the

reporting agency. Costs incurred in meeting the requirements of this section may not accrue to the legislative services division.

(6) The executive director of the legislative services division shall cause to be prepared a list of all reports required to be presented to the legislature from the list of titles received under subsection (2).

(7) The executive director shall, as soon as possible following a general election, mail to each holdover senator, senator-elect, and representative-elect a list of the titles of the reports, along with the abstracts prepared pursuant to subsection (2)(b). The list must include a form on which each member or member-elect receiving the list may indicate the report or reports that the member or member-elect would like to receive.

(8) The executive director of the legislative services division shall make copies of reports requested pursuant to subsection (7) available to those members or members-elect by either requiring that copies be mailed pursuant to subsection (3) or by delivering copies of the reports during the first week of the legislative session.

(9) The executive director of the legislative services division may keep as many copies of a report as are necessary and discard the rest.

(10) The procedure outlined in this section may also be used for a report required to be made to the legislature under the Multistate Tax Compact contained in 15-1-601, the Vehicle Equipment Safety Compact contained in 61-2-201, the Multistate Highway Transportation Agreement contained in 61-10-1101, or the Western Interstate Nuclear Compact contained in 90-5-201.

(11) Each report to the legislature required under [section 1], 19-2-405, 19-2-407, and 19-20-201 must be provided to the legislative services division as soon as the report is published. The legislative services division shall ensure that legislators are notified pursuant to this section of the report's availability. During the interim, the legislative services division shall ensure that members of the state administration and veterans' affairs interim committee and the legislative finance committee receive copies of the reports."

Section 5. Section 19-2-405, MCA, is amended to read:

"19-2-405. Employment of actuary — biennial annual investigation and valuation. (1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public systems of pensions. The actuary is the technical advisor of the board on matters regarding the operation of the retirement systems.

(2) The board shall require the actuary to make ~~a biennial~~ *an annual* actuarial investigation into the suitability of the actuarial tables used by the retirement systems and an actuarial valuation of the assets and liabilities of each defined benefit plan that is a part of the retirement systems.

(3) The normal cost contribution rate, which is funded by required employee contributions and a portion of the required employer contributions to each defined benefit retirement plan, must be calculated as the level percentage of members' salaries that will actuarially fund benefits payable under a retirement plan as those benefits accrue in the future.

(4) (a) The unfunded liability contribution rate, which is entirely funded by a portion of the required employer contributions to the retirement plan, must be calculated as the level percentage of current and future defined benefit plan members' salaries that will amortize the unfunded actuarial liabilities of the

retirement plan over a reasonable period of time, not to exceed 30 years, as determined by the board.

(b) In determining the amortization period under subsection (4)(a) for the public employees' retirement system's defined benefit plan, the actuary shall take into account the plan choice rate contributions to be made to the defined benefit plan pursuant to 19-3-2117 and 19-21-203.

(5) The board shall require the actuary to conduct a periodic actuarial investigation into the actuarial experience of the retirement systems and plans. *Copies of the report must be provided to the legislature pursuant to 5-11-210.*

(6) The board may require the actuary to conduct any valuation necessary to administer the retirement systems and the plans subject to this chapter."

Section 6. Section 19-2-407, MCA, is amended to read:

"19-2-407. Report by board to governor Reports. (1) As soon as practical after the close of each fiscal year, the board shall file with the governor *and with the legislature pursuant to 5-11-210* a report of its work for that fiscal year. The report must include *but is not limited to*:

(a) a statement as to the accumulated cash and securities in the pension trust funds as certified by the state treasurer and the board of investments. ~~The report must include;~~

(b) ~~a summary of the most recent unpublished report of information available from the actuary of concerning the actuarial valuation of the assets and liabilities of each system or plan; and~~

(c) *an analysis of how market performance is affecting actuarial funding of each of the retirement systems or plans.*

(2) The report *required under subsection (1)* must also provide information concerning the defined contribution plan, including a description of the plan, the number of members in the plan, plan contribution rates, the total amount of money invested by members, investment performance, administrative costs and fees, determinations on the plan choice rate made pursuant to 19-3-2121, and other information required under applicable governmental accounting standards and as determined by the board."

Section 7. Section 19-2-408, MCA, is amended to read:

"19-2-408. Administrative expenses. (1) The legislature finds that proper administration of the pension trust funds benefits both employers and members and continues to benefit members after retirement.

(2) (a) The administrative expenses of the retirement systems administered by the board must be paid from the investment earnings on the pension trust fund of the public employees' retirement system's defined benefit plan, except as otherwise provided in this section. The board shall compute the administrative expenses attributable to each retirement system or plan administered by the board and transfer that amount from each retirement system's or plan's pension trust fund to the pension trust fund of the public employees' retirement system's defined benefit plan in a manner that ensures that the public employees' retirement system's defined benefit plan trust fund is fully compensated for expenditures made on behalf of other systems or plans so that there is no actuarial impact on the fund.

(b) The total administrative expenses of the board, including the administration of the volunteer firefighters' pension plan, may not exceed 1.5% of the total defined benefit plan retirement benefits paid.

(3) For purposes of calculating the percentage specified in subsection (2)(b), administrative expenses do not include:

- (a) expenditures to purchase intangible assets for plan administration;
- (b) expenses of the defined contribution plan; ~~or~~
- (c) expenditures of funds allocated under 19-3-112(1)(b) to the education fund established in 19-3-112(1)(a); *or*

(d) expenses for an actuarial valuation under 19-2-405(2) performed during the first year of a biennium.

(4) The administrative expenses of the defined contribution plan must be paid, as provided in 19-3-2105, from assets of the defined contribution plan.”

Section 8. Section 19-20-201, MCA, is amended to read:

“19-20-201. Administration by retirement board. (1) The retirement board shall administer and operate the retirement system within the limitations prescribed by this chapter, and it is the duty of the retirement board to:

- (a) establish rules necessary for the proper administration and operation of the retirement system;
- (b) approve or disapprove all expenditures necessary for the proper operation of the retirement system;
- (c) keep a record of all its proceedings, which must be open to public inspection;
- (d) submit a report to the office of budget and program planning detailing the fiscal transactions for the 2 fiscal years immediately preceding the report due date, the amount of the accumulated cash and securities of the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of the retirement system;
- (e) keep in convenient form the data that is necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the retirement system;
- (f) prepare an annual valuation of the assets and liabilities of the retirement system *that includes an analysis of how market performance is affecting the actuarial funding of the retirement system;*
- (g) prescribe a form for membership application that will provide adequate and necessary information for the proper operation of the retirement system;
- (h) annually determine the rate of regular interest as prescribed in 19-20-501;
- (i) establish and maintain the funds of the retirement system in accordance with the provisions of part 6 of this chapter; and
- (j) perform other duties and functions as are required to properly administer and operate the retirement system.

(2) In discharging its duties, 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.

(3) The board may send retirement-related material to employers and the campuses of the Montana university system for delivery to employees. To facilitate distribution, employers and those campuses shall each provide the board with a point of contact who is responsible for distribution of the material provided by the board.

(4) The board shall make available to the legislature pursuant to 5-11-210 copies of the annual actuarial valuation and report required pursuant to subsections (1)(d) and (1)(f)."

Section 9. Section 19-20-719, MCA, is amended to read:

"19-20-719. Guaranteed annual benefit adjustment — rulemaking.

(1) Subject to subsection (3), on January 1 of each year, the retirement allowance payable to each recipient who is eligible under subsection (2) must be increased by 1.5%.

(2) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if the retiree has received at least 36 monthly retirement benefit payments prior to January 1 of the year in which the adjustment is to be made.

(3) On ~~January 1, 2002,~~ and January 1 of each year following the system's ~~biennial~~ valuation, the board may increase the annual benefit adjustment provided in subsection (1) until a maximum of 3% is guaranteed if:

(a) the period required to amortize the system's actuarial unfunded liability, as determined by the most recent ~~biennial~~ valuation, adjusted for any benefit enhancement enacted by the legislature since the most recent ~~biennial~~ valuation, is less than 25 years;

(b) sufficient funds are available to increase the guaranteed annual benefit adjustment by at least 0.1%; and

(c) the increase granted by the board would not cause the amortization period, as of the most recent valuation, to exceed 25 years.

(4) The board shall adopt rules to administer the provisions of this section."

Section 10. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 17, chapter 6, part 2, and the provisions of Title 17, chapter 6, part 2, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 19, chapter 2, part 4, and the provisions of Title 19, chapter 2, part 4, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 19, chapter 20, part 2, and the provisions of Title 19, chapter 20, part 2, apply to [section 3].

Section 11. Effective date. [This act] is effective June 1, 2007.

Approved April 26, 2007

CHAPTER NO. 286

[HB 778]

AN ACT PROVIDING AN EXEMPTION FROM TAXATION FOR OIL AND GAS WELLS, WORKING INTERESTS, AND NONWORKING INTERESTS OWNED BY THE STATE OR A LOCAL GOVERNMENT; AMENDING SECTION 15-36-304, 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 15-36-304, MCA, is amended to read:

“15-36-304. Production tax rates imposed on oil and natural gas — exemption. (1) The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in 15-36-331 and 15-36-332.

(2) Natural gas is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) (i) first 12 months of qualifying production	0.5%	14.8%
(ii) after 12 months:		
(A) pre-1999 wells	14.8%	14.8%
(B) post-1999 wells	9%	14.8%
(b) stripper natural gas pre-1999 wells	11%	14.8%
(c) horizontally completed well production:		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months	9%	14.8%

(3) The reduced tax rates under subsection (2)(a)(i) on production for the first 12 months of natural gas production from a well 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) (i) stripper well exemption production	0.5%	14.8%
(ii) stripper well bonus production	6.0%	14.8%
(d) horizontally completed well production:		
(i) first 18 months of qualifying production	0.5%	14.8%
(ii) after 18 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%
(e) incremental production:		
(i) new or expanded secondary recovery production	8.5%	14.8%
(ii) new or expanded tertiary production	5.8%	14.8%
(f) horizontally recompleted well:		
(i) first 18 months	5.5%	14.8%
(ii) after 18 months:		
(A) pre-1999 wells	12.5%	14.8%
(B) post-1999 wells	9%	14.8%

(6) (a) The reduced tax rates under subsection (5)(a)(i) for the first 12 months of oil production from a well 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 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 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.

(d) (i) Stripper well exemption production is taxed as provided in subsection (5)(c)(i) 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. If the price of oil is equal to or greater than \$38 a barrel, there is no stripper well exemption tax rate and oil produced from a well that produces 3 barrels a day or less is taxed as stripper well bonus production.

(ii) Stripper well bonus production is subject to taxation as provided in subsection (5)(c)(ii) only if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is equal to or greater than \$38 a barrel.

(e) For the purposes of subsections (6)(c) and (6)(d), the average price for each barrel must be computed by dividing the sum of the daily price for 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) (a) The tax rates imposed under subsections (2) and (5) on working interest owners and nonworking interest owners must be adjusted to include the total of the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131 and the derived rate for the oil, gas, and coal natural resource account as determined under subsection (7)(b).

(b) The total of the privilege and license tax and the tax for the oil, gas, and coal natural resource account may not exceed 0.3%. The base rate for the tax for oil, gas, and coal natural resource account funding is 0.08%, but when the rate adopted pursuant to 82-11-131 by the board of oil and gas conservation for the privilege and license tax:

(i) exceeds 0.22%, the rate for the tax to fund the oil, gas, and coal natural resource account is equal to the difference between the rate adopted by the board of oil and gas conservation and 0.3%; or

(ii) is less than 0.18%, the rate for the tax to fund the oil, gas, and coal natural resource account is equal to the difference between the rate adopted by the board of oil and gas conservation and 0.26%.

(c) The board of oil and gas conservation shall give the department at least 90 days' notice of any change in the rate adopted by the board. Any rate change of the tax to fund the oil, gas, and coal natural resource account is effective at the same time that the board of oil and gas conservation rate is effective.

(8) *Any interest in production owned by the state or a local government is exempt from taxation under this section.*

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

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to production on or after December 31, 1995.

Approved April 26, 2007

CHAPTER NO. 287

[HB 781]

AN ACT REQUIRING EACH LAW ENFORCEMENT AGENCY TO ADOPT A POLICY ON RACE-BASED TRAFFIC STOPS, INCLUDING THE COLLECTION OF DATA ON RACIAL PROFILING IN TRAFFIC STOPS; AMENDING SECTION 44-2-117, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 44-2-117, MCA, is amended to read:

“44-2-117. Racial profiling prohibited — definitions — policies — complaints — training. (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 law enforcement agency shall adopt a policy on race-based traffic stops that:*

(a) *prohibits the practice of routinely stopping members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law;*

(b) *provides for periodic reviews by the law enforcement agency and collection of data that determine whether any peace officers of the law enforcement agency have a pattern of stopping members of minority groups for violations of vehicle laws in a number disproportionate to the population of minority groups residing or traveling within the jurisdiction of the law enforcement agency;*

(c) *if the review under subsection (3)(b) reveals a pattern, requires an investigation to determine whether any peace officers of the law enforcement agency routinely stop members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law.*

~~(3)(4)~~ (a) 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, require that all stops are lawful under 46-5-401, and require that all stops are documented according to ~~the agency's standard policies and procedures~~ subsection (3) of this section.

(b) The policy must include a procedure that the law enforcement agency will use to address written complaints concerning racial profiling. The complaint procedure must require that:

(i) all written complaints concerning racial profiling be promptly reviewed;

(ii) a person is designated who shall review all written complaints of racial profiling;

(iii) the designated person shall, within 10 days of receipt of a written complaint, acknowledge receipt of the complaint in writing; and

(iv) after a review is completed, the designated person shall, in writing, inform the person who submitted the written complaint and the head of the agency of the results of the review.

(c) The policy must be available for public inspection during normal business hours.

~~(4)(5)~~ Each municipal, county, consolidated local government, and state law enforcement agency shall require for all of its peace officers cultural awareness

training and training in racial profiling. The training program must be certified by the peace officers' standards and training advisory council.

(6) *Each law enforcement agency may provide for appropriate counseling and training of any peace officer found to have engaged in race-based traffic stops within 90 days of the review. The course or courses of instruction and the guidelines must stress understanding and respect for racial and cultural differences and development of effective, noncombative methods of carrying out law enforcement duties in a racially and culturally diverse environment.*

(5)(7) 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.

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

(a) *"Minority group" means individuals of African American, Hispanic, Native American, Asian, or Middle Eastern descent.*

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

(b)(c) *"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.*

(7)(9) The department of justice shall make periodic reports to the law and justice interim committee regarding the degree of compliance by municipal, county, consolidated local government, and state law enforcement agencies with the requirements of this section.

(10) *Each law enforcement agency in this state may use federal funds from community-oriented policing services grants or any other federal sources to equip each vehicle used for traffic stops with a video camera and voice-activated microphone."*

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved April 26, 2007

CHAPTER NO. 288

[HB 785]

AN ACT EXEMPTING FROM THE WORKERS' COMPENSATION ACT AN ATHLETE EMPLOYED BY OR ON A TEAM OR A SPORTS CLUB ENGAGED IN CONTACT SPORTS; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers and to all employees. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation

Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

- (a) household or domestic employment;
- (b) casual employment;
- (c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;
- (d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);
- (e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;
- (f) employment as a direct seller as defined by 26 U.S.C. 3508;
- (g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;
- (h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;
- (i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;
- (j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;
- (k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection (2)(k):
 - (i) "freelance correspondent" means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and
 - (ii) "newspaper carrier":
 - (A) means a person who provides a newspaper with the service of delivering newspapers singly or in bundles; and
 - (B) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.
- (l) cosmetologist's services and barber's services as referred to in 39-51-204(1)(e);
- (m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;
- (n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior

to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

(p) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(q) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(r) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(r)(iii)(A) or (2)(r)(iii)(B);

(s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are

unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(v) employment of a person who is not an employee or worker in this state as defined in 39-71-118(10);

(w) employment of a person who is working under an independent contractor exemption certificate;

(x) *employment of an athlete by or on a team or sports club engaged in a contact sport. As used in this subsection, "contact sport" means a sport that includes significant physical contact between the athletes involved. Contact sports include but are not limited to football, hockey, roller derby, rugby, lacrosse, wrestling, and boxing.*

(3) (a) (i) A person who regularly and customarily performs services at locations other than the person's own fixed business location shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 unless the person has waived the rights and benefits of the Workers' Compensation Act by obtaining an independent contractor exemption certificate from the department pursuant to 39-71-417.

(ii) Application fees or renewal fees for independent contractor exemption certificates must be deposited in the state special revenue account established in 39-9-206 and must be used to offset the certification administration costs.

(b) A person who holds an independent contractor exemption certificate may purchase a workers' compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.

(c) For the purposes of this subsection (3), "person" means a sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of

exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

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

Approved April 26, 2007

CHAPTER NO. 289

[HB 811]

AN ACT ESTABLISHING A TRADITIONAL ARTS AND CRAFTS ACCOUNT IN THE STATE SPECIAL REVENUE FUND; ALLOWING THE MONTANA ARTS COUNCIL TO PURCHASE AND SELL TRADITIONAL AMERICAN INDIAN ARTS AND CRAFTS; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO TRANSFER REVENUE GENERATED BY PAST SALES AND TO TRANSFER ACQUISITIONS TO THE MONTANA ARTS COUNCIL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Traditional arts and crafts account — funding — use. (1)

There is an account in the state special revenue fund established in 17-2-102 for the purchase and sale of traditional arts and crafts by American Indian master artists. Money may be deposited in the account through an allocation of money to the account or as provided in this section.

(2) Money in the account may be used only by the Montana arts council to purchase traditional arts and crafts by American Indian master artists and to make the arts and crafts available for resale. Money generated through the sale of traditional arts and crafts must be deposited into the account.

(3) The department of fish, wildlife, and parks shall transfer \$1,015 to the account and transfer any inventory purchased through the American master Indian artists state parks partnership pilot program to the Montana arts council by June 30, 2007.

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

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 22, chapter 2, and the provisions of Title 22, chapter 2, apply to [section 1].

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

Approved April 26, 2007

CHAPTER NO. 290

[SB 89]

AN ACT REQUIRING BREAK TIME AND PRIVACY FOR NEEDS OF BREASTFEEDING MOTHERS IN STATE AND COUNTY GOVERNMENTS, MUNICIPALITIES, SCHOOL DISTRICTS, AND THE UNIVERSITY SYSTEM; AND PROVIDING THAT IT IS DISCRIMINATION TO REFUSE TO HIRE OR EMPLOY, BAR, OR DISCHARGE FROM EMPLOYMENT AN EMPLOYEE WHO EXPRESSES BREAST MILK OR TO DISCRIMINATE IN TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT.

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

Section 1. Public employer policy on support of women and breastfeeding — unlawful discrimination. (1) All state and county governments, municipalities, and school districts and the university system must have a written policy supporting women who want to continue breastfeeding after returning from maternity leave. The policy must state that employers shall support and encourage the practice of breastfeeding, accommodate the breastfeeding-related needs of employees, and ensure that employees are provided with adequate facilities for breastfeeding or the expression of milk for their children. At a minimum, the policy must identify the means by which an employer will make available a space suitable for breastfeeding and breast pumping for a lactating employee, including the provision of basic necessities of privacy, lighting, and electricity for the pump apparatus. The space does not need to be fully enclosed or permanent, but must be readily available during the term that the employee needs the space.

(2) It is an unlawful discriminatory practice for any public employer:

(a) to refuse to hire or employ or to bar or to discharge from employment an employee who expresses milk in the workplace; or

(b) to discriminate against an employee who expresses milk in the workplace in compensation or in terms, conditions, or privileges of employment, unless based upon a bona fide occupational qualification.

Section 2. Private place for nursing mothers. (1) All state and county governments, municipalities, and school districts and the university system shall make reasonable efforts to provide a room or other location, in close proximity to the work area, other than a toilet stall, where an employee can express the employee's breast milk as provided in [section 1].

(2) All public employers are encouraged to establish policies to allow mothers who wish to continue to breastfeed after returning to work to have privacy in order to express milk and to provide facilities for milk storage.

Section 3. Break time for working mothers. All state and county governments, municipalities, and school districts and the university system shall provide reasonable unpaid break time each day to an employee who needs to express breast milk for the employee's child, as provided in [sections 1 and 2], if breaks are currently allowed. If breaks are not currently allowed, the public employer shall consider each case and make accommodations as possible. The

break time must, if possible, run concurrently with any break time already provided to the employee. A public employer is not required to provide break time under this section if to do so would unduly disrupt the public employer's operations.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 39, chapter 2, part 2, and the provisions of Title 39, chapter 2, part 2, apply to [sections 1 through 3].

Approved April 26, 2007

CHAPTER NO. 291

[SB 95]

AN ACT REMOVING THE REQUIREMENT FOR A PHYSICIAN DIRECTOR OF AN AUTOMATED EXTERNAL DEFIBRILLATOR PROGRAM; AMENDING SECTIONS 50-6-502, 50-6-503, AND 50-6-505, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 50-6-502, MCA, is amended to read:

“50-6-502. AED program — requirements for AED use. In order for an entity to use or allow the use of an automated external defibrillator, the entity shall:

(1) establish a program for the use of an AED that includes a written plan that complies with this part and rules adopted by the department pursuant to 50-6-503. The plan must specify:

- (a) where the AED will be placed;
- (b) the individuals who are authorized to operate the AED;
- (c) how AED use will be coordinated with an emergency medical service providing services in the area where the AED is located;
- (d) the medical ~~supervision~~ oversight that will be provided;
- (e) the maintenance that will be performed on the AED;
- (f) records that will be kept by the program;
- (g) reports that will be made of AED use; *and*
- ~~(h) the name, location, and telephone number of a physician, or other individual designated by the physician, designated to provide medical supervision of the AED program; and~~

~~(i)~~(h) other matters as specified by the department;

(2) adhere to the written plan required by subsection (1);

(3) ensure that before using the AED, an individual authorized to operate the AED receives appropriate training approved by the department in cardiopulmonary resuscitation and the proper use of an AED;

(4) maintain, test, and operate the AED according to the manufacturer's guidelines and maintain written records of all maintenance and testing performed on the AED;

~~(5) ensure that the physician or other individual designated by the physician to supervise the AED program supervises the AED program to ensure~~

~~compliance with the written plan, this part, and rules adopted by the department pursuant to 50-6-503 and reviews each case in which the AED is used;~~

~~(6)(5) each time an AED is used for an individual in cardiac arrest, require that an emergency medical service is summoned to provide assistance as soon as possible and that the AED use is reported to the supervising physician or the person designated by the physician and to the department as required by the written plan;~~

~~(7)(6) before allowing any use of an AED, provide the following to all licensed emergency medical services and any public safety answering point or emergency dispatch center providing services to the area where the AED is located:~~

~~(a) a copy of the plan prepared pursuant to this section; and~~

~~(b) written notice, in a format prescribed by department rules, stating:~~

~~(i) that an AED program is established by the entity;~~

~~(ii) where the AED is located; and~~

~~(iii) how the use of the AED is to be coordinated with the local emergency medical service system; and~~

~~(8)(7) comply with this part and rules adopted by the department pursuant to 50-6-503.”~~

Section 2. Section 50-6-503, MCA, is amended to read:

“50-6-503. Rulemaking. (1) The department shall adopt rules specifying the following:

(a) the contents of the written notice required by 50-6-502(7);

(b) reporting requirements for each use of an AED;

(c) the contents of a plan prepared in accordance with 50-6-502 and requirements applicable to the subject matter of the plan;

(d) training requirements in cardiopulmonary resuscitation and AED use for any individual authorized by an AED program plan to use an AED;

(e) ~~requirements~~ *guidelines* for medical ~~supervision~~ *oversight* of an AED program;

(f) minimum requirements for a medical protocol for use of an AED;

(g) performance requirements for an AED in order for the AED to be used in an AED program; and

(h) a list of the AED training programs approved by the department.

(2) The department may not adopt rules for any purpose other than those in subsection (1).”

Section 3. Section 50-6-505, MCA, is amended to read:

“50-6-505. Liability limitations. (1) An individual who provides emergency care or treatment by using an AED in compliance with this part and rules adopted by the department pursuant to 50-6-503 and an individual providing cardiopulmonary resuscitation to an individual upon whom an AED is or may be used are immune from civil liability for a personal injury that results from that care or treatment or from civil liability as a result of any act or failure to act in providing or arranging further medical treatment for the individual upon whom the AED was used unless the individual using the AED or the

person providing cardiopulmonary resuscitation, as applicable, acts with gross negligence or with willful or with wanton disregard for the care of the person upon whom the AED is or may be used.

(2) The following individuals or entities are immune from civil liability for any personal injury that results from an act or omission that does not amount to willful or wanton misconduct or gross negligence if applicable provisions of this part and rules adopted by the department pursuant to 50-6-503 have been met by the individual or entity:

(a) ~~the physician supervising a person providing medical oversight of the AED program or the person designated by a physician to supervise the program, either of whom are, as designated in the plan prepared pursuant to 50-6-502;~~

(b) the entity responsible for the AED program, as designated in the plan prepared pursuant to 50-6-502;

(c) an individual providing training to others on the use of an AED.”

Section 4. Effective date. [This act] is effective July 1, 2007.

Approved April 26, 2007

CHAPTER NO. 292

[SB 102]

AN ACT REVISING LAWS GOVERNING MUTUAL AID AGREEMENTS FOR PROTECTION AGAINST DISASTERS, INCIDENTS, AND EMERGENCIES; INCLUDING GOVERNING BODIES OF FIRE PROTECTION SERVICES, EMERGENCY MEDICAL CARE PROVIDERS, AND LOCAL GOVERNMENT SUBDIVISIONS AS ENTITIES THAT MAY PARTICIPATE IN CERTAIN MUTUAL AID AGREEMENTS AND FROM WHICH ASSISTANCE MAY BE REQUESTED; AMENDING SECTIONS 7-33-2108, 7-33-2202, 7-33-2405, 7-33-4112, 10-3-202, 10-3-209, 10-3-1102, AND 10-3-1103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-33-2108, MCA, is amended to read:

“7-33-2108. Mutual aid agreements — request if no agreement exists — definitions. (1) A mutual aid agreement is an agreement for protection against ~~natural~~ disasters, incidents, or emergencies ~~or disasters, incidents, or emergencies caused by persons.~~

(2) Fire district trustees may enter mutual aid agreements with the proper authority of:

- (a) other fire districts;
- (b) unincorporated municipalities;
- (c) incorporated municipalities;
- (d) state agencies;
- (e) private fire prevention agencies;
- (f) federal agencies;
- (g) fire service areas; ~~and~~
- (h) governing bodies of other political subdivisions *in Montana; and*

(i) *governing bodies of fire protection services, emergency medical care providers, and local government subdivisions of any other state or the United States pursuant to Title 10, chapter 3, part 11.*

(3) If the fire district trustees have not concluded a mutual aid agreement, then the trustees, a representative of the trustees, or an incident commander may request assistance pursuant to 10-3-209.

(4) As used in this section, “incidents”, “disasters”, ~~or and~~ “emergencies” ~~has the meaning ascribed to the term~~ *have the meanings provided in 10-3-103.”*

Section 2. Section 7-33-2202, MCA, is amended to read:

“7-33-2202. Functions of county governing body. The county governing body, with respect to rural fire control, shall carry out the specific authorities and duties imposed in this section:

(1) The governing body shall:

- (a) provide for the organization of volunteer rural fire control crews; and
- (b) provide for the formation of county volunteer fire companies.

(2) The governing body shall appoint a county rural fire chief and ~~such~~ district rural fire chiefs, subject to the direction and supervision of the county rural fire chief, ~~as that~~ *it considers necessary.*

(3) The county governing body shall, within the limitations of 7-33-2205 through 7-33-2209, protect the range, farm, and forest lands within the county from fire.

(4) The county governing body may enter into mutual aid agreements for itself and for county volunteer fire companies with:

- (a) other fire districts;
- (b) unincorporated municipalities;
- (c) incorporated municipalities;
- (d) state agencies;
- (e) private fire prevention agencies;
- (f) federal agencies;
- (g) fire service areas; ~~or~~
- (h) governing bodies of other political subdivisions *in Montana; or*

(i) governing bodies of fire protection services, emergency medical care providers, and local government subdivisions of any other state or the United States pursuant to Title 10, chapter 3, part 11.

(5) If the county governing body has not concluded a mutual aid agreement, the county governing body, a representative of the county governing body, or an incident commander may request assistance pursuant to 10-3-209.”

Section 3. Section 7-33-2405, MCA, is amended to read:

“7-33-2405. Mutual aid agreements — request if no agreement exists — definitions. (1) A mutual aid agreement is an agreement for protection against ~~natural~~ disasters, incidents, or emergencies ~~or disasters, incidents, or emergencies caused by persons.~~

(2) The governing body of a fire service area may enter mutual aid agreements with the proper authority of:

- (a) other fire service areas;
- (b) unincorporated municipalities;
- (c) incorporated municipalities;
- (d) state agencies;
- (e) private fire prevention agencies;
- (f) federal agencies;
- (g) fire districts; ~~and~~

(h) governing bodies of other political subdivisions *in Montana*; and

(i) *governing bodies of fire protection services, emergency medical care providers, and local government subdivisions of any other state or the United States pursuant to Title 10, chapter 3, part 11.*

(3) If the governing body of a fire service area has not concluded a mutual aid agreement, the governing body, a representative of the governing body, or an incident commander may request assistance pursuant to 10-3-209.

(4) As used in this section, “incidents”, “disasters”, ~~or~~ *and* “emergencies” ~~has the meaning ascribed to the term~~ *have the meanings provided in 10-3-103.*”

Section 4. Section 7-33-4112, MCA, is amended to read:

“7-33-4112. Mutual aid agreements — request if no agreement exists — definitions. (1) A mutual aid agreement is an agreement for protection against ~~natural~~ disasters, incidents, or emergencies ~~or disasters, incidents, or emergencies caused by persons.~~

(2) Councils or commissions of incorporated municipalities may enter mutual aid agreements with the proper authority of:

- (a) other incorporated municipalities;
- (b) fire districts;
- (c) unincorporated municipalities;
- (d) state agencies;
- (e) private fire prevention agencies;
- (f) federal agencies;
- (g) fire service areas; ~~or~~

(h) the governing body of other political subdivisions; *or*

(i) *governing bodies of fire protection services, emergency medical care providers, and local government subdivisions of any other state or the United States pursuant to Title 10, chapter 3, part 11.*

(3) If the council or commission has not concluded a mutual aid agreement, the council or commission, a representative of the council or commission, or an incident commander may request assistance pursuant to 10-3-209.

(4) As used in this section, ~~“incidents”, the terms~~ “disasters”, ~~or~~ “emergencies” ~~has the meaning ascribed to the term,~~ *or “incidents” have the meanings provided in 10-3-103.*”

Section 5. Section 10-3-202, MCA, is amended to read:

“10-3-202. Mutual aid — cooperation. (1) Political subdivisions, ~~fire districts, fire service areas, and fire companies in unincorporated places and governmental fire agencies organized under Title 7, chapter 33,~~ must be

encouraged and assisted by the division to conclude mutual aid arrangements with other public and private agencies within this state or *any other state or the United States pursuant to Title 10, chapter 3, part 11*, for reciprocal aid and assistance in coping with incidents, emergencies, and disasters.

(2) In reviewing disaster and emergency plans and programs of political subdivisions, the division shall consider whether they contain adequate provisions for the reciprocal mutual aid.

(3) Local and interjurisdictional disaster and emergency agencies may assist in negotiation of reciprocal mutual aid agreements between the governor and the adjoining states (including foreign states or provinces) or political subdivisions of adjoining states and shall carry out arrangements of any of the agreements relating to the local and political subdivision.

(4) In providing assistance under parts 1 through 4 of this chapter, state departments and agencies shall cooperate to the fullest extent possible with each other and with local governments and relief agencies such as the American national red cross. Parts 1 through 4 of this chapter do not list or in any way affect the responsibilities of the American national red cross under the act approved January 5, 1905 (33 Stat. 559), as amended *its congressional charter*."

Section 6. Section 10-3-209, MCA, is amended to read:

"10-3-209. Political subdivision requests for assistance — application to fire districts, fire service areas, and fire companies in unincorporated places — immunity. (1) If an incident, emergency, or disaster occurs in a political subdivision that has not concluded a mutual aid agreement pursuant to 10-3-202, the local or interjurisdictional agency, incident commander, or principal executive officer of the political subdivision may request assistance from another public or private agency.

(2) (a) The following individuals or entities may request assistance with an incident, emergency, or disaster if a mutual aid agreement has not been concluded for protection of the area within the jurisdiction of these individuals or entities:

(i) the trustees of a rural fire district created pursuant to Title 7, chapter 33, part 21, a representative of the trustees, or an incident commander for the district;

(ii) the chief of a rural fire company organized pursuant to 7-33-2311 or an incident commander for the chief;

(iii) the governing body of a fire service area created pursuant to Title 7, chapter 33, part 24, a representative of the governing body, or an incident commander for the area.

(b) A request for assistance by an individual or entity under subsection (2)(a) may be made to any of the following:

(i) a fire district;

(ii) an unincorporated municipality;

(iii) an incorporated municipality;

(iv) a state agency;

(v) a private fire prevention agency;

(vi) an agency of the federal government;

(vii) a fire service area; ~~or~~

(viii) the governing body of a political subdivision; or

(ix) *the governing bodies of fire protection services, emergency medical care providers, and local government subdivisions of any other state or the United States pursuant to part 11 of this chapter.*

(3) A public or private agency receiving a request pursuant to subsection (1) or (2) shall determine if it will provide the requested assistance; or *if it will provide other assistance; and shall inform the requesting local or interjurisdictional agency, principal executive officer, incident commander, or other individual or entity making the request, as soon as possible, of that determination. The nature and extent of assistance provided by a public or private agency may be determined only by that public or private agency.*

(4) The incident commander of the local or interjurisdictional agency making a request for assistance has overall responsibility for command of the resources provided by a public or private agency responding to a request. However, operational control of individual pieces of equipment and personnel furnished by the responding public or private agency remains with that agency.

(5) This section does not waive an immunity or limitation on liability applicable to any of the following entities or individuals requesting or receiving assistance pursuant to this section:

(a) a fire district;

(b) a fire service area;

(c) a fire company;

(d) an unincorporated municipality, town, or village;

(e) a political subdivision; or

(f) an agent, employee, representative, or volunteer of an entity listed in this subsection.”

Section 7. Section 10-3-1102, MCA, is amended to read:

“10-3-1102. Purpose. It is the purpose of this part to permit one or more fire protection services, emergency medical care providers, or local government subdivisions of this state to enter into mutual aid agreements, on the basis of mutual advantage, with one or more fire protection services, emergency medical care providers, or local government subdivisions of any other state or the United States in order to facilitate and coordinate efficient, cooperative firefighting efforts directed toward protection of life and property in areas transcending state boundaries that, due to geographic remoteness, population sparsity, and economic or other factors, are in need of ~~such~~ those services.”

Section 8. Section 10-3-1103, MCA, is amended to read:

“10-3-1103. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) “Emergency medical care provider” means a local government subdivision or other entity, whether public or private, licensed by the state to provide emergency medical services pursuant to Title 50, chapter 6.

(2) “Fire protection service” means a ~~paid or volunteer fire department, fire company, governmental fire agency organized under Title 7, chapter 33, or other~~ another fire suppression entity organized under the laws of this state, any party other state, or an agency of the government of the United States.

(3) “Local government subdivision” means the local governmental entity, other than state government, including but not limited to incorporated towns and cities, townships, and counties.

(4) “Mutual aid agreement” or “agreement” means an agreement, consistent with the purposes of this part, by one or more fire protection services, emergency medical care providers, or local government subdivisions of this state with one or more fire protection services, emergency medical care providers, or local government subdivisions of any other state or the United States.

(5) “Party emergency service” means a fire protection service, emergency medical care provider, local government subdivision, or agency of the United States that is a party to a mutual aid agreement as ~~set forth~~ *provided* in this part.”

Section 9. Effective date. [This act] is effective on passage and approval.

Approved April 26, 2007

CHAPTER NO. 293

[SB 114]

AN ACT REVISING CONSTRUCTION LIEN LAWS; DEFINING “ORIGINAL CONTRACTOR”; REVISING CONSTRUCTION LIEN NOTICE REQUIREMENTS; AND AMENDING SECTIONS 71-3-522 AND 71-3-531, MCA.

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

Section 1. Section 71-3-522, MCA, is amended to read:

“71-3-522. Definitions. *As used in this part, the following definitions apply:*

(1) “Commencement of work” means the date of the first visible change in the physical condition of the real estate caused by the first person furnishing services or materials pursuant to a particular real estate improvement contract.

(2) “Construction lien” or “lien” means a lien against real estate arising under this part.

(3) (a) “Contract price” means the amount agreed upon by the contracting parties for performing services and furnishing materials covered by the contract, increased or diminished by:

(i) the price of change orders or extras;

(ii) any amounts attributable to altered specifications; or

(iii) a breach of contract, including but not limited to defects in workmanship or materials.

(b) If ~~no~~ a price is *not* agreed upon by the contracting parties, the contract price means the reasonable value of all services or materials covered by the contract.

(4) (a) “Contracting owner” means a person who owns an interest in real estate and who, personally or through an agent, enters into an express or implied contract for the improvement of the real estate.

(b) For the purpose of determining whether a person is a contracting owner, agency is presumed, in the absence of clear and convincing evidence to the contrary:

- (i) between employer and employee;
- (ii) between spouses;
- (iii) between joint tenants; and
- (iv) among tenants in common.

(5) *“Original contractor” means a contractor who contracts directly with the contracting owner.*

~~(5)~~(6) (a) “Real estate improvement contract” means an agreement to perform services, including labor, or to furnish materials for the purpose of producing a change in the physical condition of the real estate, including:

- (i) alteration of the surface by excavation, fill, change in grade, or change in a shore, bank, or flood plain of a stream, swamp, or body of water;
- (ii) construction or installation on, above, or below the surface of land;
- (iii) demolition, repair, remodeling, or removal of a structure previously constructed or installed;
- (iv) seeding, sodding, or other landscape operation;
- (v) surface or subsurface testing, boring, or analysis; and
- (vi) preparation of plans, surveys, or architectural or engineering plans or drawings for any change in the physical condition of the real estate, regardless of whether they are used to produce a change in the physical condition of the real estate.

(b) For the purpose of claiming a construction lien, a real estate improvement contract does not include:

- (i) a contract for the mining or removal of timber, minerals, gravel, soil, sod, or things growing on the land or a similar contract in which the activity is primarily for the purpose of making the materials available for sale or use; or
- (ii) a contract for the planting, cultivation, or harvesting of crops or for the preparation of the soil for *the* planting of crops.”

Section 2. Section 71-3-531, MCA, is amended to read:

“71-3-531. Notice of right to claim lien required — exceptions. (1) The following are not required to give notice of a right to claim a lien as required by this section:

- (a) ~~a person~~ *an original contractor* who furnishes services or materials directly to the owner at the owner’s request;
- (b) a wage earner or laborer who performs personal labor services for a person furnishing any service or material pursuant to a real estate improvement contract;
- (c) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to a dwelling for five or more families; and
- (d) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to an improvement that is partly or wholly commercial in character.

(2) A person who may claim a construction lien pursuant to this part shall give notice of the right to claim a lien to the contracting owner in order to claim a lien.

(3) Except as provided in subsection (4), ~~this~~ *the* notice may not be given later than 20 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 20-day period before the date on which notice is given.

(4) When payment for services or materials furnished pursuant to a real estate improvement contract, excluding a contract on an owner-occupied residence, is made by or on behalf of the contracting ~~party~~ *owner* from funds provided by a regulated lender and secured by an interest, lien, mortgage, or encumbrance for the purpose of paying the particular real estate improvement being liened, the notice required by this section may not be given later than 45 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 45-day period before the date on which notice is given.

(5) The notice of the right to claim a lien must be sent to the contracting owner by certified mail or delivered personally to the owner. Notice by certified mail is effective on the date on which the notice is mailed. If the notice is delivered *personally to the contracting owner*, written acknowledgment of receipt must be obtained from the *contracting owner*. A person may not claim a construction lien unless the person has complied with this subsection.

(6) (a) A person who may claim a lien shall also file with the clerk and recorder of the county in which the improved real estate is located a copy of the notice of the right to claim a lien, in the form required by 71-3-532. This copy may not be filed later than 5 business days after the date on which the notice of the right to claim a lien is given to the contracting owner.

(b) The county clerk and recorder may allow the notice of the right to claim a lien to be electronically filed.

(c) The notice filed with the clerk and recorder for the purpose of public notice is effective for 1 year from the date of filing. The notice lapses upon the expiration of the 1-year period unless the person who may claim a lien files with the clerk and recorder a 1-year continuation of the notice prior to the date on which the notice lapses. The clerk and recorder may remove the notice from the public record when it lapses.

(d) The continuation statement must include:

- (i) the clerk and recorder's file number of the notice;
- (ii) the date on which the notice originally was filed; and
- (iii) the name of the person to whom the original notice was given.

(e) If a notice of a right to claim a lien is required under this section, a person may not claim a construction lien pursuant to this part unless there is an unexpired notice of right to claim a construction lien or an unexpired continuation notice filed with the clerk and recorder at the time that the person files the lien.

(7) *A contracting owner shall provide in the construction contract with the original contractor:*

(a) a street address or legal description that is sufficient to identify the real estate being improved; and

(b) the name and address of the contracting owner.

(7)(8) At the request of any subcontractor or material supplier who may claim a lien through ~~a person~~ *an original contractor* providing services or materials to a contracting owner, the ~~person~~ *original contractor* shall furnish to the requestor within 5 business days:

(a) a street address or legal description sufficient to identify the real estate being improved; and

(b) the name and address of the contracting owner.”

Approved April 26, 2007

CHAPTER NO. 294

[SB 132]

AN ACT PROVIDING FOR INFORMED CONSENT AND A WAIVER OF THE REQUIREMENT FOR A RUBELLA BLOOD TEST AS A CONDITION OF OBTAINING A MARRIAGE LICENSE; AND AMENDING SECTIONS 40-1-202, 40-1-203, 40-1-205, 40-1-206, AND 40-1-208, MCA.

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

Section 1. Section 40-1-202, MCA, is amended to read:

“40-1-202. License issuance. When a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the clerk of the district court and paid the marriage license fee of \$53, the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of 18 years at the time the marriage license is effective or will have attained the age of 16 years and has obtained judicial approval as provided in 40-1-213;

(2) satisfactory proof that the marriage is not prohibited; and

(3) a certificate of the results of any medical examination required by the laws of this state; *or a waiver of the medical certificate requirement as provided in 40-1-203.*”

Section 2. Section 40-1-203, MCA, is amended to read:

“40-1-203. Proof of age and medical certificate required — waiver of medical certificate requirement. (1) Before a person authorized by law to issue marriage licenses may issue a marriage license, each applicant for a license shall provide a birth certificate or other satisfactory evidence of age and, if the applicant is a minor, the approval required by 40-1-213. Each female applicant, unless exempted on medical grounds by rule of the department of public health and human services *or as provided in subsection (2)*, shall file with the license issuer a medical certificate from a physician who is licensed to practice medicine and surgery in any state or United States territory or from any other person authorized by rule of the department to issue a medical certificate. The certificate must state that the applicant has been given a ~~standard serological~~ *blood test for rubella immunity*, that the report of the ~~test~~ *test* results of the ~~serological~~ *test* has been shown to the applicant tested, and that

the other party to the proposed marriage contract has examined the report of the serological test.

(2) *In lieu of a medical certificate, applicants for a marriage license may file an informed consent form acknowledging receipt and understanding of written rubella immunity information and declining rubella immunity testing. Filing of an informed consent form will effect a waiver of the requirement for a blood test for rubella immunity. Informed consent must be recorded on a form provided by the department and must be signed by both applicants. The informed consent form must include:*

(a) *the reasons for undergoing a blood test for rubella immunity;*

(b) *the information that the results would provide about the woman's rubella antibody status;*

(c) *the risks associated with remaining uninformed of the rubella antibody status, including the potential risks posed to a fetus, particularly in the first trimester of pregnancy; and*

(d) *contact information indicating where applicants may obtain additional information regarding rubella and rubella immunity testing.*

(2)(3) A person who by law is able to obtain a marriage license in this state is also able to give consent to any examinations, and tests, or waivers required or allowed by this section. In submitting the blood specimen to the laboratory, the physician or other person authorized to issue a medical certificate shall designate that it is a premarital test.”

Section 3. Section 40-1-205, MCA, is amended to read:

“40-1-205. Certificates from other states or for military personnel — when acceptable. Certificate forms provided by other states having comparable laws will be accepted for persons who have received a ~~standard serological rubella blood~~ test outside of Montana. Certificates provided by the United States armed forces will be accepted for military personnel if ~~such~~ the certificates are signed by a medical officer commissioned in the United States armed forces or United States public health service and the certificates state the examinations are ~~standard serological rubella blood~~ tests.”

Section 4. Section 40-1-206, MCA, is amended to read:

“40-1-206. Premarital test — approved laboratories — rules. ~~(1) For the purpose of 40-1-203 through 40-1-209, a standard serological test is a test for rubella immunity that is approved by the department of public health and human services.~~

~~(2)(1) The standard serological rubella blood test is acceptable for the purposes of 40-1-203 through 40-1-209 only if it is approved by the department of public health and human services and performed by one of the following:~~

~~(a) the laboratory of the department of public health and human services;~~

~~(b) a laboratory approved by the department of public health and human services;~~

~~(c) a laboratory operated by any other state; or~~

~~(d) a laboratory operated by the United States public health service or the United States armed forces.~~

~~(3)(2) The standard serological test may be made on request at the laboratory of the department of public health and human services.~~

(4)(3) The department of public health and human services shall adopt reasonable rules for:

(a) reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the certifying physician and the state; and

(b) exemptions, on medical grounds, from the premarital ~~serological~~ *rubella blood test.*"

Section 5. Section 40-1-208, MCA, is amended to read:

"40-1-208. Penalties. (1) An applicant for a marriage license, a physician or other person authorized by rule of the department of public health and human services to issue a medical certificate, or a person in charge of or authorized to make reports or statements for a laboratory who misrepresents the person's identity or any of the facts called for by the certificate form prescribed by 40-1-203 through 40-1-205; a licensing officer who issues a marriage license without having received the certificate form, if required, or who has reason to believe that any of the facts on the certificate form have been misrepresented and nevertheless issues a marriage license; or any person who otherwise fails to comply with the provisions of 40-1-203 through 40-1-209 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$100.

(2) Medical certificates, laboratory statements or reports, ~~and~~ applications, ~~and~~ *wavers* referred to in 40-1-203 through 40-1-209 are confidential and may not be divulged to or open to inspection by any person other than state or local health officers or their representatives. A person who divulges the information or opens to inspection the certificates, statements, reports, ~~or~~ applications, ~~or~~ *wavers*, without authority, to any person not entitled to the material by law is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$100."

Approved April 26, 2007

CHAPTER NO. 295

[SB 246]

AN ACT ADDING AMBULANCE SERVICES TO THOSE HEALTH CARE PROVIDERS ABLE TO ESTABLISH A LIEN FOR SERVICES RENDERED IN THE DIAGNOSIS OR TREATMENT OF A MEDICAL CONDITION; AND AMENDING SECTION 71-3-1114, MCA.

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

Section 1. Section 71-3-1114, MCA, is amended to read:

~~"71-3-1114. Liens of physicians, nurses, physical therapists, occupational therapists, chiropractors, dentists, hospitals, and ambulatory surgical facilities and liens of psychologists, licensed social workers, and licensed professional counselors~~ *certain health care providers and health care facilities.* (1) (a) Upon the required notice of a lien being given, there is a lien as provided in subsection (1)(b) whenever:

(i) a physician, nurse, physical therapist, occupational therapist, chiropractor, dentist, hospital, ~~or~~ ambulatory surgical facility, ~~or~~ *ambulance service* renders services or provides products for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor renders services or provides products; and

(iii) the services rendered or products provided under subsection (1)(a)(i) or (1)(a)(ii) are rendered or provided to a person injured through the fault or neglect of another.

(b) The physician, nurse, physical therapist, occupational therapist, chiropractor, dentist, hospital, ambulatory surgical facility, *ambulance service*, psychologist, licensed social worker, or licensed professional counselor has a lien for the value of services rendered or products provided on:

(i) any claim or cause of action that the injured person or the injured person's estate or successors may have for injury, disease, or death;

(ii) any judgment that the injured person or the estate or successors may obtain for injury, disease, or death; and

(iii) all money paid in satisfaction of the judgment or in settlement of the claim or cause of action.

(2) (a) If a person is an insured or a beneficiary under insurance that provides coverage in the event of injury or disease, there is a lien as provided in subsection (2)(b) upon required notice of a lien being given by:

(i) a physician, nurse, physical therapist, occupational therapist, chiropractor, dentist, hospital, or ambulatory surgical facility, *or ambulance service* for the value of services rendered or products provided for the diagnosis and treatment of a medical condition; or

(ii) a psychologist, licensed social worker, or licensed professional counselor for services rendered or products provided.

(b) The lien is on all proceeds or payments, except payments for property damage, payable by the insurer.

(3) A physician, nurse, physical therapist, occupational therapist, chiropractor, dentist, hospital, ambulatory surgical facility, *ambulance service*, psychologist, licensed social worker, or licensed professional counselor claiming a lien under this part is not liable for attorney fees and costs incurred by the injured person, the injured person's estate or successors, or a beneficiary in connection with obtaining payments or benefits subject to a lien under this part. The lien of an attorney provided for in 37-61-420 has priority over a lien created by this part."

Approved April 26, 2007

CHAPTER NO. 296

[SB 339]

AN ACT REVISING ANNEXATION AND ZONING LAWS; PROHIBITING A MUNICIPALITY FROM ANNEXING TERRITORY LOCATED IN A COUNTY DIFFERENT FROM THE COUNTY IN WHICH THE MUNICIPALITY IS LOCATED UNLESS CERTAIN CONDITIONS ARE MET; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Annexation across county boundaries. (1) Except as provided in subsection (2), in all instances of annexation allowed under parts 42

through 47 of this chapter, a municipal governing body may not annex territory in a county that is different from the county in which the municipality is located.

(2) Annexation by a municipality of territory in a county that is different from the county in which the municipality is located may occur only if the municipality and the county execute an interlocal agreement that provides for a joint city-county planning board and jurisdictional equality.

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].

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

Approved April 26, 2007

CHAPTER NO. 297

[SB 406]

AN ACT CLARIFYING THE PROCESS OF PETITIONING FOR ESTABLISHMENT OF A COUNTY BOUNTY PROGRAM AND COUNTY PREDATORY ANIMAL CONTROL PROGRAMS BY PROVIDING THAT A SIGNATURE ON A PETITION MAY NOT BE WITHDRAWN BY THE SIGNER AFTER THE HOUR SET FOR HEARING THE PETITION; AMENDING SECTIONS 81-7-202, 81-7-305, AND 81-7-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 81-7-202, MCA, is amended to read:

“81-7-202. Signers of petition — time for presenting — limitation on bounties — bounty inspectors. (1) The petition provided for in 81-7-201 must be signed by the owners or agents of the owners of not less than 51% of the livestock of the county and must recommend to the board of county commissioners the bounties to be paid on predatory animals, which may not exceed the following:

- (a) on each wolf or mountain lion, \$100;
- (b) on each wolf pup or mountain lion kitten, \$20;
- (c) on one coyote, \$5; and
- (d) on each coyote pup, \$2.50.

(2) A petition must be presented not later than August 1 of each year, and the board of county commissioners on determining the sufficiency of the petition shall make an order granting the petition. *A signature on a petition may not be withdrawn by the signer after the hour set for hearing the petition.* The order must fix the fee for that year and the amount of the bounties to be paid for the killing of each predatory animal, which may not exceed the amounts recommended in the petition. The order may also appoint not less than 10 or more than 20 stockowners of the county to be bounty inspectors under this part, without compensation, who shall hold their offices for 1 year.”

Section 2. Section 81-7-305, MCA, is amended to read:

“81-7-305. Duty of county commissioners — petition of sheep owners — license fees. (1) In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for

~~such a program and its incidents as made by organized associations of sheep growers in the county. Upon petition of the resident owners of at least 51% of the sheep in the county, as shown by the assessment rolls of the last preceding assessment, which petition shall be filed with the board of county commissioners on or before the first Monday in December in any year, such the board shall establish the predatory animal control program and cause said issue licenses to be secured and issued and the collect fees collected for the following year in such an amount as that will defray the cost of administering the program so established. The petition must be filed with the board on or before the first Monday in December in any year, and a signature on a petition may not be withdrawn by the signer after the hour set for hearing the petition. The license fee determined and set by the board shall must remain in full force and effect from year to year without change, unless there is filed with the board a petition subscribed by the resident owners of at least 51% of the sheep in the county, as shown by the assessment rolls of the last assessment preceding the filing of the petition, for termination of the program and repeal of the license fee., in which event the program shall by order of Upon the filing of the petition, the board of county commissioners be disestablished and the license fee shall not be further levied shall terminate the program and cease levying the license fee.~~

(2) If the resident owners of at least 51% of the sheep in the county either petition for an increase in the license fee or petition for a decrease in the license fee then in force effect, the board of county commissioners shall upon receipt of any such petition fix set a new license fee to continue from year to year and the program shall thereupon continue within the limits of the aggregate amount of the license fee as collected from year to year.”

Section 3. Section 81-7-605, MCA, is amended to read:

“81-7-605. Duty of county commissioners — petition of cattle owners — license fees. (1) In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for a program made by an organized association of cattle producers in the county. Upon petition of the resident owners of at least 51% of the cattle in the county, as shown by the property tax record of the last preceding assessment, which petition must be filed with the board of county commissioners on or before the first Monday in December in any year, the board shall establish the predatory animal control program and issue licenses and collect fees for the following year in an amount that will defray the cost of administering the program. *The petition must be filed with the board on or before the first Monday in December in any year, and a signature on a petition may not be withdrawn by the signer after the hour set for hearing the petition.* The license fee set by the board must remain in effect from year to year without change unless there is filed with the board a petition signed by the resident owners of at least 51% of the cattle in the county, as shown by the property tax record of the last assessment preceding the filing of the petition, for termination of the program and elimination of the license fee. Upon the filing of the petition, the board of county commissioners shall terminate the program and cease levying the license fee.

(2) If the resident owners of at least 51% of the cattle in the county file a petition with the board of county commissioners either for an increase in the license fee or for a decrease in the license fee then in force effect, the board of county commissioners shall set a new license fee to continue from year to year.”

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

Approved April 26, 2007

CHAPTER NO. 298

[SB 422]

AN ACT ELIMINATING THE REQUIREMENT THAT POLE TRAILERS ENGAGED IN TRANSPORTING LOGS BE EQUIPPED WITH WRAPPERS MADE OF STEEL CHAIN, STEEL CABLE, OR A COMBINATION OF STEEL CHAIN AND STEEL CABLE; AMENDING SECTION 61-9-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 61-9-414, MCA, is amended to read:

“61-9-414. Logging trucks. (1) A truck or truck trailer combination, except pole trailers, actively engaged in transporting logs must be equipped with chains, cables, steel straps, or fiber webbing with working load limits that meet or exceed the manufacturer’s marked value. The number of tie-down assemblies must be determined by the working load limits and the total weight of the load. The working load limits must equal or exceed 1 1/2 times the total weight of the load.

(2) A pole trailer actively engaged in transporting logs upon the highways of the state must be equipped as follows:

(a) At least three wrappers are required as standard equipment. The wrappers must:

(i) ~~be made of steel chain, steel cable, or a combination of steel chain and steel cable;~~

(ii) ~~(i)~~ have a minimum working load limit of at least 3,000 pounds; and

(iii) ~~(ii)~~ be long enough to encompass any load when secured by a binder.

(b) (i) Wrappers used to secure loads of logs together must be fastened by means of a binder.

(ii) The complete wrapper and binder assembly must have a working load limit of at least 3,000 pounds.

(iii) The handle, or leverage portion of the binder, when in use in tightening and holding the wrapper, must be securely fastened to the wrapper or to the binder so that it cannot be accidentally loosened.

(c) At least two wrappers must be in use on all loads. The wrappers must be placed as close as reasonably possible to the front and rear bunks.

(d) If short logs are loaded on top of longer logs, sufficient wrappers must be used to secure both ends of the short logs to the main body of the load. A log may not extend laterally beyond the stakes that form the outer boundary of the load at the top of the stakes. Logs or poles loaded above the tops of the stakes must be loaded in a pyramidal fashion.

(3) For the purposes of this section:

(a) “binder” means a device attached to a wrapper that provides tension on and secures a wrapper; and

(b) “wrapper” means an indirect tie-down device, the tension of which is intended to secure a stack of logs.”

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

Approved April 26, 2007

CHAPTER NO. 299

[SB 532]

AN ACT AUTHORIZING PARTICIPATION IN THE FIREFIGHTERS' UNITED RETIREMENT SYSTEM BY CERTAIN FIRE DEPARTMENTS; AUTHORIZING A RETURN TO SERVICE FOR A LIMITED NUMBER OF HOURS WITHOUT LOSS OF BENEFITS; AMENDING SECTIONS 19-13-210 AND 19-13-301, MCA; AND PROVIDING AN EFFECTIVE DATE .

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

Section 1. Section 19-13-210, MCA, is amended to read:

“19-13-210. Participation in retirement system. (1) Cities of the first and second class that employ full-paid firefighters shall participate in the retirement system. If a city of the first or second class is reduced to a city of the third class or a town under 7-1-4118, it shall continue to participate in the retirement system as long as it has retired firefighters or survivors eligible to receive retirement benefits.

(2) Firefighters hired by the Montana air national guard on or after October 1, 2001, or on or after the date of the execution of an agreement between the department of military affairs and the board, whichever is later, shall participate in the retirement system.

(3) (a) *A city that is not covered under subsection (1) and that has full-paid firefighters covered by the public employees' retirement system and any rural fire district department with full-paid firefighters covered by the public employees' retirement system may elect to be covered under the retirement system as provided in 19-13-211.*

(b) *An election by a city fire department or a rural fire department to be covered by the retirement system must be made through adoption of a resolution stating that the governing body of the city or the fire district agrees to be bound by the provisions of the retirement system. The resolution must specify the effective date of the department's election. The provisions of the retirement system become applicable on the effective date specified in the adopted resolution. A certified copy of the resolution must be provided to the board.*

(4) *The following are the terms and conditions of an election by a fire department to join the retirement system pursuant to subsection (3):*

(a) *Each firefighter employed by the fire department before the effective date of the department's election must be given 180 days from the effective date of the department's election to make an individual, one-time, irrevocable election to remain in the public employees' retirement system or to join the retirement system. Failure to make an election under this subsection (4)(a) must be considered an election to remain in the public employees' retirement system.*

(b) *Each firefighter employed by the fire department who is hired on or after the effective date of the department's election must be covered by the retirement system.*

(c) *A firefighter electing to join the retirement system may retain prior service in the public employees' retirement system or qualify the prior service in the retirement system as provided for in 19-2-715.”*

Section 2. 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) An inactive member with at least 5 years of membership service 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.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member’s accumulated contributions and not the employer’s contributions.

(6) (a) An inactive member with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) 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.

(8) *A retired member who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 480 hours in any calendar year without returning to active service and without any effect to the retiree’s retirement benefit.”*

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved April 26, 2007

CHAPTER NO. 300

[SB 544]

AN ACT CREATING A MONTANA-CERTIFIED NATURAL BEEF CATTLE MARKETING PROGRAM TO BE ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE AND THE DEPARTMENT OF LIVESTOCK; PROVIDING QUALIFICATIONS FOR THE CERTIFICATION OF MONTANA NATURAL BEEF CATTLE AND MONTANA-CERTIFIED NATURAL GRASS-FED BEEF CATTLE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Montana-certified natural beef cattle marketing program. (1) The department and the department of livestock shall administer a program to qualify and market beef cattle from Montana that have been certified as natural.

(2) To qualify as Montana-certified natural beef cattle, the beef cattle must have been born and raised in Montana and finished following naturally raised protocols. The beef cattle must be:

(a) raised in an environmentally prudent manner that is consistent with Montana's best grazing standards;

(b) raised pursuant to beef quality assurance standards or similar guidelines;

(c) raised without subtherapeutic antibiotics, synthetic hormones, synthetic growth promotants, and ionophores; and

(d) fed only natural feeds that contain no drugs, chemicals, or animal byproducts.

(3) To qualify as Montana-certified natural grass-fed beef cattle, the beef cattle must meet the requirements of subsection (2) and must also have been finished on grass.

(4) A producer who desires natural beef cattle certification shall maintain records of the birth of the beef cattle by month and keep health records for the beef cattle, including vaccine lot numbers, the vaccine manufacturer, and dates of vaccination.

(5) To ensure compliance, the department and the department of livestock shall jointly adopt rules requiring at least one inspection of the ranch of origin of the beef cattle as well as development of the necessary protocols for recordkeeping and verification for the certification of natural and natural grass-fed beef cattle.

(6) The department shall include the promotion of Montana-certified natural beef cattle in its agricultural product marketing programs.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 80, chapter 11, and the provisions of Title 80, chapter 11, apply to [section 1].

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

Approved April 26, 2007

CHAPTER NO. 301

[HB 3]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2007; 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, 2007. The unspent balance of any appropriation must revert to the appropriate fund.

Section 2. Appropriations — authorization to expend money. The following money is appropriated, subject to the terms and conditions of [section 1]:

Agency and Program	Amount	Fund
Department of Public Health and Human Services	\$11,000,000	General Fund
Department of Corrections		
Secure Care	\$23,379,726	General Fund
Administrative Services	\$2,666,599	General Fund
Community Corrections	\$1,112,839	General Fund
Montana Correctional Enterprises	\$65,000	General Fund
Youth Services Division	\$1,051,383	General Fund
Canteen Purchases	\$375,000	State Special Revenue
Department of Natural Resources and Conservation		
Wildfire Suppression	\$25,000,000	General Fund
Department of Justice		
Legal Services Major Litigation	\$400,000	General Fund
ACLU Lawsuit	\$375,000	General Fund
School Lawsuit	\$499,732	General Fund
Department of Livestock		
Meat Inspection	\$97,534	General Fund
Department of Transportation		
Motor Pool	\$1,330,000	General Fund
Judicial Branch		
District Court Reimbursement	\$2,500,000	General Fund
Office of the Public Defender		
District Court Reimbursement	\$5,363,042	General Fund
Office of Public Instruction		
Tuition for State-Placed Students	\$200,000	General Fund
Transportation Aid	\$380,000	General Fund

Department of Revenue

Business Equipment Rate
Reduction Reimbursement \$2,802,315 General Fund

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

Approved April 27, 2007

CHAPTER NO. 302

[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, 2007; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEARS 2008 AND 2009; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Time limits. The appropriations contained in [section 2] are intended to provide necessary expenditures for the years for which the appropriations are made. The unspent balance of an appropriation reverts to the fund from which it was appropriated upon conclusion of the final fiscal year for which its expenditures are authorized by [sections 1 and 2].

Section 2. Appropriations. The following money is appropriated, subject to the terms and conditions of [sections 1 and 2]:

Agency and Program	FY	Amount	Fund
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Judicial Branch

Supreme Court Operations

All remaining fiscal year 2007 budget amendment authority for court improvement training and court improvement data share is authorized to continue into federal fiscal year 2008.

District Court Operations

Lewistown family treatment

court/parental substance

abuse grant

2008

\$73,560

federal

All remaining fiscal year 2007 and fiscal year 2008 federal budget amendment authority for the Lewistown family treatment court/parental substance abuse grant is authorized to continue into federal fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the Montana drug courts grant is authorized to continue into state fiscal year 2008.

Secretary of State

Business and Government Services

Voting access for individuals

with disabilities grant

2007

\$100,000

federal

All remaining fiscal year 2007 federal budget amendment authority for help America vote and the voting access for individuals with disabilities grant is authorized to continue into federal fiscal year 2009.

Office of Public Instruction

State Level Activities

All remaining fiscal year 2007 federal budget amendment authority for the jobs and growth tax relief funds for technical assistance for the No Child Left Behind Act and recognizing American Indian cultural heritage is authorized to continue into federal fiscal year 2009.

Local Education Activities

All remaining fiscal year 2007 federal budget amendment authority for the jobs and growth tax relief funds for technology programs, reading first, and vocational education is authorized to continue into federal fiscal year 2009.

Crime Control Division

Justice System Support Services

Montana adult methamphetamine treatment coalition	2008	\$500,000	federal
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All remaining fiscal year 2007 and fiscal year 2008 federal budget amendment authority for the Montana adult methamphetamine treatment coalition grant is authorized to continue into federal fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the anti-gang initiative and the project safe neighborhood grant is authorized to continue to state fiscal year 2009.

Department of Justice

Legal Services Division

All remaining fiscal year 2007 federal budget amendment authority for the faith and community technical support grant and for the Montana statewide rural delivery of interventions and extend services to victims of domestic violence and child abuse grant is authorized to continue into federal fiscal year 2008.

Highway Patrol Division

Federal forfeiture	2007	\$257,660	federal
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All remaining fiscal year 2007 federal budget amendment authority for the federal forfeiture funds is authorized to continue into state fiscal year 2008.

Division of Criminal Investigation

Federal forfeiture	2007	\$223,750	federal
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Information Technology Services

All remaining fiscal year 2007 federal budget amendment authority for the statewide automated victims information and notification service grant is authorized to continue into state fiscal year 2008.

Public Service Commission

Public Service Regulation Program

One-call grant	2007	\$7,080	federal
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All remaining fiscal year 2007 federal budget amendment authority for the one-call grant is authorized to continue into state fiscal year 2008.

Library Commission

Statewide Library Resources

All remaining fiscal year 2007 federal budget amendment authority for recruiting and educating librarians for the 21st century, for archiving, distribution, and development of natural resources geographic information for the natural resources conservation service, and for librarians for the 21st century for transfer to counties is authorized to continue into state fiscal year 2008.

Historical Society

Administration Program

All remaining fiscal year 2007 federal budget amendment authority for the preserve America grant is authorized to continue into state fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the golden triangle thinking through American history—early career indirect costs is authorized to continue into federal fiscal year 2008.

Library Program

Map conservation assessment	2007	\$4,905	federal
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Administrative expenses, scholarships, Montana state historical records advisory board	2007	\$9,275	federal
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All remaining fiscal year 2007 federal budget amendment authority for the map conservation assessment grant and the Montana state historical records advisory board grant is authorized to continue into state fiscal year 2008.

Museum Program

Montana American Indian heritage public education program	2007	\$30,000	federal
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All remaining fiscal year 2007 federal budget amendment authority for the Montana American Indian heritage public education program is authorized to continue into federal fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the golden triangle thinking through American history—early career employee costs and the Lewis and Clark exhibit of “Neither Empty Nor Unknown” are authorized to continue into federal fiscal year 2008.

Publications Program

All remaining fiscal year 2007 federal budget amendment authority for the preserve America grant for publishing books is authorized to continue into state fiscal year 2008.

Historic Preservation Program

Access of the cultural resource database	2007	\$10,000	federal
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All remaining fiscal year 2007 federal budget amendment authority for the access of the cultural resource database is authorized to continue into state fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the preserve America grant for grant administration plus grants to local communities is authorized to continue into state fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for improving access to bureau of land management to the state historic preservation database is authorized to continue into federal fiscal year 2009.

Fish, Wildlife, and Parks

Fisheries Division

Trail Creek fish screen	2008	balance	federal
Big Hole grayling recovery	2008	balance	federal
Grayling candidate conservation	2008	balance	federal
Coal bed methane fish toxicity study	2008	balance	federal
Aquatic nuisance species	2008	balance	federal
Westslope cutthroat trout restoration program	2008	balance	federal
Hedge canal fish screens	2008	balance	federal
Republican canal fish screen	2008	balance	federal
Pallid sturgeon flow	2008	balance	federal
Biological data on pallid sturgeon	2008	\$11,380	federal
Big Hole focus area	2008	\$34,812	federal

All remaining fiscal year 2007 federal legislative contract authority appropriated in House Bill No. 2 to the department of fish, wildlife, and parks, fisheries division, in the 2005 legislative session for the statewide landowner outreach and assistance program and the aquatic nuisance species grant is reappropriated as federal budget amendment authority and is authorized to continue into state fiscal year 2009.

All remaining fiscal year 2007 federal legislative contract authority appropriated in House Bill No. 2 to the department of fish, wildlife, and parks, fisheries division, in the 2005 legislative session for the Big Hole grayling recovery grant, the westslope cutthroat trout restoration program, the Hedge canal fish screens grant, the Republican canal fish screens grant, and the pallid sturgeon flow modification study is reappropriated as federal budget amendment authority and is authorized to continue into federal fiscal year 2009.

All remaining fiscal year 2007 federal budget amendment authority for the grant to monitor bull trout habitat use in the Wedge Canyon fire area is authorized to continue into state fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the fish screening and fish passage enhancement projects in the Bitterroot River drainage; for the seasonal movement patterns and habitat use of various fish, turtles, and birds project; and for the Yellowstone cutthroat trout landowner outreach and technical assistance project is authorized to continue into state fiscal year 2009.

All remaining fiscal year 2007 and fiscal year 2008 federal budget amendment authority for biological data collection on pallid sturgeon in the Missouri River below Fort Peck Dam is authorized to continue into federal fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the fish conservation geneticist grant is authorized to continue into federal fiscal year 2009.

All remaining fiscal year 2008 federal budget amendment authority for the Big Hole focus area grant is authorized to continue into state fiscal year 2009.

Wildlife Division

Grizzly bear recovery	2007	\$30,000	federal
Swift fox census	2007	\$10,000	federal
Forest legacy-06	2007	\$43,500	federal
Bear shrub field survey	2008	balance	federal
Chronic wasting disease	2008	balance	federal
Avian influenza monitor-1	2008	balance	federal
Wolf research	2008	balance	federal
Wetland legacy coordinate	2008	balance	federal
Forest legacy-05	2008	balance	federal
Prairie pothole venture	2008	balance	federal
Avian influenza monitor-2	2008	balance	federal
Grizzly bear recovery	2008	balance	federal
Grizzly bear management	2008	balance	federal
Grizzly bear conservation	2008	balance	federal
Sagebrush grassland focus	2008	\$145,188	federal

All remaining fiscal year 2007 federal legislative contract authority appropriated in House Bill No. 2 to the department of fish, wildlife, and parks, wildlife division, in the 2005 legislative session for the grizzly bear recovery grant, the grizzly bear management grant, and the grizzly bear conservation grant is reappropriated as federal budget amendment authority and is authorized to continue into federal fiscal year 2009.

All remaining fiscal year 2007 federal budget amendment authority for the small manual survey grant, the sage grouse wintering area grant, the bear conflict specialist grant, the in-lieu-fee water resource mitigation program grant, and the development of regional prairie dog abundance and distribution goals grant is authorized to continue into state fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the mule deer chronic wasting disease study and the forest legacy fiscal year 06-grant is authorized to continue into federal fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the loon ecology project is authorized to continue into state fiscal year 2009.

All remaining fiscal year 2007 federal budget amendment authority for the swift fox census, for the Montana landowners technical assistance for habitat conservation programs, for the Montana wolf conservation and management purposes grant, and for the wildlife research for long-term integrity of the northern Yellowstone winter range contract is authorized to continue in federal fiscal year 2009.

All remaining fiscal year 2008 federal budget amendment authority for the sagebrush grassland focus grant is authorized to continue into state fiscal year 2009.

Parks Division

All remaining fiscal year 2007 federal budget amendment authority for the Lewis and Clark historical trail grant is authorized to continue into federal fiscal year 2007.

All remaining fiscal year 2007 federal budget amendment authority for the further development, operation, maintenance, interpretation and protection of the Lewis and Clark national historic trail is authorized to continue into federal fiscal year 2008.

Capital Outlay Program

All remaining fiscal year 2007 federal budget amendment authority for the North Swan River valley forest legacy project phase III grant is authorized to continue into state fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the Nevada Creek forest legacy grant is authorized to continue into federal fiscal year 2008.

Department Management

Assistance for fish and wildlife management	2007	\$211,044	federal
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All remaining fiscal year 2007 federal budget amendment authority for the assistance for fish and wildlife management grant is authorized to continue into federal fiscal year 2009.

All remaining fiscal year 2007 federal budget amendment authority for the Montana habitat conservation plan for management of aquatic and wildlife habitat owned by the department of natural resources and conservation is authorized to continue into state fiscal year 2008.

Department of Environmental Quality

Remediation Division

Libby asbestos grant	2007	\$1,300,000	federal
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All remaining fiscal year 2007 federal budget amendment authority for the leaking underground storage tank grant to document and finalize release closure sites and the Libby asbestos grant is authorized to continue into federal fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the leaking underground storage tank grant to clean up the Ronan, Montana, contaminated site and other Montana sites is authorized to continue into state fiscal year 2008.

Department of Livestock

Disease Control Program

Voluntary premises registration	2007	\$251,100	federal
Foreign animal disease work in Montana	2007	\$12,300	federal
Swine health program	2007	\$6,100	federal

All remaining fiscal year 2007 federal budget amendment authority for the voluntary premises registration grant, the foreign animal disease work in Montana grant, and the swine health program grant is authorized to continue into state fiscal year 2008.

Department of Natural Resources and Conservation

Water Resources Division

Community participation in national flood insurance program	2007	\$67,000	federal
Fish and wildlife service grant	2007	\$35,632	federal
Big Hole grant	2007	\$25,000	federal

All remaining fiscal year 2007 federal budget amendment authority for the community participation in the national flood insurance program and the Big Hole grant is authorized to continue into federal fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for streamflow gauging stations at Benton Lake national wildlife refuge, the United States fish and wildlife service grant, and the grant to convert Yellowstone County into a digital flood insurance rate map is authorized to continue into federal fiscal year 2009.

Forestry/Trust Lands

McKay Creek road and trailhead improvements	2007	\$28,980	federal
Incident command system training	2007	\$16,706	federal
Natural resources conservation service grant	2007	\$20,000	federal
Northwest region conservation development	2007	\$6,000	federal
Bitterroot technical service	2007	\$6,000	federal
Headwaters technical service	2007	\$6,000	federal

All remaining fiscal year 2007 federal budget amendment authority for the rural fire assistance program, the McKay Creek road and trailhead improvements grant, the incident command system training grant, and the natural resources conservation service grant is authorized to continue into state fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the state fire assistance and general forest health assistance grant and the forest land enhancement program that provides education, technical assistance, and financial incentives to forest and private landowners is authorized to continue into federal fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the hazardous fuel reduction work on nonfederal lands adjacent to national forest lands, for the rural fire assistance pass-through grant to rural fire departments, and for the grant for the department of natural resources and conservation habitat conservation plan is authorized to continue into federal fiscal year 2009.

Department of Administration

Information Technology Services Division

All remaining fiscal year 2007 federal budget amendment authority for the grant to expand and enhance the Montana spatial data infrastructure is authorized to continue into federal fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the purchase of technology equipment to enhance tribal and urban public safety answering points through the new 9-1-1 system is authorized to continue into state fiscal year 2009.

Department of Agriculture

Central Management Division

National potato cyst nematode survey indirect costs	2007	\$19,659	federal
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All remaining fiscal year 2007 federal budget amendment authority for the national potato cyst nematode survey indirect costs is authorized to continue into state fiscal year 2008.

Agricultural Sciences Division

National potato cyst nematode survey	2007	\$218,487	federal
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All remaining fiscal year 2007 federal budget amendment authority for the national potato cyst nematode survey is authorized to continue into state fiscal year 2008.

Department of Corrections

Administration and Support Services

All remaining fiscal year 2007 federal budget amendment authority for the Prison Rape Elimination Act grant is authorized to continue into state fiscal year 2008.

Department of Commerce

Housing Division

All remaining fiscal year 2007 federal budget amendment authority for the grant to address chronic homelessness in Cascade, Flathead, and Yellowstone Counties is authorized to continue into federal fiscal year 2009.

Department of Labor and Industry

Workforce Services Division

All remaining fiscal year 2007 federal budget amendment authority for the evolution of Montana's workforce by creation of innovative biolubricant and bioproduct manufacturing embryonic clusters grant is authorized to continue into state fiscal year 2009.

Unemployment Insurance Division

All remaining fiscal year 2007 federal budget amendment authority for the implementation and purchase of software for the dumping program grant, for the new businesses to electronically register and establish an account number over the internet grant, and for the additional federal authority grant to perform the following functions: data validation, national directory of new hire updates, identity theft deterrence, internal security, document information technology for the unemployment system, buy and install software for the automation of the O'Net code system for occupations of claimants, reduce postage costs, database cross-match with workers' compensation clients, and benefit payment control enhancements is authorized to continue into state fiscal year 2008.

Department of Military Affairs

Centralized Services

Star base grant	2007	\$300,000	federal
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All remaining fiscal year 2007 federal budget amendment authority for the star base grant is authorized to continue into state fiscal year 2008.

Army National Guard Program

All remaining fiscal year 2007 federal budget amendment authority for the grant to create redundant backup communications systems through a wireless wide-area network is authorized to continue into federal fiscal year 2008.

Disaster and Emergency Services

2005 predisaster mitigation competitive grant	2007	\$3,000,000	federal
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All remaining fiscal year 2007 federal budget amendment authority for state multihazard mitigation and assessment plan, for the fiscal year 2005 homeland security preparedness grant, and for the fiscal year 2006 homeland security preparedness grant is authorized to continue into state fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the homeland security buffer zone protection program is authorized to continue into federal fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the 2005 predisaster mitigation competitive grant is authorized to continue into federal fiscal year 2009.

Department of Public Health and Human Services

Human and Community Services

Food stamp bonus grant	2007	\$294,840	federal
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All remaining fiscal year 2007 federal budget amendment authority for the residential energy assistance challenge grant, for the food stamp program performance bonus grant, and for the temporary assistance for needy families (TANF) high-performance grant is authorized to continue into federal fiscal year 2009.

Child and Family Services

All remaining fiscal year 2007 federal budget amendment authority for the monthly caseworker visit grant is authorized to continue into federal fiscal year 2009.

Director's Office

Clinical decisionmaking	2007	\$853,122	federal
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All remaining fiscal year 2007 federal budget amendment authority for the clinical decisionmaking grant is authorized to continue into federal fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the Montana medicaid infrastructure grant is authorized to continue into state fiscal year 2008.

Public Health and Safety Division

All remaining fiscal year 2007 federal budget amendment authority for youth and young adult suicide prevention is authorized to continue into federal fiscal year 2008.

Integrate clinical laboratories into public health testing	2008	\$199,542	federal
	2009	\$199,542	federal

All remaining fiscal year 2007, fiscal year 2008, and fiscal year 2009 federal budget amendment authority for integrate clinical laboratories into public health testing is authorized to continue into federal fiscal year 2009.

Disability Services Division

All remaining fiscal year 2007 federal budget amendment authority for the general supervision enhancement grant is authorized to continue into federal fiscal year 2007.

Senior and Long-Term Care Services

Alzheimer's demonstration grant	2008	\$290,000	federal
Traumatic brain injury grant	2007	\$118,597	federal

All remaining fiscal year 2007 federal budget amendment authority for the Alzheimer's demonstration grant and the traumatic brain injury grant is authorized to continue into state fiscal year 2008.

All remaining fiscal year 2007 federal budget amendment authority for the one-stop aging and disability resource center initiative grant is authorized to continue into federal fiscal year 2008.

Addictive and Mental Disorders

All remaining fiscal year 2007 federal budget amendment authority for the strategic prevention framework state incentive grant is authorized to continue into federal fiscal year 2009.

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

Approved April 27, 2007

CHAPTER NO. 303

[HB 9]

AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECTS GRANT AWARDS; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE CULTURAL AND AESTHETIC PROJECTS TRUST FUND ACCOUNT; 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 3] and this section. Money must be disbursed in priority order, first to projects covered under subsection (3) and second to projects listed in [section 3].

(2) The Montana arts council shall disburse money to projects authorized by [section 3] 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 3].

(3) There is appropriated from the cultural and aesthetic projects trust fund account to the Montana historical society \$30,000 for the biennium ending July 1, 2009, for care and conservation of capitol complex artwork.

Section 2. Fund transfer. At the beginning of fiscal year 2008, the amount of \$1.5 million is transferred from the state general fund to the cultural and aesthetic projects trust fund account established in 15-35-108 for the purpose of protection of the works of art in the capitol and for other cultural and aesthetic projects. The intent of this fund transfer is to increase the corpus of the trust for purposes of generating interest earnings that provide funding to support programs and projects funded by the Montana arts council, and it is further the intent of the legislature that the money transferred in this section remain in the trust and not be appropriated for other purposes.

Section 3. Appropriation of cultural and aesthetic grant funds. The following projects are approved and \$698,770 is appropriated to the Montana arts council for the biennium ending June 30, 2009, from the cultural and aesthetic projects trust fund account:

Grant #	Grantee	Grant Amount
A.	Special Projects \$4,500 or Less	
1207	Signatures From the Big Sky	\$4,500
1202	Flathead Valley Community College	\$2,000
1205	Miles City Speakers Bureau	\$4,000
1208	Valley County Historical Museum	\$4,000
1200	Council for the Arts, Lincoln	\$2,500
1204	Metropolitan Opera National Council	\$1,000
B.	Special Projects	
1228	Montana Committee for the Humanities	\$22,000
1224	Helena Symphony Orchestra and Chorale	\$10,000
1236	Pondera History Association	\$10,000
1239	Western Heritage Center	\$10,000
1225	KUFM-TV, Montana PBS	\$10,000
1213	Butte Citizens for Preservation and Revitalization	\$10,000
1229	Montana Historical Society	\$7,000
1240	Yellowstone Chamber Players	\$6,000
1217	CoMotion Dance	\$10,000
1222	Glacier Symphony and Chorale	\$7,000
1232	Montana Performing Arts Consortium	\$15,000
1231	Montana Museum of Art and Culture	\$5,000
1234	Montana Shakespeare Company - Artists Group	\$6,000
1219	Emerson Cultural Center	\$7,000

1297	MONTANA SESSION LAWS 2007	Ch. 303
1227	Montana Alliance for Arts Education	\$5,000
1220	Equinox Theatre Company	\$8,000
1216	Children's Museum of Bozeman	\$5,000
1226	Missoula Art Museum	\$5,000
1210	Alpine Artisans	\$6,000
1223	Headwaters Dance Company	\$5,000
1241	Yellowstone Historic Center	\$8,000
C.	Operational Support	
1267	Montana Art Gallery Directors' Association	\$15,000
1276	Museums Association of Montana	\$10,000
1270	Montana Association of Symphony Orchestras	\$5,000
1269	Montana Arts	\$10,000
1272	Montana Dance Arts Association	\$5,000
1253	Custer County Art and Heritage Center	\$15,000
1285	Schoolhouse History and Art Center	\$14,000
1242	Alberta Bair Theater	\$14,000
1248	Bozeman Symphony Society	\$11,000
1244	Art Mobile of Montana	\$14,000
1286	Shakespeare in the Parks	\$15,000
1259	Hockaday Museum of Art	\$14,000
1257	Great Falls Symphony Association, Inc.	\$9,000
1273	Montana Preservation Alliance	\$13,000
1293	Yellowstone Art Museum	\$9,000
1280	Paris Gibson Square Museum of Art	\$13,000
1278	Myrna Loy Center	\$9,000
1249	Butte Center for the Performing Arts	\$12,000
1264	Missoula Children's Theatre	\$10,000
1260	Holter Museum of Art	\$12,000
1252	Carbon County Historical Society	\$11,000
1256	Grandstreet Theatre/Broadwater Productions	\$12,000
1274	Montana Repertory Theatre	\$10,000
1287	Southwest Montana Arts Council	\$8,000
1243	Archie Bray Foundation	\$10,000
1266	Montana Agricultural Center and Museum	\$8,000
1290	Whitefish Theatre Company	\$10,000
1255	Pioneer Museum - Gallatin Historical Museu	\$5,000
1288	Vigilante Theatre Company	\$8,000
1292	Writer's Voice (Billings YMCA)	\$12,000
1251	Carbon County Arts Guild	\$7,000

Ch. 304	MONTANA SESSION LAWS 2007	1298
1281	Pondera Arts Council	\$5,000
1282	Rimrock Opera Company	\$10,000
1247	Billings Symphony Society	\$8,000
1283	Rocky Mountain Ballet Theater	\$7,000
1250	Butte Symphony Association	\$8,000
1246	Big Horn Arts and Crafts Association	\$7,000
1289	VSA Arts of Montana	\$6,000
1271	Montana Ballet Company	\$5,000
1291	World Museum of Mining	\$8,000
1279	NW Montana Historical Society - Museum at Central School	\$5,000
1263	Mission Valley Friends of the Arts	\$4,000
1294	Young Audiences of Western MT	\$6,000
1245	Artisan Dance	\$4,000
1258	Hamilton Players, Inc.	\$6,000
1275	Museum of the Rockies	\$6,000
1284	CM Russell Museum	\$9,000
1261	Intermountain Opera	\$8,000
1254	District 7 HRDC Growth Thru Art	\$8,000
1262	Miles City Preservation Commission	\$2,270
D.	Capital Expenditure	
1295	Butte-Silver Bow Public Archives	\$15,000
1300	Mai Wah Society - Museum	\$17,500
1297	City of Shelby	\$8,000
1303	Yellowstone Ballet Company	\$3,000
1302	TVIA - Board of Arts	\$8,000

Section 4. Reversion of grant money. On July 1, 2009, the unencumbered balance of the 2009 biennium grants revert to the cultural and aesthetic projects trust fund account provided for in 15-35-108.

Section 5. Reduction of grants on pro rata basis. Except as provided in [section 1(3)], if money in the cultural and aesthetic projects trust fund account is insufficient to fund projects at the appropriation levels contained in [section 3], reductions to projects with funding greater than \$4,500 will be made on a pro rata basis.

Section 6. Effective date. [This act] is effective July 1, 2007.

Approved April 27, 2007

CHAPTER NO. 304

[HB 27]

AN ACT AUTHORIZING A WIRELESS ENHANCED 9-1-1 EMERGENCY TELEPHONE SYSTEM AND PROVIDING FOR ITS ADMINISTRATION;

PROVIDING FOR FUNDING OF THE SYSTEM BY LEVYING A WIRELESS ENHANCED 9-1-1 FEE; ESTABLISHING ACCOUNTS FOR THE DEPOSIT OF FEES COLLECTED; PROVIDING FOR DISTRIBUTION OF THE FEES COLLECTED; DEFINING ELIGIBILITY CRITERIA FOR WIRELESS COST RECOVERY; AMENDING SECTIONS 10-4-101, 10-4-102, 10-4-114, 10-4-201, AND 10-4-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 10-4-101, MCA, is amended to read:

“10-4-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) *“Allowable costs” means the actual costs associated with upgrading, purchasing, programming, installing, testing, operating, and maintaining data, hardware, and software necessary to comply with federal communications commission orders.*

(1)(2) *“Basic 9-1-1 account” means the 9-1-1 emergency telecommunications account established in 10-4-301(1)(a).*

(2)(3) *“Basic 9-1-1 service” means a telephone service meeting the standards established in 10-4-102 that automatically connects a person dialing the digits 9-1-1 to an established public safety answering point.*

(3)(4) *“Basic 9-1-1 system” includes equipment for connecting and outswitching 9-1-1 calls within a telephone central office, trunking facilities from the central office to a public safety answering point, and equipment, as appropriate, that is used for transferring the call to another point, when appropriate, and that is capable of providing basic 9-1-1 service.*

(5) *“Commercial mobile radio service” means:*

(a) *a mobile service that is:*

(i) *provided for profit with the intent of receiving compensation or monetary gain;*

(ii) *an interconnected service; and*

(iii) *available to the public or to classes of eligible users so as to be effectively available to a substantial portion of the public; or*

(b) *a mobile service that is the functional equivalent of a mobile service described in subsection (5)(a).*

(4)(6) *“Department” means the department of administration provided for in Title 2, chapter 15, part 10.*

(5)(7) *“Direct dispatch” means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, provides for a decision as to the proper action to be taken and for dispatch of appropriate emergency service units.*

(6)(8) *“Emergency” means an event that requires dispatch of a public or private safety agency.*

(7)(9) *“Emergency services” means services provided by a public or private safety agency, including law enforcement, firefighting, ambulance or medical services, and civil defense services.*

(8)(10) *“Enhanced 9-1-1 account” means the 9-1-1 emergency telecommunications account established in 10-4-301(1)(b).*

(9)(11) "Enhanced 9-1-1 service" means telephone service that meets the requirements for basic 9-1-1 service and that consists of selective routing with the capability of automatic number identification and automatic location identification at a public safety answering point enabling users of the public telecommunications system to request emergency services by dialing the digits 9-1-1.

(10)(12) "Enhanced 9-1-1 system" includes customer premises equipment that is directly related to the operation of an enhanced 9-1-1 system, including but not limited to automatic number identification or automatic location identification controllers and display units, printers, and software associated with call detail recording, and that is capable of providing enhanced 9-1-1 service.

(11)(13) "Exchange access services" means:

(a) telephone exchange access lines or channels that provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) unless a separate tariff rate is charged for the exchange access lines or channels, any facility or service provided in connection with the services described in subsection (11)(a) (13)(a).

(14) "*Federal communications commission order*" means a federal communications commission enhanced 9-1-1 first report and order addressing 47 CFR 20.18.

(12)(15) A "9-1-1 jurisdiction" means a group of public or private safety agencies who operate within or are affected by one or more common central office boundaries and who have agreed in writing to jointly plan a 9-1-1 emergency telephone system.

(16) "*Phase I wireless enhanced 9-1-1*" means a 9-1-1 system that automatically delivers number information to the public safety answering point for wireless calls.

(17) "*Phase II wireless enhanced 9-1-1*" means a 9-1-1 system that automatically delivers number information and location information to the public safety answering point for wireless calls.

(18) "*Place of primary use*" means the primary business or residential street address location at which an end-use customer's use of the commercial mobile radio service primarily occurs.

(13)(19) "Private safety agency" means any entity, except a public safety agency, providing emergency fire, ambulance, or medical services.

(14)(20) "Provider" means a public utility, cooperative telephone company, or any other entity that provides telephone exchange access services.

(15)(21) "Public safety agency" means the state and any city, county, city-county consolidated government, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state that provides or has authority to provide emergency services.

(16)(22) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives 9-1-1 calls from persons in a 9-1-1 service area and that may, as appropriate, directly dispatch public or private safety services or transfer or relay 9-1-1 calls to appropriate public safety agencies.

(17)(23) "Relay" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays the information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

(18)(24) "Subscriber" means an end user who receives telephone exchange access services *or who contracts with a wireless provider for commercial mobile radio services.*

(19)(25) "Transfer" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers the request to an appropriate public safety answering agency or other provider of emergency services.

(26) "*Wireless enhanced 9-1-1" means either phase I wireless enhanced 9-1-1 or phase II wireless enhanced 9-1-1.*

(27) "*Wireless enhanced 9-1-1 account" means the wireless enhanced 9-1-1 account established in 10-4-301.*

(28) "*Wireless provider" means an entity, as defined in 35-1-113, that is authorized by the federal communications commission to provide facilities-based commercial mobile radio service within this state.*"

Section 2. Section 10-4-102, MCA, is amended to read:

"10-4-102. Department of administration duties and powers. (1) The department shall assist in the development of basic and enhanced 9-1-1 systems in the state. The department shall:

(a) establish procedures for determining and evaluating requests for variations from basic or enhanced 9-1-1 service;

(b) upon request of a 9-1-1 jurisdiction, assist in planning a basic or enhanced 9-1-1 system;

(c) establish criteria for evaluating basic and enhanced 9-1-1 system plans;

(d) monitor implementation of approved basic and enhanced 9-1-1 system plans for compliance with the plan and use of funding; and

(e) as it finds necessary, report to the legislature the progress made in implementing statewide basic and enhanced 9-1-1 systems *and in implementing wireless enhanced 9-1-1 services.*

(2) The department shall obtain input from all 9-1-1 jurisdictions by creating an advisory council to participate in development and implementation of the 9-1-1 program in the state. The council must be established pursuant to 2-15-122. The highway patrol, emergency medical services organizations, telephone companies, the associated public safety communicators, the department of emergency services, police departments, sheriff's offices, local citizens, organizations, and other public safety organizations may submit recommendations for membership on the advisory council."

Section 3. Section 10-4-114, MCA, is amended to read:

"10-4-114. Rulemaking authority. The department may adopt rules to implement the provisions of this chapter. The rules may include but are not limited to:

(1) establishing procedures to evaluate and make determinations on requests for a variation of the basic or enhanced 9-1-1 service;

(2) establishing evaluation criteria for basic and enhanced 9-1-1 systems plans;

(3) establishing requirements for program participation by public and private safety agencies;

(4) establishing guidelines for the distribution of funds; and

(5) ~~specifying reporting requirements~~ *establishing requirements regarding applications for reimbursement for allowable costs to wireless providers for enabling wireless enhanced 9-1-1 services.*

Section 4. Submission of phase I and phase II wireless notification by wireless provider. (1) A wireless provider must meet the following requirements to be eligible for wireless cost recovery:

(a) Within 30 days of receipt of a formal phase I and phase II request from a public safety answering point, the wireless provider shall submit to the department a notification stating the anticipated date of deployment and the number of subscribers, based on billing addresses, for the 9-1-1 jurisdiction.

(b) The department shall first determine that the wireless provider is providing phase I and phase II functionality to the public safety answering point. The wireless provider is responsible for notifying the department of the date of deployment and proof of acceptance tests.

(2) A 9-1-1 jurisdiction must be ready to provide phase I and phase II wireless service and have submitted a phase I and phase II wireless request to the wireless providers providing service in the jurisdiction's area.

Section 5. Section 10-4-201, MCA, is amended to read:

~~“10-4-201. Fees imposed for telephone exchange access services 9-1-1 services.~~ (1) Except as provided in 10-4-202:

(a) for basic 9-1-1 services, a fee of 25 cents a month per access line on each service subscriber in the state is imposed on the amount charged for telephone exchange access services, wireless telephone service, or other 9-1-1 accessible services; ~~and~~

(b) for enhanced 9-1-1 services, a fee of 25 cents a month per access line on each service subscriber in the state is imposed on the amount charged for telephone exchange access services, wireless telephone service, or other 9-1-1 accessible services; *and*

(c) *for wireless enhanced 9-1-1 services, a fee of 50 cents a month per access line or subscriber in the state is imposed on the amount charged for telephone exchange access services, wireless telephone service, or other 9-1-1 accessible services.*

(2) The subscriber paying for exchange access line services is liable for the fees imposed by this section.

(3) The provider shall collect the fees. The amount of the fees collected by the provider is considered payment by the subscriber for that amount of fees.

(4) Any return made by the provider collecting the fees is prima facie evidence of payments by the subscribers of the amount of fees indicated on the return.”

Section 6. Section 10-4-301, MCA, is amended to read:

“10-4-301. Establishment of emergency telecommunications accounts. (1) There are established in the state special revenue fund in the state treasury:

(a) an account for all fees collected for basic 9-1-1 services pursuant to 10-4-201(1)(a); ~~and~~

(b) an account for all fees collected for enhanced 9-1-1 services pursuant to 10-4-201(1)(b); *and*

(c) *an account for all fees collected for wireless enhanced 9-1-1 services pursuant to 10-4-201(1)(c). The money is allocated as follows:*

(i) *50% of the account must be deposited in an account for distribution to the 9-1-1 jurisdictions; and*

(ii) *50% of the account must be deposited in an account for distribution to wireless providers.*

(2) All money received by the department of revenue pursuant to 10-4-201 must be paid to the state treasurer for deposit in the appropriate account. An amount equal to 3.74% of the money received pursuant to 10-4-201 must be deposited in the state general fund.

(3) The accounts established in subsection (1) retain interest earned from the investment of money in the accounts.

(4) After payment of refunds pursuant to 10-4-205, the balance of the respective accounts must be used for the purposes described in part 1 of this chapter.

(5) The distribution of funds in the 9-1-1 emergency telecommunications accounts described in subsection (1), as required by 10-4-302, ~~and~~ 10-4-311, *and [section 7]*, is statutorily appropriated, as provided in 17-7-502, to the department.

(6) Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from appropriations made for that purpose.”

Section 7. Distribution of wireless enhanced 9-1-1 account by department. (1) The department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account for allowable costs described in 10-4-301(1)(c)(ii) incurred by each wireless provider in each 9-1-1 jurisdiction as follows:

(a) For each fiscal year through the fiscal year ending June 30, 2011:

(i) 84% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. The wireless provider in each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the balance of the account must be distributed evenly to the wireless providers providing wireless enhanced 9-1-1 in counties with 1% or less of the total population of the state.

(b) For fiscal years beginning after June 30, 2011, 100% of the balance of the account must be allocated to the wireless providers providing wireless enhanced 9-1-1 in each county on a per capita basis. Each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(c) If the department is unable to fully reimburse a wireless provider under subsection (1)(a) in any quarter, the department shall in the subsequent quarter pay from the allocation under subsection (1)(a) to wireless providers any unpaid balances from the previous quarter. If the amount available is insufficient to pay all previous unpaid balances, the department shall repeat the process of paying unpaid balances that remain unpaid for as many quarters as necessary until all unpaid balances are fully paid. The department shall review all invoices for appropriateness of costs claimed by the wireless provider. If the wireless provider contests the review, payment may not be made until the amount owed to the wireless provider is determined.

(d) A wireless provider shall submit an invoice for cost recovery according to the allowable costs.

(e) The department shall determine the percentage of overall subscribers, based on billing addresses, within the 9-1-1 jurisdiction for each wireless provider seeking cost recovery by dividing the wireless provider's subscribers by the total number of subscribers in that 9-1-1 jurisdiction. The percentage must be applied to the total wireless provider funds for that 9-1-1 jurisdiction, and each wireless provider shall receive distribution based on the provider's percentage. To receive cost recovery, wireless providers shall submit subscriber counts to the department on a quarterly basis. The subscriber count must be provided for each 9-1-1 jurisdiction in which the wireless provider receives cost recovery within 30 calendar days following the end of each quarter. The department shall recalculate distribution percentages on a quarterly basis.

(f) If the department determines that a wireless provider has submitted costs that exceed allowable costs or are not submitted in the manner prescribed in [section 4], the department may, after giving notice to the wireless provider, suspend or withhold payment from the wireless enhanced 9-1-1 account.

(2) The department shall make quarterly distribution of the portion of the wireless enhanced 9-1-1 account described in 10-4-301(1)(c)(i) to each 9-1-1 jurisdiction in accordance with 10-4-311(3) as follows:

(a) for each fiscal year through the fiscal year ending June 30, 2011:

(i) 84% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the balance of the account must be distributed evenly to the counties with 1% or less than 1% of the total population of the state; and

(b) for fiscal years beginning after June 30, 2011, 100% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

Section 8. Codification instruction. [Sections 4 and 7] are intended to be codified as an integral part of Title 10, chapter 4, and the provisions of Title 10, chapter 4, apply to [sections 4 and 7].

Section 9. Effective date. [This act] is effective July 1, 2007.

Approved April 30, 2007

CHAPTER NO. 305

[HB 63]

AN ACT PROVIDING FOR THE ACTUARIAL FUNDING OF THE TEACHERS' RETIREMENT SYSTEM; PROVIDING A SUPPLEMENTAL CONTRIBUTION, PAYABLE BY THE STATE, TO THE TEACHERS' RETIREMENT SYSTEM FOR EMPLOYEES OF SCHOOL DISTRICTS AND COMMUNITY COLLEGES; PROVIDING FOR A STATUTORY APPROPRIATION; REVISING DEFINITIONS; ESTABLISHING STATE POLICY REGARDING TEACHERS' RETIREMENT; REVISING THE REQUIREMENTS FOR THE TEACHERS' RETIREMENT BOARD TO SET THE TEACHERS' RETIREMENT SYSTEM'S REGULAR INTEREST RATE; INCREASING THE EMPLOYER CONTRIBUTION RATE FOR TEACHERS' RETIREMENT; INCREASING THE SUPPLEMENTAL CONTRIBUTION TO THE OPTIONAL RETIREMENT PROGRAM; ELIMINATING THE AUTHORITY OF THE TEACHERS' RETIREMENT BOARD TO INCREASE THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT; REVISING AND CLARIFYING THE MAXIMUM AMOUNT OF COMPENSATION A RETIRED MEMBER OF THE TEACHERS' RETIREMENT SYSTEM MAY EARN UNDER CERTAIN CIRCUMSTANCES; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 17-7-502, 19-20-101, 19-20-102, 19-20-501, 19-20-605, 19-20-621, 19-20-716, 19-20-719, AND 19-20-731, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Supplemental state contribution. (1) Each month, the state shall contribute, as a supplemental contribution to the teachers' retirement system, from the general fund to the pension trust fund an amount equal to:

(a) beginning July 1, 2007, through June 30, 2009, 2% of the total earned compensation of school district and community college active members participating in the system; and

(b) beginning July 1, 2009, 2.38% of the total earned compensation of school district and community college active members participating in the system.

(2) The contributions are statutorily appropriated, as provided in 17-7-502, to the pension trust fund. The board shall determine and shall certify to the state treasurer amounts due under this section on a monthly basis. The state treasurer shall transfer the certified amounts to the pension trust fund within 1 week following receipt of the certification from the board.

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 10-2-603; 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; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; [section 1]; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; 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, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 3. Section 19-20-101, MCA, is amended to read:

"19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings fund, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) "Average final compensation" means the average of a member's earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of average final compensation. If amounts

defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under 19-20-716(1)(b).

(4) "Beneficiary" means one or more persons formally designated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.

(5) "Creditable service" is that service defined by 19-20-401.

(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation.

(b) Earned compensation does not mean:

(i) direct employer premium payments on behalf of members for health or dependent care expense accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for:

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

(E) automobile, travel, lodging, or entertaining expenses; or

(F) any similar payment for any form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or

(iv) any noncash benefit provided by an employer to or on behalf of an employee.

(c) Unless included pursuant to 19-20-716, earned compensation does not include termination pay.

(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(e) Earned compensation does not include:

(i) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);

(ii) payment for sick, annual, or other types of leave that is allowed to a member and that is accrued in excess of that normally allowed; or

(iii) incentive or bonus payments paid to a member that are not part of a series of annual payments.

(7) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state that employs a person who is designated a member of the retirement system.

(8) “Full-time service” means service that is full-time and that extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, full-time service means service that is full-time and that totals at least 9 months in any year at least 180 days in a fiscal year or at least 140 hours a month during 9 months in a fiscal year.

(9) “Internal Revenue Code” has the meaning provided in 15-30-101.

(10) “Member” means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

(11) “Normal retirement age” means an age no earlier than the age at which the member is eligible to retire:

(a) by virtue of age, length of service, or both;

(b) without disability; and

(c) with the right to receive immediate retirement benefits without an actuarial reduction in the benefits.

(12) “Part-time service” means service that is less than full-time or that totals less than 180 days in a normal academic year. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

(13) “Prior service” means employment of the same nature as service but rendered before September 1, 1937.

(14) “Regular interest” means interest at a rate set by the retirement board in accordance with 19-20-501(2).

(15) “Retired member” means a person who has terminated employment that qualified the person for membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant to this chapter.

(16) “Retirement allowance” means a monthly payment due to a person who has qualified for service or disability retirement or due to a beneficiary as provided in 19-20-1001.

(17) “Retirement board” or “board” means the retirement system’s governing board provided for in 2-15-1010.

(18) “Retirement system”, “system”, or “plan” means the teachers’ retirement system of the state of Montana provided for in 19-20-102.

(19) “Service” means the performance of instructional duties or related activities that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(20) “Termination” or “terminate” means that the member has severed the employment relationship with the member’s employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

(21) (a) “Termination pay” means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating

employment and on which employee and employer contributions have been paid as required by 19-20-716.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

(22) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, as required by 19-20-602, ~~and~~ 19-20-605, *and [section 1]*, and who has a right to a future retirement benefit.

(23) "Written application" or "written election" means a written instrument, required by statute or the rules of the board, properly signed, and filed with the board, that contains all the required information, including documentation that the board considers necessary."

Section 4. Section 19-20-102, MCA, is amended to read:

"19-20-102. Retirement system — *policy*. (1) The state teachers' retirement system created under the provisions of Chapter 87, Laws of 1937, is ~~hereby recognized as~~ the state teachers' retirement system of the state of Montana, and ~~no~~ *the* provisions of this chapter ~~shall do not~~ affect or impair the validity of any action taken by its governing board or the rights of any person arising under the provisions of Chapter 87, Laws of 1937, or any subsequent amendment ~~thereto to this chapter~~. ~~Such~~ *The* state teachers' retirement system ~~shall be~~ *is* known as "The Teachers' Retirement System of the State of Montana" and in that name shall transact all business of the retirement system, hold its assets in trust, and have ~~such~~ *the* powers and privileges of a corporation that may be necessary to ~~carry into effect~~ *administer* the provisions of this chapter.

(2) *It is the policy of the state to:*

(a) *provide equitable retirement benefits to members of the teachers' retirement system based on each member's normal service retirement and salary;*

(b) *limit the effect on the retirement system of isolated salary increases received by a member, including but not limited to end-of-career promotions or one-time salary enhancements during the member's last years of employment; and*

(c) *limit the compensation that a retired member may earn after retirement while working in a position that would normally be covered under the teachers' retirement system to the amount determined under 19-20-731."*

Section 5. Section 19-20-501, MCA, is amended to read:

"19-20-501. Financial administration of money. The members of the retirement board are the trustees of all money collected for the retirement system, and as trustees, they shall provide for the financial administration of the money as provided in Article VIII, section 15, of the Montana constitution in the following manner:

(1) The money must be invested and reinvested by the state board of investments.

(2) The retirement board shall annually establish the rate of regular interest. ~~The rate established by the board may not be less than 4%.~~

(3) The retirement board shall annually divide among the several reserves of the retirement system an amount equal to the average balance of the reserves during the preceding fiscal year multiplied by the rate of regular interest. In accordance with the provisions of 19-20-605(5)(7), the amount to be credited to each reserve must be allocated from the interest and other earnings on the money of the retirement system actually realized during the preceding fiscal year, less the amount allocated to administrative expenses. The administrative expenses of the retirement system, less amortization of intangible assets, may not exceed 1.5% of retirement benefits paid.

(4) The state treasurer is the custodian of the collected retirement system money and of the securities in which the money is invested.

(5) For purposes of Article VIII, section 12, of the Montana constitution, all the reserves established by part 6 of this chapter must be accounts in the pension trust fund type of the treasury fund structure of the state.

(6) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination.”

Section 6. Section 19-20-605, MCA, is amended to read:

“19-20-605. Pension accumulation fund — employer’s contribution.

(1) The pension accumulation fund is the fund in which the reserves for payment of retirement allowances and benefits must be accumulated and from which retirement allowances and benefits must be paid to retirees or their beneficiaries. Contributions to and payments from the pension accumulation fund must be made as follows: *provided in this section.*

~~(1) Each~~ (2) *Except as provided in subsection (3), for each member employed during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation fund an amount equal to: 7.47% of the earned compensation of each member employed during the whole or part of the preceding payroll period*

(a) *beginning July 1, 2007, through June 30, 2009, 9.47% of total earned compensation; and*

(b) *beginning July 1, 2009, 9.85% of total earned compensation.*

(3) *For each member employed by a school district or a community college during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation fund an amount equal to 7.47% of total earned compensation.*

(2)(4) If the employer is a district or community college district, the trustees shall budget and pay for the employer’s contribution under the provisions of 20-9-501.

(3)(5) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer’s contribution.

(4)(6) If the employer is a county, the county commissioners shall budget and pay for the employer’s contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(5)(7) All interest and other earnings realized on the money of the retirement system must be credited to the pension accumulation fund, and the amount required to allow regular interest on the annuity savings fund must be transferred to that fund from the pension accumulation fund.

(6)(8) The retirement board may transfer from the pension accumulation fund to the expense fund an amount necessary to cover expenses of administration.”

Section 7. Section 19-20-621, MCA, is amended to read:

“19-20-621. Montana university system optional retirement program supplemental contributions. (1) Each employer within the university system with employees participating in the optional retirement program under Title 19, chapter 21, shall contribute to the teachers’ retirement system a supplemental employer contribution sufficient to amortize, by July 1, 2033, the past service liability of the teachers’ retirement system for the university system members.

(2) The optional retirement program supplemental employer contribution as a percentage of the total compensation of all employees participating in the program ~~must increase to is:~~

(a) ~~2.81% beginning July 1, 1997;~~

(b) ~~3.12% beginning July 1, 1998;~~

(c) ~~3.42% beginning July 1, 1999;~~

(d) ~~3.73% beginning July 1, 2000; and~~

(e)(a) 4.04% beginning July 1, 2001, *through June 30, 2007; and*

(b) 4.72% *beginning July 1, 2007.*

(3) The board shall periodically review the supplemental employer contribution rate and recommend adjustments to the legislature as needed to maintain the amortization of the university system’s past service liability by July 1, 2033.”

Section 8. Section 19-20-716, MCA, is amended to read:

“19-20-716. Termination pay. (1) If a member terminates and receives termination pay at the time of retirement, the member shall select, subject to subsections (4) and (5), by signing a binding, irrevocable written election at least 90 days before the member’s termination date, one of the following options:

(a) Option 1—The member may use the total termination pay in the calculation of the member’s average final compensation. The member and the employer shall pay contributions to the retirement system as determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time of termination.

(b) Option 2—The member may use a yearly amount of the total termination pay added to each of the 3 consecutive years’ salary used in the calculation of the member’s average final compensation. To determine the amount of termination pay used in the calculation of average final compensation, termination pay must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602 and 19-20-605(1). *For the purposes of this subsection (1)(b), the employer shall also pay as a contribution an amount equal to the termination pay multiplied by the rate established in [section 1] that would have been payable by the state as a*

supplemental contribution. The contributions must be made at the time of termination.

(c) Option 3—The member may exclude the termination pay from the average final compensation. A contribution is not required of either the member or the employer.

(2) A binding, irrevocable written election required by this section must be signed by both the member and the employer at least 90 days prior to the member's termination date and must contain statements with regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:

(a) the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the system in lieu of contributions by the member and that the picked up contributions are paid from the same source as compensation is paid;

(b) the member may not choose to directly receive the amounts deducted from the member's termination pay instead of having them paid by the employer to the system;

(c) the member may not prepay any portion of the contributions; and

(d) the effective date of the pickup is the date that the irrevocable written election is signed by both the member and employer. The effective date must be at least 90 days prior to the date of the member's termination. The pickup does not apply to a contribution made before the effective date of the pickup.

(3) Pursuant to subsection (2), contributions required under subsection (1)(a) or (1)(b) must be:

(a) deducted from the portion of termination pay that:

(i) constitutes wages for the purposes of section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) can be included in the member's gross income for federal tax purposes; and

(b) picked up by the employer, except as provided in subsections (4) and (5).

(4) A member's contributions greater than the total amount of the member's termination pay may not be picked up by the employer and are subject to the limitations of section 415 of the Internal Revenue Code.

(5) If a member and the member's employer fail to sign the written election within the time period required in subsection (1), the member may contribute for the purposes specified in subsections (1)(a) and (1)(b) on all or any part of the termination pay received. A contribution made pursuant to this subsection may not be picked up by the employer and is subject to the limitations of section 415 of the Internal Revenue Code."

Section 9. Section 19-20-719, MCA, is amended to read:

"19-20-719. Guaranteed annual benefit adjustment — rulemaking.

(1) ~~Subject to subsection (3), on~~ On January 1 of each year, the retirement allowance payable to each recipient who is eligible under subsection (2) must be increased by 1.5%.

(2) A benefit recipient is eligible for and must receive the ~~minimum~~ annual benefit adjustment provided for in this section if the retiree has received at least

36 monthly retirement benefit payments prior to January 1 of the year in which the adjustment is to be made.

~~(3) On January 1, 2002, and January 1 of each year following the system's biennial valuation, the board may increase the annual benefit adjustment provided in subsection (1) until a maximum of 3% is guaranteed if:~~

~~(a) the period required to amortize the system's actuarial unfunded liability, as determined by the most recent biennial valuation, adjusted for any benefit enhancement enacted by the legislature since the most recent biennial valuation, is less than 25 years;~~

~~(b) sufficient funds are available to increase the guaranteed annual benefit adjustment by at least 0.1%; and~~

~~(c) the increase granted by the board would not cause the amortization period, as of the most recent valuation, to exceed 25 years.~~

~~(4) The board shall adopt rules to administer the provisions of this section."~~

Section 10. Section 19-20-731, MCA, is amended to read:

"19-20-731. Postretirement employment limitations — cancellation and recalculation of benefits. (1) (a) Except as otherwise provided in this section, a retired member may be employed part-time by a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

~~(a)(i)~~ one-third of the sum of the member's average final compensation; or

~~(b)(ii)~~ one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) For the purposes of this subsection (1), the maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all remuneration paid to the retired member, excluding:

(i) the amount of health insurance premiums paid by the employer on the retired member's behalf;

(ii) the value of housing provided by the employer to the retired member;

(iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;

(iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and

(v) payroll taxes paid by the employer on behalf of the retired member.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(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 calendar year.

(3) Except as provided in subsection (5), the retirement benefit of a retired member:

(a) employed in a part-time position or earning more than allowed by subsections (1) and (2) must be temporarily reduced by \$1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as

soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be canceled if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in a full-time position must be canceled beginning in the month in which the retired member returns to full-time employment.

(4) Upon termination and retirement subsequent to a cancellation of benefits pursuant to subsection (3), the retirement benefit of a member:

(a) who was reemployed and earned less than 1 year of creditable service must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later. The reinstated retirement benefit is the amount and option that the retired member would have been entitled to receive had the retired member not returned to employment.

(b) who was reemployed and earned at least 1 year of creditable service must be recalculated under 19-20-804 if the member has attained normal retirement age or under 19-20-802 if the member has not attained normal retirement age but is eligible for early retirement. 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. The recalculated normal form benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were canceled.

(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 canceled."

Section 11. Appropriations. (1) There is appropriated \$50 million from the general fund to the teachers' retirement system.

(2) The following money is appropriated to implement the supplemental state contribution and employer contribution rate increases provided for in [this act]:

	Fiscal Year 2008		Fiscal Year 2009	
	General Funds	Other Funds	General Funds	Other Funds
State Agencies	\$89,298	\$35,607	\$92,788	\$36,785
University System	\$1,045,800		\$1,023,853	

Section 12. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 19, chapter 20, part 6, and the provisions of Title 19, chapter 20, part 6, apply to [section 1].

Section 13. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2007.

(2) [Sections 3, 4, 11(1), and this section] are effective on passage and approval.

Approved April 27, 2007

CHAPTER NO. 306

[HB 95]

AN ACT PROVIDING A STATUTORY APPROPRIATION TO FUND A STATE CONTRIBUTION TO ACCOUNTS OF CERTAIN EMPLOYEES PARTICIPATING IN THE OPTIONAL RETIREMENT PROGRAM; REQUIRING A STATE CONTRIBUTION TO ACCOUNTS OF CERTAIN EMPLOYEES PARTICIPATING IN THE OPTIONAL RETIREMENT PROGRAM; AMENDING SECTIONS 17-7-502 AND 19-21-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 10-2-603; 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; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; 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, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)”

Section 2. Section 19-21-203, MCA, is amended to read:

“19-21-203. Contributions — supplemental and plan choice rate contributions. The following provisions apply to program participants not otherwise covered under 19-21-214:

(1) (a) Each program participant shall contribute an amount equal to the member’s contribution required under 19-20-602.

(b) (i) *Each month, the board of regents shall calculate an amount equal to 1% of each participant’s earned compensation, total the amounts calculated, and certify to the state treasurer the total amount for all participants combined.*

(ii) *Within 1 week of receiving notice of the certified amount, the state treasurer shall transfer the certified amount from the general fund to the board of regents. Upon receipt of the amount transferred, the board shall allocate and deposit to the account of each participant the amount calculated for that participant under subsection (1)(b)(i). The amounts transferred under this subsection (1)(b)(ii) are statutorily appropriated, as provided in 17-7-502.*

(c) The board of regents shall contribute an amount that, when added to *the sum of the participant’s contribution plus the contribution made under subsection (1)(b)(ii)*, is equal to ~~12%~~ 13% of the participant’s earned compensation.

(2) (a) The board of regents may:

(i) reduce the participant’s contribution rate established in subsection (1) to an amount not less than 6% of the participant’s earned compensation; and

(ii) increase the employer’s contribution rate to an amount not greater than 6% of the participant’s earned compensation.

(b) *The Notwithstanding the supplemental contributions required under 19-20-604 and subsection (5) of this section, the sum of the participant’s contributions made under subsection (1)(a), the state’s contributions made under subsection (1)(b), and the employer’s contributions made under subsection (2)(a) (1)(c) must remain at ~~12%~~ 13% of the participant’s earned compensation.*

(3) The board of regents shall determine whether the participant’s contribution is to be made by salary reduction under section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b), as amended, or by employer pickup under section 414(h)(2) of that code, 26 U.S.C. 414(h)(2), as amended.

(4) The disbursing officer of the employer or other official designated by the board of regents shall pay both the participant’s contribution and the appropriate portion of the board of regents’ contribution to the designated company or companies for the benefit of the participant.

(5) The board of regents shall make the supplemental contributions to the teachers’ retirement system, as provided in 19-20-621, to discharge the obligation incurred by the Montana university system for the past service liability incurred by active, inactive, and retired members of the teachers’ retirement system.”

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved April 28, 2007

CHAPTER NO. 307

[HB 125]

AN ACT APPROPRIATING FUNDS TO REPAY IN FULL THE LOAN FOR THE STARTUP COSTS OF THE DEFINED CONTRIBUTION RETIREMENT PLAN IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Appropriation to repay startup loan for defined contribution plan. There is appropriated from the general fund to the public employees' retirement board \$1.4 million to be used exclusively for repaying the loan for startup costs of the defined contribution retirement plan as provided for in section 74, Chapter 471, Laws of 1999. The loan must be repaid as soon as practicable. If funds from the appropriation exceed the amount necessary to repay the loan in full, all excess funds appropriated revert to the general fund.

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

Approved April 28, 2007

CHAPTER NO. 308

[HB 136]

AN ACT PROVIDING FOR PAYMENT OF A STATE DEATH BENEFIT TO BENEFICIARIES OF MEMBERS OF THE MONTANA NATIONAL GUARD WHO DIE IN THE LINE OF DUTY WHILE ON STATE ACTIVE DUTY; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 15-30-116 AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Death while on state duty — death benefit payment — certification — rules. (1) The department of administration shall, upon certification by the department as provided in subsection (2), make a death benefit payment by state warrant in the amount of \$50,000 to the beneficiary, as provided in subsection (3), of a member of the national guard who dies in the line of duty performed pursuant to state active duty orders.

(2) Upon the death of the member, the department shall certify to the department of administration:

- (a) the name and other identifying information of the member;
- (b) that the member died in the line of duty performed pursuant to Article VI, section 13, of the Montana constitution;
- (c) that, at the time of the death of the member, the member was being paid or was to be paid for the member's military service from state and not federal military funds; and

(d) the name and address of the beneficiary, as provided in subsection (3), to whom payment must be made.

(3) The department of administration shall pay the death benefit to the member's surviving spouse. If there is no surviving spouse, the department of administration shall pay the death benefit to the member's surviving children in equal shares. If there are no surviving children, the department of administration shall pay the death benefit to the member's survivors pursuant to Title 72 as if the member had died intestate.

(4) The department and the department of administration may adopt rules to implement this section.

Section 2. Section 15-30-116, MCA, is amended to read:

"15-30-116. (Temporary) Veterans' bonus, or military salary, or death benefit — exemptions. (1) All payments made under the World War I bonus law, the Korean bonus law, and the veterans' bonus law are exempt from taxation under this chapter. Any income tax that has been or may be paid on income received from the World War I bonus law, the Korean bonus law, and the veterans' bonus law is considered an overpayment and must be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

(2) The salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana is exempt from state income tax.

(3) The amount received pursuant to 10-1-1104 or from the federal government by a service member, as defined in 10-1-1102, as reimbursement for group life insurance premiums paid is considered to be a bonus and is exempt from taxation under this chapter.

(4) *The amount received by a beneficiary pursuant to [section 1] is exempt from taxation under this chapter.* (Terminates on occurrence of contingency—sec. 9, Ch. 604, L. 2005.)

15-30-116. (Effective on occurrence of contingency) Veterans' bonus, or military salary, or death benefit — exemptions. (1) All payments made under the World War I bonus law, the Korean bonus law, and the veterans' bonus law are hereby exempt from taxation under the income tax laws of the state of Montana, and any income tax which has been or may hereafter be paid on income received from this source shall be considered an overpayment and shall be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

(2) The salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana is exempt from state income tax.

(3) *The amount received by a beneficiary pursuant to [section 1] is exempt from taxation under this chapter.*"

Section 3. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; [section 4]; 10-2-603; 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; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; 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, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 4. Statutory appropriation. The payment to a beneficiary certified pursuant to [section 1] is statutorily appropriated, as provided in 17-7-502, from the general fund to the department of administration.

Section 5. Codification instruction. [Sections 1 and 4] are intended to be codified as an integral part of Title 10, chapter 1, and the provisions of Title 10, chapter 1, apply to [sections 1 and 4].

Section 6. Effective date. [This act] is effective July 1, 2007.

Approved April 27, 2007

CHAPTER NO. 309

[HB 139]

AN ACT CREATING A LEGISLATIVE BRANCH RETIREMENT TERMINATION RESERVE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION AND A FUND TRANSFER; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Legislative branch retirement termination reserve account. (1) There is a legislative branch retirement termination reserve account in the state special revenue fund. Money may be deposited in the account through an allocation of money to the account or as provided in 17-7-304.

(2) (a) The money in the account is statutorily appropriated, as provided in 17-7-502, to the legislative services division to be used only for staff retirement termination pay in the legislative branch.

(b) The money in the account may be expended only with the approval of the appropriate branch division director for eligible termination pay expenditures for division staff.

(3) The account is limited to an amount to be calculated at the beginning of each biennium based on an analysis by branch division directors of the staff eligible for retirement within the biennium. For the 2009 biennium, the limit is set at \$400,000.

(4) The money in the account must be invested pursuant to Title 17, chapter 6. The income and earnings on the account must be deposited in the account.

Section 2. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; [section 1]; 5-13-403; 10-2-603; 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; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415;

69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; 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, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 3. Fund transfer. There is transferred \$400,000 from the general fund in fiscal year 2008 to the legislative branch retirement termination reserve account provided for in [section 1].

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 5, chapter 11, and the provisions of Title 5, chapter 11, apply to [section 1].

Section 5. Effective date. [This act] is effective July 1, 2007.

Approved April 28, 2007

CHAPTER NO. 310

[HB 148]

AN ACT EXPANDING THE DEFINITION OF "PUBLIC SWIMMING POOL"; DEFINING TERMS; IMPOSING FEES FOR THE REVIEW OF PLANS RELATING TO THE CONSTRUCTION OR ALTERATION OF PUBLIC SWIMMING POOLS OR PUBLIC BATHING PLACES; CLARIFYING THE TERM "SEPARATE" WITH REGARD TO PUBLIC SWIMMING POOLS; INCREASING FEES FOR LICENSURE OF PUBLIC SWIMMING POOLS, PUBLIC BATHING PLACES, AND SPAS OR WADING POOLS; AUTHORIZING LOCAL BOARDS OF HEALTH TO ESTABLISH INSPECTION AND ENFORCEMENT ACTIVITIES OF PUBLIC SWIMMING POOLS AND PUBLIC BATHING PLACES; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO DEPOSIT ALL FEES COLLECTED BY LOCAL BOARDS OF HEALTH IN A STATE SPECIAL REVENUE FUND; CLARIFYING LICENSE VALIDATION REQUIREMENTS; AND AMENDING SECTIONS 50-53-102, 50-53-103, 50-53-201, 50-53-202, 50-53-203, AND 50-53-206, MCA.

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

Section 1. Section 50-53-102, MCA, is amended to read:

“50-53-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Department” means the department of public health and human services provided for in 2-15-2201.

(2) “*Lazy river*” means a constructed watercourse through which people travel by use of flotation devices.

(2)(3) “Local board of health” or “board” means a local board as defined in 50-2-101.

(3)(4) “Local health officer” or “officer” means a local health officer as defined in 50-2-101.

(4)(5) “Person” means a person, firm, partnership, corporation, or organization; or the state; or any political subdivision of the state.

(5)(6) “Public bathing place” means a body of water with bathhouses and related appurtenances operated for the public.

(6)(7) (a) “Public swimming pool” means an artificial pool ~~and bathhouses~~ and related appurtenances for swimming, bathing, ~~or wading, or other aquatic therapy or recreation,~~ including but not limited to natural hot water pools, ~~and spas, splash decks, water slides, lazy rivers, and wave pools.~~

(b) The term does not include:

(a)(i) swimming pools located on private property, *including the private common area property of owner-occupied condominium developments*, used for swimming or bathing only by the owner, members of the owner’s family, or their invited guests; or

(b)(ii) medicinal hot water baths for individual use.

(7)(8) “Spa” means an artificial pool *that is designed for recreational bathing or therapeutic use or therapeutic use* and that is not drained, cleaned, or refilled for individual use. A spa includes but is not limited to a ~~therapeutic pool, hydrotherapy pool, whirlpool,~~ *therapeutic pool, hydrotherapy pool, whirlpool,* hot tub, or Jacuzzi-type whirlpool bath.

(9) “*Splash deck*” means a constructed area over which water is sprayed but is not allowed to pool.

(8)(10) “Tourist home” means a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis.

(11) “*Wading pool*” means a pool in which the water depth does not exceed 2 feet.

(12) “*Wave pool*” means a swimming pool designed for the purpose of producing wave action in the water.”

Section 2. Section 50-53-103, MCA, is amended to read:

“50-53-103. Department rules. (1) The department shall adopt rules relating to the operation of public swimming pools and public bathing places, including rules:

(a) setting standards to ensure sanitation and safety in public swimming pools and public bathing places to protect public health and safety;

(b) *imposing reasonable fees for review of plans relating to the design, construction, reconstruction, alteration, conversion, repair, and installation of equipment and for plan review when plan review is conducted by the department;*

~~(b)(c)~~ relating to the licensing of operators of public swimming pools and public bathing places;

~~(e)(d)~~ providing procedures for the enforcement of the laws and rules relating to public swimming pools and public bathing places;

~~(d)(e)~~ relating to cooperative agreements between the department and local boards of health; and

~~(e)(f)~~ 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 50-53-218.

(2) Any rule relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings or installation of equipment in buildings is effective only when it has been adopted by the department of labor and industry as part of the state building code and filed with the secretary of state pursuant to 50-60-204.”

Section 3. Section 50-53-201, MCA, is amended to read:

“50-53-201. License required — validation. (1) A person may not operate a public swimming pool or public bathing place without annually obtaining a license from the department.

(2) ~~A separate license is required for each separate public swimming pool or public bathing place. unless more than one public swimming pool is operated on the same premises by the same person, in which case a single license is required for all public swimming pools on the premises~~ *A public swimming pool is separate if:*

(a) *its water does not commingle with water from any other public swimming pool; or*

(b) *it is serviced by a separate water filtration system.*

(3) A license issued by the department is not valid unless signed in accordance with 50-53-206, *if applicable*, or in accordance with 50-53-207, in the case of an appeal.”

Section 4. Section 50-53-202, MCA, is amended to read:

“50-53-202. Application for and right to license. (1) An application for both an original and renewal license to operate a public swimming pool or public bathing place must be made to the department, must contain the information required by the department, and must be accompanied by the fee provided for in 50-53-203.

(2) A license must be issued to an applicant who has satisfied the requirements for a license provided in part 1, this part, and department rules.

(3) Upon issuing a license, the department shall forward the license to the appropriate local health officer for validation as provided in 50-53-206, *if applicable.*”

Section 5. Section 50-53-203, MCA, is amended to read:

“50-53-203. License fee and late fee — disposition. (1) (a) Except as provided in subsection (1)(b), each application for an original or renewal license must be accompanied by a license fee of ~~\$75~~ *\$200*.

(b) ~~The fee for an original or renewal license for a public swimming pool or public bathing place operated in conjunction with a campground, trailer court, work camp, youth camp, hotel, motel, roominghouse, boardinghouse, retirement home, or tourist home is \$50. Each application for an original or renewal license for a spa or wading pool with a total water capacity not exceeding 4,000 gallons must be accompanied by a license fee of \$75.~~

(2) An operator of a public swimming pool or public bathing place who fails to renew a license by the expiration date provided in 50-53-204 and who operates the public swimming pool or public bathing place in the license year for which a renewal fee was not paid shall, upon renewal, pay to the department a late renewal fee of \$25 for each calendar month after the renewal due date in addition to the renewal fee required by subsection (1). Payment of the late renewal fee does not relieve the operator of responsibility for any operation without a license.

(3) If the local board of health conducts its own inspections and enforcement activities for the public swimming pools and public bathing places within its jurisdiction:

~~(3)(a)~~ *The the department shall deposit 85% of the fees collected under subsection (1) in the state special revenue fund to the credit of the local board inspection fund account created by 50-2-108. Money deposited in the local board inspection fund account is subject to appropriation by the legislature for the purposes of 50-53-218.*

~~(4)(b)~~ *The the department shall deposit 15% of the fees collected under subsection (1) and all the fees collected under subsection (2) in an account in the state special revenue fund to be appropriated by the legislature to the department for the enforcement of part 1 and this part.*

(4) If the local board of health has delegated its inspection and enforcement activities for public swimming pools and public bathing places to the department, the department shall deposit all of the fees collected under subsections (1) and (2) in an account in the state special revenue fund to be appropriated by the legislature to the department for the enforcement of part 1 and this part."

Section 6. Section 50-53-206, MCA, is amended to read:

"50-53-206. Validation of license required — ~~validation by local officer.~~ (1) *(a) If the local board of health conducts its own inspections and enforcement activities for the public swimming pools and public bathing places within its jurisdiction, a* A license issued by the department under part 1 and this part is not valid until it is signed by the local health officer of the jurisdiction in which the public swimming pool or public bathing place is located.

(2)(b) The local health officer shall, within 15 days of receipt of the license, validate or refuse to validate the license. Failure of the officer to validate a license is a refusal for the purposes of 50-53-207.

(2) Validation is not required if the local board of health has delegated its inspection and enforcement activities for public swimming pools and public bathing places to the department."

Approved April 28, 2007

CHAPTER NO. 311

[HB 179]

AN ACT ESTABLISHING THE MONTANA MILITARY FAMILY RELIEF FUND; CREATING AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND FOR USE BY THE FUND; AUTHORIZING THE AWARD OF STATUS-BASED, NEEDS-BASED, AND CASUALTY-BASED GRANTS; ESTABLISHING INELIGIBILITY CRITERIA FOR GRANTS; REQUIRING THE DEPARTMENT OF MILITARY AFFAIRS TO ADOPT RULES TO IMPLEMENT AND ADMINISTER THE FUND; PROVIDING FOR A VOLUNTARY INCOME TAX CHECKOFF FOR THE FUND; PROVIDING A STATUTORY APPROPRIATION; PROVIDING A TRANSFER OF FUNDS TO THE FUND; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Short title. [Sections 1 through 10] may be cited as the “Montana Military Family Relief Fund”.

Section 2. Montana military family relief fund — purpose — administration. (1) There is a Montana military family relief fund.

(2) The purpose of the fund is to aid members of the Montana national guard or reserve component who have been activated for federal service in a contingency operation and the families of members.

(3) The department shall administer the fund as provided in [sections 1 through 10].

Section 3. Fund account — statutory appropriation. (1) There is a Montana military family relief fund account in the state special revenue fund provided for in 17-2-102. All money transferred to the fund by the legislature, all monetary contributions, gifts, and grants donated to the fund, all contributions made to the fund pursuant to [section 11], and all interest and income earned on money in the account must be deposited into the account.

(2) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department for the purposes of [sections 1 through 10].

Section 4. Definitions. As used in [sections 1 through 10] the following definitions apply:

(1) “Account” means the Montana military family relief fund account established in [section 3].

(2) “Contingency operation” means an assignment within the provisions of 10 U.S.C. 101(a)(13).

(3) “Family member” means a person who has been approved as a dependent of a member and is enrolled as a dependent of the member in the defense enrollment eligibility reporting system of the United States department of defense.

(4) “Fund” means the Montana military family relief fund established in [section 2].

(5) “Member” means a Montana resident who is a member of the Montana national guard or reserve component, as defined in 38 U.S.C. 101, and who on or after [the effective date of this act] is in active duty for federal service in a contingency operation.

Section 5. Allowable uses of account. Subject to the availability of money in the account and [section 6], the department shall use the money in the account to make the following grants to members and to family members:

(1) a status-based grant of \$250 to each family member of a member who is activated for federal service in a contingency operation for a period of more than 30 days;

(2) a needs-based grant of not more than \$2,000 to a member or to a family member of a member who is activated for federal service in a contingency operation for a period of more than 30 days and:

(a) the member's monthly military pay and allowances, combined, are at least 30% less than the member's monthly civilian wages or salary; or

(b) the member or a family member is experiencing a significant emergency that warrants financial assistance; and

(3) a casualty-based grant of \$2,000 to a member who at any time after activation for federal service in a contingency operation sustained a nonfatal injury in the course of or related to combat as a direct result of hostile action. A member may receive only one casualty-based grant for injuries sustained during or arising out of the same contingency operation.

Section 6. Ineligibility for grants. (1) (a) A member who, at any time prior to the disbursement of grant money, receives a punitive discharge pursuant to the federal Manual for Courts-Martial or an administrative discharge with service characterized as other than honorable conditions is ineligible for any grant under [section 5].

(b) A family member of a member described in subsection (1)(a) is ineligible for any grant under [section 5].

(2) (a) A member and a family member of the member are ineligible for status-based and needs-based grants under [section 5] if the member holds a rank or pay grade, as those terms are used in Titles 10 and 37 of the United States Code, of:

(i) O-4 (major or lieutenant commander) or higher, if a commissioned officer; or

(ii) W-4 (chief warrant officer, W-4) or higher, if a warrant officer.

(b) The determination of the member's pay grade must be made at the time of application for the grant.

(3) A member is ineligible for a casualty-based grant under [section 5] if:

(a) the member's injury is the result of a self-inflicted wound, willful negligence by the member, or other misconduct by the member; or

(b) the injury occurs when the member is not in an authorized duty status.

Section 7. Rules. The department shall adopt rules pursuant to 10-1-105 to implement and administer the provisions of [sections 1 through 10]. The rules must ensure that all similarly situated members and family members are treated equitably and must include but are not limited to provisions regarding:

(1) applications;

(2) timelines;

(3) eligibility, including proof of eligibility of members and family members;

(4) the procedure for establishing priority of grant awards if the amount of money available in the account is insufficient to support an award of grants to the maximum authority allowed under [section 5];

(5) the appeal process for grant applications that are denied; and

(6) disbursement of grant money to members and family members.

Section 8. Grant application — review — approval or denial. (1) A member or a family member may apply for a grant authorized under [section 5] on forms provided by and in the manner prescribed by the department.

(2) (a) A committee of three members shall review all applications for needs-based grants and shall recommend to the adjutant general approval or denial of each application.

(b) The committee is composed of the director of the department of public health and human services provided for in 2-15-2201 or the director's designee, the commissioner of labor and industry provided for in 2-15-1701 or the commissioner's designee, and the budget director provided for in 17-7-103 or the budget director's designee.

(3) The adjutant general shall review all grant applications and the recommendations of the committee made under subsection (2) and shall either approve or deny each application pursuant to the rules adopted under [section 7].

(4) The department shall notify the applicant in writing whether the applicant's application for a grant is approved or denied.

Section 9. Review if application denied. (1) If the adjutant general denies an application for a grant, the adjutant general shall explain the basis for the denial to the applicant in writing.

(2) An applicant whose application is denied may appeal the decision in writing to the adjutant general in the manner prescribed by rule. After considering the applicant's appeal, the adjutant general shall affirm or deny the appeal in writing.

(3) There is no further appeal if the adjutant general denies the appeal.

Section 10. Contributions to the fund. The department may accept monetary contributions, gifts, or grants to the fund. Upon receipt, monetary contributions, gifts, and grants must be deposited into the account.

Section 11. Voluntary checkoff for Montana military relief fund. (1) Each individual taxpayer who is required to file an income tax return under Title 15, chapter 30, may contribute to the Montana military family relief fund established in [section 2] by marking the appropriate box on the state income tax return.

(2) The department shall include on each Montana state individual income tax return form a clear and conspicuous provision by which the taxpayer may indicate a contribution to the Montana military family relief fund. The contribution may be made from the amount to be refunded to the taxpayer or, if no refund is due, must be in addition to the amount of tax required to be paid. The provision must be in substantially the following form:

Montana military family relief fund. Check the appropriate blank if you wish to contribute, in addition to your existing tax liability, ___\$5, ___\$10, or ___(specify an amount) to support the Montana military family relief fund. If a joint return, check the appropriate blank if your spouse wishes to contribute, in

addition to your existing tax liability, ___\$5, ___\$10, or ___ (specify an amount) for the same purpose.

(3) Money received under this section must be deposited into the account established in [section 3], after the department has deducted the administrative charge provided for in 15-30-153.

Section 12. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; [section 3]; 10-2-603; 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; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; 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, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)”

Section 13. Fund transfer. On July 1, 2007, there is transferred \$1 million from the general fund to the Montana military family relief fund account established in [section 3].

Section 14. Codification instruction. (1) [Sections 1 through 10] are intended to be codified as an integral part of Title 10, chapter 1, and the provisions of Title 10, chapter 1, apply to [sections 1 through 10].

(2) [Section 11] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [section 11].

Section 15. Effective date. [This act] is effective July 1, 2007.

Section 16. Applicability. [Section 11] applies to tax years beginning after December 31, 2007.

Approved April 28, 2007

CHAPTER NO. 312

[HB 259]

AN ACT DEFINING TERMS; RESTRICTING THE USE AND LOCATION OF GRAY WATER REUSE SYSTEMS; DIRECTING THE BOARD OF ENVIRONMENTAL REVIEW TO CREATE RULES REGULATING RESIDENTIAL GRAY WATER REUSE SYSTEMS; AMENDING SECTION 75-5-305, MCA; AND PROVIDING AN APPLICABILITY CLAUSE.

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

Section 1. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Gray water" means wastewater that is collected separately from a sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets.

(2) "Gray water reuse system" means a plumbing system for a private, single-family residence that collects gray water.

Section 2. Residential gray water reuse — restrictions. (1) Gray water may not be used to irrigate plants to be consumed by humans.

(2) Gray water reuse systems may not be located within a flood plain, as defined in 76-5-103.

Section 3. Section 75-5-305, MCA, is amended to read:

"75-5-305. Adoption of requirements for treatment of wastes — variance procedure — appeals. (1) The board may establish minimum requirements for the treatment of wastes. For cases in which the federal government has adopted technology-based treatment requirements for a particular industry or activity in 40 CFR, chapter I, subchapter N, the board shall adopt those requirements by reference. To the extent that the federal government has not adopted minimum treatment requirements for a particular industry or activity, the board may do so, through rulemaking, for parameters likely to affect beneficial uses, ensuring that the requirements are cost-effective and economically, environmentally, and technologically feasible. Except for the technology-based treatment requirements set forth in 40 CFR, chapter I, subchapter N, minimum treatment may not be required to address the

discharge of a parameter when the discharge is considered nonsignificant under rules adopted pursuant to 75-5-301.

(2) (a) The board shall establish minimum requirements for the control and disposal of sewage from private and public buildings, including standards and procedures for variances from the requirements.

(b) *For gray water reuse systems in private, single-family residences, the board shall establish rules that:*

(i) *allow the diversion of gray water from wastewater treatment systems and limit the amount of gray water flow allowed by permit;*

(ii) *address the uses of gray water, including when and how gray water may be applied to land; and*

(iii) *include any other provisions that the board considers necessary to ensure that gray water reuse systems comply with laws and regulations and protect public health and the environment.*

(3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant to 50-2-116(1)(i) may appeal the local board of health's final decision to the department by submitting a written request for a hearing within 30 days after the decision. The written request must describe the activity for which the variance is requested, include copies of all documents submitted to the local board of health in support of the variance, and specify the reasons for the appeal of the local board of health's final decision.

(4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department shall base its decision on the board's standards for a variance.

(5) A decision of the department pursuant to subsection (4) is appealable to district court under the provisions of Title 2, chapter 4, part 7."

Section 4. Local gray water regulations. The requirements of 75-5-305 and [section 2] are minimum requirements and do not restrict a local governing body from adopting stricter or additional regulations for gray water reuse systems.

Section 5. Codification instruction. [Sections 1, 2, and 4] are intended to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [sections 1, 2, and 4].

Section 6. Applicability. (1) [This act] applies to gray water systems that are installed after [the effective date of this act].

(2) [This act] and any rules or requirements adopted as a result of [this act] may not be imposed on a gray water system that was installed on or before [the effective date of this act].

Approved April 27, 2007

CHAPTER NO. 313

[HB 269]

AN ACT REVISING LAWS RELATING TO WEEDS; REMOVING THE REQUIREMENT THAT AN OWNER SELLING PROPERTY PROVIDE NOTICE THAT THERE IS THE POTENTIAL EXISTENCE OF NOXIOUS

WEEDS; PROVIDING THAT A COUNTY WEED BOARD MAY ESTABLISH EMBARGOES; CLARIFYING STATUTES REGARDING THE CREATION OF A NOXIOUS WEED FUND IN EACH COUNTY; REMOVING THE REQUIREMENT THAT AN INTEGRATED NOXIOUS WEED MANAGEMENT PLAN WITH STATE AGENCIES BE FOR 6 YEARS; REMOVING THE REDUNDANT STATUTE REGARDING RESPONSIBILITY FOR ASSESSMENTS AND TAXES FOR THE WEED DISTRICT; PROVIDING A TRANSFER OF FUNDS; AMENDING SECTIONS 7-22-2116, 7-22-2126, 7-22-2142, AND 7-22-2151, MCA; REPEALING SECTIONS 7-22-2149 AND 77-6-114, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Section 7-22-2116, MCA, is amended to read:

“7-22-2116. Unlawful to permit noxious weeds to propagate — notice required in sale. (1) It is unlawful for any person to permit any noxious weed to propagate or go to seed on the person’s land, except that any person who adheres to the noxious weed management program of the person’s weed management district or who has entered into and is in compliance with a noxious weed management agreement is considered to be in compliance with this section.

(2) When property is offered for sale, the person who owns the property shall notify the owner’s agent and the purchaser of the existence ~~or potential existence~~ of noxious weeds on the property offered for sale.”

Section 2. Section 7-22-2126, MCA, is amended to read:

“7-22-2126. Embargo. (1) The board may establish ~~voluntary~~ embargo programs to reduce the spread of noxious weeds within the district or the introduction of noxious weeds into the district.

(2) The board shall establish a special embargo program for the movement of forage, as defined in 80-7-903, into or out of the county. The board may implement an embargo upon confirmation of a violation, based upon complaint investigations, requests for investigation by the department, or through county investigations, if the forage has not been certified by the state and is being sold as noxious weed seed free, as defined in 80-7-903.

(3) A person in possession of the forage that is not in compliance with Title 80, chapter 7, part 9, may not move or dispose of the forage as noxious weed seed free that is subject to embargo until written permission is obtained from the board. If the forage that is subject to embargo is found to have met all of the requirements of the state certification program and the department verifies compliance with the program, the board shall release the embargo. The board may also release the forage under the following conditions:

(a) verification of guaranteed delivery back to the original producer, as defined in 80-7-903;

(b) burning or disposal of the forage in a manner acceptable to the board; or

(c) other alternatives approved by the board.

(4) The board shall report all embargoes issued and the final resolution of an embargo imposed pursuant to a violation of Title 80, chapter 7, part 9, to the department within 48 hours.

(5) The person in possession of forage subject to embargo shall comply with the conditions approved by the board within 30 days. If resolution is not

accomplished, the board may condemn the forage and implement through its employees any of the conditions set forth in this section. If the board proceeds with correction of these conditions after 30 days, all actual expenses incurred and documented by the board are payable by the producer unless the person in possession of the forage also has an interest in the forage.”

Section 3. Section 7-22-2142, MCA, is amended to read:

“7-22-2142. Sources of money for noxious weed fund. ~~(1) The commissioners may create a noxious weed fund to enable the board to fulfill its duties as specified in 7-22-2109.~~

~~(2)~~(1) The commissioners may provide sufficient money in the noxious weed fund for the board to fulfill its duties, as specified in 7-22-2109, by:

(a) appropriating money from the general fund of the county; and

(b) subject to 15-10-420 and at any time fixed by law for levy and assessment of taxes, levying a tax of not less than 1.6 mills on the taxable value of all taxable property in the county or by contributing an equivalent amount from another source of not less than the amount received from all county sources in fiscal year 2000 or, for first-class counties, as defined in 7-1-2111, the greater of the amount received from all county sources in fiscal year 2000 or \$100,000. The tax levied under this subsection must be identified on the assessment as the tax that will be used for noxious weed control.

~~(3)~~(2) The proceeds of the noxious weed control tax or other contribution must be used solely for the purpose of managing noxious weeds in the county and must be deposited in the noxious weed fund.

~~(4)~~(3) Any proceeds from work or chemical sales must revert to the noxious weed fund and must be available for reuse within that fiscal year or any subsequent year.

~~(5)~~(4) The commissioners may accept any private, state, or federal gifts, grants, contracts, or other funds to aid in the management of noxious weeds within the district. These funds must be placed in the noxious weed fund.

~~(6)~~(5) The commissioners may impose a tax for weed control within a special management zone as provided in 7-22-2121(4). For the purposes of imposing the tax, the special management zone boundaries must be established by the board and approved by a majority of the voters within the special management zone. The amount of the tax must be approved by a majority of the voters within the special management zone, and approval of the zone and the tax may occur simultaneously. Revenue received from a special management zone tax must be spent on weed management projects within the boundaries of the special management zone.”

Section 4. Section 7-22-2151, MCA, is amended to read:

“7-22-2151. Cooperative agreements. (1) A state agency that controls land within a district, including the department of transportation; the department of fish, wildlife, and parks; the department of corrections; the department of natural resources and conservation; and the university system, shall enter into a written agreement with the board. The agreement must specify mutual responsibilities for integrated noxious weed management on state-owned or state-controlled land within the district. The agreement must include the following:

(a) ~~a 6-year~~ an integrated noxious weed management plan, which must be updated biennially;

- (b) a noxious weed management goals statement;
- (c) a specific plan of operations for the biennium, including a budget to implement the plan; and
- (d) a provision requiring a biennial performance report by the board to the state weed coordinator in the department of agriculture, on a form to be provided by the state weed coordinator, regarding the success of the plan.

(2) The board and the governing body of each incorporated municipality within the district shall enter into a written agreement and shall cooperatively plan for the management of noxious weeds within the boundaries of the municipality by ~~January 1, 2002~~. The board may implement management procedures described in the plan within the boundaries of the municipality for noxious weeds only. Control of nuisance weeds within the municipality remains the responsibility of the governing body of the municipality, as specified in 7-22-4101.

(3) A board may develop and carry out its noxious weed management program in cooperation with boards of other districts, with state and federal governments and their agencies, or with any person within the district. The board may enter into cooperative agreements with any of these parties.

(4) Each agency or entity listed in subsection (1) shall submit a statement or summary of all noxious weed actions that are subject to the agreement required under subsection (1) to the state weed coordinator and shall post a copy of the statement or summary on a state electronic access system.”

Section 5. Repealer. Sections 7-22-2149 and 77-6-114, MCA, are repealed.

Section 6. Transfer of funds. There is transferred \$5 million from the general fund to the noxious weed management trust fund established in 80-7-811. The transfer is a one-time transfer of funds.

Section 7. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2007.

(2) [Section 6 and this section] are effective July 1, 2007.

Approved April 27, 2007

CHAPTER NO. 314

[HB 298]

AN ACT EXTENDING THE 2003 APPROPRIATION OF MONEY FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE DEPARTMENT OF JUSTICE FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA NATURAL RESOURCE DAMAGE ASSESSMENT AND LITIGATION; REQUIRING REPAYMENT OF THE EXPENDED AMOUNTS FROM ANY RECOVERY IN THE LITIGATION; AND PROVIDING EFFECTIVE DATES.

WHEREAS, in House Bill No. 160 (Chapter 283, Laws of 2003), the Legislature appropriated to the Department of Justice from the coal severance tax permanent fund a loan, in the form of a line of credit, of up to \$650,000 as needed for the biennium ending June 30, 2005; and

WHEREAS, less than \$200,000 of this \$650,000 loan had been expended through January 1, 2005; and

WHEREAS, in House Bill No. 201 (Chapter 160, Laws of 2005), the Legislature reappropriated the remainder of the \$650,000 loan to the Department for the biennium ending June 30, 2007; and

WHEREAS, less than \$250,000 of the original \$650,000 loan has been expended through January 1, 2007.

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

Section 1. Extension of natural resource damage program appropriation. The remainder of the \$650,000 loan originally appropriated to the department of justice for the biennium ending June 30, 2005, in section 1, Chapter 283, Laws of 2003, is reappropriated to the department for the biennium ending June 30, 2009, for the purpose of conducting natural resource damage assessments and litigation and pursuing the state of Montana's natural resource damage claims and any appeals through the natural resource damage program.

Section 2. Loan agreement. The board of investments and the department of justice shall amend the existing contract pledging the amount recovered in any natural resource damage litigation to the repayment of the loan, which is to be deposited in the coal severance tax permanent fund. This amendment of the contract must incorporate the provisions of [section 1] and must also incorporate the other terms of the existing contract relating to the loan repayment requirements of Chapter 283, Laws of 2003. The continuing loan authorized in [section 1] may not be made for expenditures incurred after June 30, 2007, until the amendment of the contract required by this section has become effective.

Section 3. Three-fourths vote required. Because [section 1] appropriates money from the coal severance tax permanent fund for 2 additional years, Article IX, section 5, of the Montana constitution requires a vote of three-fourths of the members of each house of the legislature for passage.

Section 4. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 1] is effective July 1, 2007.

Approved April 28, 2007

CHAPTER NO. 315

[HB 299]

AN ACT REVISING PROVISIONS RELATED TO SKI AREAS AND PASSENGER ROPEWAYS; PROVIDING DEFINITIONS; REVISING THE DEFINITIONS OF "PASSENGER ROPEWAY" AND "SKIER"; REQUIRING THE MARKING OF DESIGNATED FREESTYLE TERRAIN; AND AMENDING SECTIONS 23-2-702, 23-2-703, 23-2-704, 23-2-731, 23-2-733, 23-2-734, 23-2-735, AND 23-2-736, MCA.

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

Section 1. Section 23-2-702, MCA, is amended to read:

"23-2-702. Definitions. As used in this part, the following definitions apply:

(1) *“Freestyle terrain” means terrain parks and terrain features, including but not limited to jumps, rails, fun boxes, half-pipes, quarter-pipes, and freestyle bump terrain, and any other constructed features.*

(2) *“Inherent dangers and risks of skiing” means those dangers or conditions that are part of the sport of skiing, including:*

(a) *changing weather conditions;*

(b) *snow conditions as they exist or as they may change, including ice, hardpack, powder, packed powder, wind pack, corn snow, crust, slush, cut-up snow, and machine-made snow;*

(c) *avalanches, except on open, designated ski trails;*

(d) *collisions with natural surface or subsurface conditions, such as bare spots, forest growth, rocks, stumps, streambeds, cliffs, trees, and other natural objects;*

(e) *collisions with lift towers, signs, posts, fences, enclosures, hydrants, water pipes, or other artificial structures and their components;*

(f) *variations in steepness or terrain, whether natural or the result of slope design, snowmaking, or snow grooming operations, including but not limited to roads, freestyle terrain, ski jumps, catwalks, and other terrain modifications;*

(g) *collisions with clearly visible or plainly marked equipment, including but not limited to lift equipment, snowmaking equipment, snow grooming equipment, trail maintenance equipment, and snowmobiles, whether or not the equipment is moving;*

(h) *collisions with other skiers;*

(i) *the failure of a skier to ski within that skier’s ability;*

(j) *skiing in a closed area or skiing outside the ski area boundary as designated on the ski area trail map; and*

(k) *restricted visibility caused by snow, wind, fog, sun, or darkness.*

(3) *“Passenger” means any person who is being transported or conveyed by a passenger ropeway.*

(4) *“Passenger tramway ropeway” means a device used to transport passengers by means of any of the following: an aerial tramway or lift, surface lift, surface conveyor, or surface tow.*

(a) ~~two-car aerial passenger tramway, a device used to transport passengers in two open or enclosed cars attached to and suspended from a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar devices;~~

(b) ~~multicar aerial passenger tramway, a device used to transport passengers in several open or enclosed cars or carrying device attached to and suspended from a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar devices;~~

(c) ~~skimobile, a device in which a passenger car running on steel or wooden tracks is attached to and pulled by a steel cable or similar devices;~~

(d) ~~chairlift, a type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain, or link belt supported by trestles or towers with one or more spans or similar devices;~~

(e) a J-bar, T-bar, or platterpull, so called, and similar types of devices or means of transportation that pull skiers riding on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans;

(f) rope tow, a type of transportation that pulls the skier, riding on skis as the skier grasps the rope or wire rope manually, or similar devices.

(2)(5) "Ski area operator" or "operator" means a person, firm, or corporation and its agents and employees having operational and administrative responsibility for ski slopes and trails and improvements.

(3)(6) "Ski slopes and trails" means those areas designated by the ski area operator to be used by skiers for the purpose of participating in the sport of skiing.

(4)(7) "Skier" means a person admitted to *who is using a any ski area facility or using the ski trails, areas, and other improvements within the ski area. The term does not include a person using an aerial passenger tramway. for the purpose of skiing, including but not limited to ski slopes and trails.*

(8) "Skiing" means any activity, including an organized event, that involves sliding or jumping on snow or ice while using skis, a snowboard, or any other sliding device."

Section 2. Section 23-2-703, MCA, is amended to read:

"23-2-703. Tramways Ropeways not common carriers or public utilities. Passenger tramways shall ropeways may not be construed to be common carriers or public utilities for the purposes of regulation within the meaning of the laws of the state of Montana."

Section 3. Section 23-2-704, MCA, is amended to read:

"23-2-704. Unlawful to endanger life or cause damage. (1) It shall be is unlawful for any person a passenger riding or using a passenger tramway ropeway to do so in such manner as to endanger the life and safety of other persons or cause damage to passenger tramway ropeway equipment.

(2) Any A person who purposely or knowingly violates this section shall be is guilty of a misdemeanor."

Section 4. Section 23-2-731, MCA, is amended to read:

"23-2-731. Purpose. The legislature finds that skiing is a major recreational sport and a major industry in the state and recognizes that among the attractions of the sport are *the inherent dangers and risks, inherent and otherwise of skiing.* The state has a legitimate interest in maintaining the economic viability of the ski industry by discouraging claims based on damages resulting from *the inherent dangers and risks inherent in the sport of skiing,* defining *the inherent dangers and risks of skiing,* and establishing the duties of skiers and ski area operators."

Section 5. Section 23-2-733, MCA, is amended to read:

"23-2-733. Duties of operator regarding ski areas. (1) Consistent with the duty of reasonable care owed by a ski area operator to a skier, a ski area operator shall:

(1)(a) mark all trail grooming vehicles by furnishing the vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are in movement in the ski area;

(2)(b) mark with a visible sign or other warning implement the location of any hydrant or similar equipment used in snowmaking operations and located on ski slopes and trails;

(3)(c) maintain one or more trail boards at prominent locations at each ski area displaying a map of that area's network of ski slopes and trails, the boundaries of the ski area, and the relative degree of difficulty of the ski slopes and trails at that area;

(4)(d) post a notice requiring the use of ski-retention devices;

(5)(e) designate at the start of each day, by trail board or otherwise, which ski slopes and trails are open or closed and amend those designations as openings and closures occur during the day;

(6)(f) post in a conspicuous location the current skier responsibility code that is published by the national ski areas association; and

(7)(g) post a copy of 23-2-736 in a conspicuous location; and

(h) mark designated freestyle terrain with a symbol recognized by the national ski areas association.

(2) Nothing in this part may be construed to impose any duty owed by a ski area operator to a trespasser or an unauthorized user of a ski area."

Section 6. Section 23-2-734, MCA, is amended to read:

"23-2-734. Duties of operator with respect to passenger tramways ropeways. A ski area operator shall construct, operate, maintain, and repair any passenger tramway ropeway. An operator has the duty of taking whatever responsible actions are necessary to properly construct, operate, maintain, and repair a passenger tramway ropeway in accordance with current standards."

Section 7. Section 23-2-735, MCA, is amended to read:

"23-2-735. Duties of passenger. No A passenger may not:

(1) board or disembark from a passenger tramway ropeway except at an area designated for such those purposes;

(2) throw or expel any object from a passenger tramway ropeway;

(3) commit an act that interferes interfere with the running or operation of a passenger tramway ropeway;

(4) use a passenger tramway ropeway unless the passenger has the ability to use it safely without any instruction on its use by the operator or requests and receives instruction before boarding;

(5) embark on a passenger tramway ropeway without the authority of the operator."

Section 8. Section 23-2-736, MCA, is amended to read:

"23-2-736. Skier's conduct—~~inherent risks~~ Duties of skier. (1) A skier has the duty to ski at all times in a manner that avoids injury to the skier and others and to be aware of the inherent dangers and risks of the sport skiing.

(2) A skier:

(a) ~~must~~ shall know the range of the skier's ability and safely ski within the limits of that ability and the skier's equipment so as to negotiate any section of terrain or ski slope and trail safely and without injury or damage. A skier ~~must~~ shall know that the skier's ability may vary because of ski slope and trail changes caused by weather, grooming changes, or skier use.

(b) shall maintain control of speed and course so as to prevent injury to the skier or others;

(c) shall abide by the requirements of the skier responsibility code that is published by the national ski areas association and that is posted as provided in 23-2-733; ~~and~~

(d) shall obey all posted or other warnings and instructions of the ski area operator; *and*

(e) *shall read the ski area trail map and must be aware of its contents.*

(3) A person may not:

(a) place an object in the ski area or on the uphill track of a passenger ~~tramway~~ *ropeway* that may cause a passenger or skier to fall;

(b) cross the track of a passenger ~~tramway~~ *ropeway* except at a designated and approved point; or

(c) if involved in a skiing accident, depart from the scene of the accident without:

(i) leaving personal identification; or

(ii) notifying the proper authorities and obtaining assistance when the person knows that a person involved in the accident is in need of medical or other assistance.

(4) A skier shall accept all legal responsibility for injury or damage of any kind to the extent that the injury or damage results from ~~risks inherent~~ *dangers and risks in the sport* of skiing. *Nothing in this part may be construed to limit a skier's right to hold another skier legally accountable for damages caused by the other skier. Risks inherent in the sport of skiing are:*

~~(a) variations in skiing terrain, including surface and subsurface snow or ice conditions naturally occurring or resulting from weather changes, skier use, or grooming or snowmaking operations;~~

~~(b) bare spots and thin snow cover caused by limited snowfall, melting, wind erosion, skier action, grooming, or unconsolidated base;~~

~~(c) forest growth on designated trails;~~

~~(d) skiing in an area not designated as a ski trail;~~

~~(e) clearly visible or plainly marked improvements or equipment;~~

~~(f) clearly visible or plainly marked mobile equipment and attachments, whether moving or stationary, used by the ski area operator; and~~

~~(g) avalanches, except on open, designated ski trails."~~

Approved April 27, 2007

CHAPTER NO. 316

[HB 362]

AN ACT ALLOWING A BOARD OF COUNTY COMMISSIONERS TO CANCEL CERTAIN DELINQUENT REAL PROPERTY TAXES; AMENDING SECTIONS 15-16-701 AND 15-16-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 15-16-701, MCA, is amended to read:

“15-16-701. Personal property taxes five years delinquent — *real property taxes ten years delinquent* — list. (1) ~~It is the duty of each~~ *The* county treasurer ~~to shall~~ prepare in triplicate and submit to the board of county commissioners of the county, on or before the first Monday ~~of in June in~~ of each year, a list of personal property taxes that are not a lien on real estate and that have been delinquent for 5 years or more. The list must show the following:

~~(a)~~(i) the name and address of the delinquent taxpayer;
~~(b)~~(ii) the amount of the delinquent taxes, plus interest, penalties, and costs, if any; and

~~(c)~~(iii) the date the taxes became delinquent.

~~(2)~~(b) The list prepared pursuant to under subsection (1)(a) may not include personal property taxes that remain uncollected because of bankruptcy or other litigation.

(2) (a) *At the time the list is prepared as provided in subsection (1)(a), the county treasurer may prepare in triplicate and submit to the board of county commissioners of the county a list of the real property taxes that have been delinquent for 10 years or more. To be included on the list, the tax lien for each property must have been sold at a tax lien sale under chapter 17, which includes the county as purchaser of the tax lien under 15-17-214, at least 3 years before preparation of the list. If prepared, the list must show the following:*

(i) *the name and address of the delinquent taxpayer;*
 (ii) *the amount of the delinquent taxes, plus interest, penalties, and costs, if any;*

(iii) *the real property identification number;*

(iv) *the legal description of the property;*

(v) *the date the taxes became delinquent; and*

(vi) *the date of the last tax lien sale on the property.*

(b) *The list prepared under subsection (2)(a) may not include real property taxes that remain uncollected because of bankruptcy or litigation.*

(3) *The board of county commissioners may enter an order that permanently and prospectively cancels real property taxes on parcels identified by the county treasurer or the board as being solely used for road purposes and that otherwise meet the requirements of this section.*

~~(3)~~(4) ~~Every~~ *At the time the list is prepared as provided in subsection (1)(a), the county treasurer shall, within the same time, prepare in triplicate and submit to the board of county commissioners of the county a list of all contractual obligations owed to or held by the county for seed grain, feed, or other relief, the collection of which is barred by the statute of limitations provided in 27-2-202(1). The list must show the following:*

(a) *the name and address of the person or persons who entered into the contractual obligation;*

(b) *the name of the contractual obligation, as “seed loan”, “feed loan”, or “promissory note”, as applicable; and*

(c) *the date of obligation, the date when the last payment became due, the date of the last payment on the obligation, and the date when the collection of*

the obligation became barred by the statute of limitations provided in 27-2-202(1).”

Section 2. Section 15-16-702, MCA, is amended to read:

“15-16-702. Cancellation of taxes and obligations — filing of lists. (1) ~~Upon receipt of such list or lists and within~~ *Within 30 days thereafter of receiving any list prepared under 15-16-701*, the board of county commissioners shall examine the ~~same list~~ and make any necessary corrections. ~~Thereupon~~ *After examining the list*, the board of county commissioners shall make its order canceling all ~~such~~ personal property taxes and contractual obligations contained in the list or lists, as corrected, *that are* required by this part to be canceled ~~and, subject to subsection (2), canceling real property taxes.~~

(2) *The board may cancel any or all delinquent real property taxes contained in the list prepared under 15-16-701 as corrected under subsection (1) of this section. If the board cancels any real property taxes under this subsection, the cancellation must be included in the order provided for in subsection (1).*

(3) ~~The and spread such order upon its~~ *made under subsection (1) must be included in the board’s minutes. The order and minutes need not set forth in full the contents of the list or lists, may include only a proper reference therein for their for the proper identification being sufficient of any list included in the order. When the order is made, the original or a copy of the list or lists, as corrected, must be filed with and as a part of the records of the board. One legible copy thereof of any list included in the order must be filed with the county clerk and recorder as a public record, and one legible copy thereof of any list included in the order must be filed with the county treasurer as a permanent record of his the treasurer’s office.”*

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.

Approved April 28, 2007

CHAPTER NO. 317

[HB 425]

AN ACT REVISING REQUIRED CONTENTS OF SUBDIVISION REGULATIONS; REQUIRING SUBDIVISION REGULATIONS TO REQUIRE A SUBDIVIDER TO MEET WITH AN AGENT OF THE GOVERNING BODY PRIOR TO SUBMITTAL OF A SUBDIVISION APPLICATION; AMENDING SECTION 76-3-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 76-3-504, MCA, is amended to read:

“76-3-504. Subdivision regulations — contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in 76-3-210, 76-3-509, or 76-3-609, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of

landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions

provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) ~~allows~~ *requires* a subdivider to meet with the agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

(3) The governing body may establish deadlines for submittal of subdivision applications.”

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

Approved April 27, 2007

CHAPTER NO. 318

[HB 461]

AN ACT ESTABLISHING REQUIREMENTS FOR CIGARETTES SOLD IN THE STATE; ESTABLISHING REDUCED IGNITION PROPENSITY STANDARDS AND TESTING AND CERTIFICATION REQUIREMENTS; PROVIDING DEFINITIONS; REQUIRING THAT RECORDS OF TESTING BE MAINTAINED AND MADE AVAILABLE UPON REQUEST; REQUIRING THE DEPARTMENT OF JUSTICE TO REPORT TO THE LEGISLATURE EVERY 4 YEARS; REQUIRING CERTAIN INFORMATION FOR CERTIFICATION OF CIGARETTES; REQUIRING A CIGARETTE MANUFACTURER TO PAY A FEE FOR CERTIFICATION AND REQUIRING REVENUE FROM THE FEE TO BE USED FOR CERTAIN PURPOSES; REQUIRING SPECIFIC MARKING ON CIGARETTE PACKAGING; PROVIDING PENALTIES FOR NONCOMPLIANCE; ALLOWING RULEMAKING BY THE DEPARTMENT OF JUSTICE AND THE

DEPARTMENT OF REVENUE; ALLOWING INSPECTION OF CIGARETTES AND OF RECORDS KEPT BY SELLERS OF CIGARETTES; CREATING A FIRE PREVENTION AND PUBLIC SAFETY FUND; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Definitions. As used in [sections 1 through 10], the following definitions apply:

(1) “Agent” means a person authorized by the department of revenue to purchase and affix stamps on packages of cigarettes.

(2) “Cigarette” means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper or any other substance or material except tobacco.

(3) “Manufacturer” means:

(a) an entity that manufactures or otherwise produces cigarettes or causes cigarettes that the manufacturer intends to be sold in this state to be manufactured or produced anywhere, including cigarettes intended to be sold in the United States through an importer;

(b) the first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or

(c) an entity that becomes a successor of an entity described in subsections (3)(a) and (3)(b).

(4) “Quality control and quality assurance program” means the laboratory procedures implemented to ensure that operator bias, systemic and nonsystemic methodological errors, and equipment-related problems do not affect the results of testing. The program ensures that the testing repeatability remains within the required repeatability values provided in [section 2(2)(f)] for all test trials used to certify cigarettes in accordance with [sections 1 through 10].

(5) “Repeatability” means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95% of the time.

(6) “Retail dealer” means a person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products.

(7) “Sale” means any transfer of title of cigarettes for consideration, exchange, barter, gift, offer for sale, or distribution, in any manner or by any means.

(8) “Wholesale dealer” means a person who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, and a person who owns, operates, or maintains one or more cigarette or tobacco product vending machines in, at, or upon premises owned or occupied by any other person.

Section 2. Cigarette test method and performance standard — conditions on sale — alternative test method and performance standard. (1) Except as provided in subsection (8), cigarettes may not be sold or offered for sale in this state or sold or offered for sale to persons located in this state unless:

(a) the cigarettes have been tested in accordance with the test method provided in this section;

(b) the cigarettes meet the performance standard specified in this section;

(c) the manufacturer has filed a written certification with the state fire marshal in accordance with [section 3]; and

(d) the cigarettes have been marked in accordance with [section 4].

(2) (a) Testing of cigarettes must be conducted in accordance with the American society for testing and materials standard E2187-04, the standard test method for measuring the ignition strength of cigarettes.

(b) Testing must be conducted on 10 layers of filter paper.

(c) No more than 25% of the cigarettes tested in a test trial in accordance with this section may exhibit full-length burns. Forty replicate tests compose a complete test trial for each cigarette used.

(d) The performance standards required in subsection (2)(c) may be applied only to a complete test trial.

(e) Written certifications must be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the international organization for standardization or another comparable accreditation standard required by the state fire marshal.

(f) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure for determining the repeatability of the testing results. The repeatability value may not be greater than 0.19.

(g) This section does not require additional testing if cigarettes are tested for any other purpose in a manner that is consistent with [sections 1 through 10].

(h) Testing performed or sponsored by the state fire marshal to determine a cigarette's compliance with the required performance standard must be conducted in accordance with this section.

(3) Each cigarette listed in a certification submitted pursuant to [section 3] that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard provided in this section must have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band must be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there must be at least two bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column or, for nonfiltered cigarettes, 10 millimeters from the labeled end of the tobacco column.

(4) (a) A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with the test method prescribed in subsection (2)(a) shall propose a test method and performance standard for the cigarette to the state fire marshal.

(b) Upon approval of the proposed test method and a determination by the state fire marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subsection (2)(c), the manufacturer may employ that test method and performance standard to certify a cigarette pursuant to [section 3].

(c) If the state fire marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in [section 2] and the state fire marshal determines that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under provisions comparable to this section, the state fire marshal shall authorize the manufacturer to employ the alternative test method and performance standard to certify the cigarette for sale in this state, unless the state fire marshal demonstrates a reasonable basis why the alternative test is unacceptable. All other applicable provisions of this section apply to the manufacturer even if the alternative test method and performance standard are authorized.

(5) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of 3 years and shall make copies of these reports available to the state fire marshal and the attorney general upon written request. A manufacturer who fails to make copies of the reports available within 60 days of receipt of a written request is subject to a civil penalty not to exceed \$10,000 for each day after the 60th day that the manufacturer does not make the copies available.

(6) The state fire marshal may adopt a subsequent American society for testing and materials standard test method for measuring the ignition strength of cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with the standard provided in subsection (2)(a) and the performance standard in subsection (2)(c).

(7) The department of justice shall review the effectiveness of this section and report every 4 years to the legislature the state fire marshal's findings and, if appropriate, submit recommendations for legislation to improve the effectiveness of this section. The report and legislative recommendations may be submitted no later than January 1 of each 4-year period.

(8) The requirements of subsection (1) do not prohibit a wholesale dealer or retail dealer from selling the wholesale dealer's or retail dealer's existing inventory of cigarettes on or after [the effective date of this act] if the wholesale dealer or retail dealer can establish that state tax stamps were affixed to the cigarettes prior to [the effective date of this act] and if the wholesale dealer or retail dealer establishes that the inventory was purchased prior to [the effective date of this act] in comparable quantity to the inventory purchased during the same period of the prior year.

(9) Because [sections 1 through 10] are based on New York law, it is the intent of the legislature that [sections 1 through 10] be implemented in accordance with the implementation and substance of the New York executive law section 156-c, fire safety standards for cigarettes.

Section 3. Certification — fee for certification — product change. (1) Each manufacturer shall submit to the department of justice a written certification attesting that each cigarette listed in the certification:

- (a) has been tested in accordance with [section 2]; and
- (b) meets the performance standard provided in [section 2(2)(c)].

(2) Each cigarette listed in the certification must be described with the following information:

- (a) brand or trade name on the package;
- (b) style, such as light or ultralight;
- (c) length in millimeters;
- (d) circumference in millimeters;
- (e) flavor, such as menthol or chocolate, if applicable;
- (f) filter or nonfilter;
- (g) package description, such as soft pack or box;
- (h) marking approved in accordance with [section 4];
- (i) the name, address, and telephone number of the laboratory, if different from the manufacturer, that conducted the test; and
- (j) the date that the testing occurred.

(3) Certifications must be made available to the attorney general for purposes consistent with [sections 1 through 10] and to the department of revenue for the purposes of ensuring compliance with this section.

(4) Each cigarette certified under this section must be recertified every 3 years.

(5) (a) For each cigarette listed in a certification, a manufacturer shall pay a fee, not to exceed \$250, to offset the actual costs of the processing, testing, enforcement, and oversight activities required in [sections 1 through 10].

(b) There is an account in the state special revenue fund in which fees collected under this subsection (5) must be deposited to the credit of the department of justice. Money collected may be used only by the department of justice for the purposes provided in subsection (5)(a).

(6) If a manufacturer has certified a cigarette pursuant to this section and later makes any change to the cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by [sections 1 through 10], the cigarette may not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards provided in [section 2] and maintains records of the retesting as required by [section 2]. Any altered cigarette that does not meet the performance standard provided in [section 2] may not be sold in this state.

Section 4. Marking on cigarette packaging. (1) Cigarettes that are certified by a manufacturer in accordance with [section 3] must be marked to indicate compliance with the requirements of [section 2]. The marking must be in 8-point type or larger and consist of:

(a) modification of the universal product code to include a visible mark printed at or around the area of the code. The mark may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed in conjunction with the code;

(b) any visible combination of alphanumeric or symbolic characters permanently stamped, engraved, or embossed upon the cigarette package or cellophane wrap; or

(c) stamped, engraved, embossed, or printed text that indicates that the cigarettes meet the standards required in [sections 1 through 10].

(2) A manufacturer may use only one marking and shall uniformly apply the marking to all packages, including but not limited to packs, cartons, and cases, and brands marketed by the manufacturer.

(3) The department of revenue must be notified of the marking that is selected.

(4) Prior to the certification of any cigarette, a manufacturer shall present its proposed marking to the department of revenue for approval. Upon receipt of the request, the department of revenue shall approve or disapprove the marking offered, except that the department of revenue shall approve any marking in use and approved for sale in New York pursuant to New York executive law section 156-c, the New York fire safety standards for cigarettes. Proposed markings must be considered to be approved if the department of revenue fails to act within 10 business days of receiving a request for approval.

(5) A manufacturer may not modify its approved marking unless the modification has been approved by the department of revenue in accordance with this section.

(6) Manufacturers certifying cigarettes in accordance with [section 3] shall provide a copy of the certification to all wholesale dealers and agents to whom they sell cigarettes and shall also provide sufficient copies of an illustration of the package marking used by the manufacturer pursuant to this section for each retail dealer to whom the wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide a copy of these package markings received from manufacturers to all retail dealers to whom they sell cigarettes.

Section 5. Penalties. (1) A manufacturer, wholesale dealer, agent, or any other person or entity that knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of [section 2], for a first offense, is subject to a civil penalty not to exceed \$10,000 for each sale of the cigarettes and, for a subsequent offense, is subject to a civil penalty not to exceed \$25,000 for each sale of the cigarettes. However, the penalty may not exceed \$100,000 during any 30-day period.

(2) (a) A retail dealer who knowingly sells cigarettes in violation of [section 2]:

(i) for a first offense, is subject to a civil penalty not to exceed \$100 and, for a subsequent offense, is subject to a civil penalty not to exceed \$400 for each sale or offer for sale of the cigarettes, if the total number of cigarettes sold or offered for sale does not exceed 1,000 cigarettes; or

(ii) for a first offense, is subject to a civil penalty not to exceed \$1,000 and, for a subsequent offense, is subject to a civil penalty not to exceed \$5,000 for each sale or offer for sale of the cigarettes, if the total number of cigarettes sold or offered for sale exceeds 1,000 cigarettes.

(b) The total penalty against a retail dealer provided in this subsection (2) may not exceed \$25,000 during a 30-day period.

(3) In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited liability company, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to [section 3] is, for a first offense, subject to a civil penalty of at least \$75,000 and, for a subsequent offense, a civil penalty not to exceed \$250,000 for each false certification.

(4) A person violating any other provision in [sections 1 through 10] is subject to a civil penalty for a first offense not to exceed \$1,000 and, for a subsequent offense, a civil penalty not to exceed \$5,000 for each violation.

(5) Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by [section 2] are subject to forfeiture under 16-11-159 if prior to the destruction of any cigarette seized pursuant to these provisions, the true holder of the trademark rights in the cigarette brand is permitted to inspect the cigarette.

(6) In addition to any other remedy provided by law, the department of justice may file an action in the appropriate district court for a violation of [sections 1 through 10], including petitioning for injunctive relief or to recover any costs or damages suffered by the state because of a violation of [sections 1 through 10], including enforcement costs related to the specific violation and attorney fees. Each violation of [sections 1 through 10] or of rules adopted under [sections 1 through 10] constitutes a separate civil violation for which the department of justice may obtain relief.

Section 6. Implementation — rulemaking authority — inspection for proper markings. (1) The department of justice and the department of revenue may adopt rules, pursuant to Title 2, chapter 4, necessary to effectuate the purposes of [sections 1 through 10].

(2) The department of revenue in the regular course of conducting inspections of wholesale dealers, agents, and retail dealers, as authorized under Title 16, chapter 11, may inspect cigarettes to determine if the cigarettes are marked as required by [section 4]. If the cigarettes are not marked as required, the department of revenue shall notify the department of justice.

Section 7. Inspection. To enforce the provisions of [sections 1 through 10], the department of revenue may examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises. Each person in the possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale shall give the department of revenue the means, facilities, and opportunity for the examinations authorized by this section.

Section 8. Sale outside Montana. [Sections 1 through 10] may not be construed to prohibit a person or entity from manufacturing or selling cigarettes that do not meet the requirements of [section 2] if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and if the person or entity has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale to a person located in this state.

Section 9. Preemption. [Sections 1 through 10] no longer apply if a federal reduced cigarette ignition propensity standard that preempts [sections 1 through 10] is adopted and becomes effective.

Section 10. Local consistency required. The provisions of 7-1-113 apply in the administration and application of [sections 1 through 10].

Section 11. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 12. Effective date. [This act] is effective May 1, 2008.

Section 13. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 10].

Approved April 28, 2007

CHAPTER NO. 319

[HB 473]

AN ACT REPEALING THE WATER ADJUDICATION FEE; CLARIFYING CLAIMS EXAMINATION PRIORITIES; PROVIDING FOR COMPLETION OF EXAMINATION ON A BASIN-BY-BASIN BASIS; TRANSFERRING MONEY FROM THE GENERAL FUND TO THE WATER ADJUDICATION ACCOUNT; PROVIDING THAT AN APPROPRIATION FOR WATER ADJUDICATION MAY NOT BE PART OF THE BASE BUDGET IF THE CLAIMS EXAMINATION BENCHMARKS ARE NOT MET; PROVIDING FOR THE COLLECTION OF OUTSTANDING WATER ADJUDICATION FEES; AMENDING SECTIONS 15-1-216, 17-7-102, 85-2-270, 85-2-271, 85-2-280, AND 85-2-281, MCA; REPEALING SECTIONS 85-2-272, 85-2-273, 85-2-276, 85-2-279, 85-2-283, MCA, AND SECTION 15, CHAPTER 288, LAWS OF 2005; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Section 15-1-216, MCA, is amended to read:

“15-1-216. Uniform penalty and interest assessments for violation of tax provisions — applicability — exceptions — uniform provision for interest on overpayments. (1) A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of \$50 or the amount of the tax due, whichever is less.

(2) (a) Except as provided in subsection (2)(b), a person who fails to pay a tax when due must be assessed a late payment penalty of 1.2% a month or fraction of a month on the unpaid tax. The penalty may not exceed 12% of the tax due.

(b) A person who fails to pay a tax when due under chapter 30, part 2, chapter 53, chapter 65, or chapter 68 must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 15% of the tax due.

(c) The penalty imposed under subsection (2)(a) or (2)(b) accrues on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing a return.

(3) A person who purposely or knowingly, as those terms are defined in 45-2-101, fails to file a return when due or fails to file a return within 60 days after receiving written notice from the department that a return must be filed is liable for an additional penalty of not less than \$1,000 or more than \$10,000. The department may bring an action in the name of the state to recover the penalty and any delinquent taxes.

(4) (a) Interest on taxes not paid when due must be assessed by the department. The department shall determine the interest rates established under subsection (4)(a)(i) for each calendar year by rule subject to the conditions

of this subsection (4)(a). Interest rates on taxes not paid when due for a calendar year are as follows:

(i) For individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is equal to the underpayment rate for individual taxpayers established by the secretary of the United States department of the treasury pursuant to section 6621 of the Internal Revenue Code, 26 U.S.C. 6621, for the fourth quarter of the preceding year or 8%, whichever is greater.

(ii) For all taxes other than individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is 12%.

(b) Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid. Interest accrues daily on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing the return.

(5) (a) Except as provided in subsection (5)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16 [and *the former* 85-2-276].

(b) This section does not apply to:

(i) property taxes; or

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70.

(6) Any changes to interest rates apply to any current outstanding tax balance, regardless of the rate in effect at the time the tax accrued.

(7) Penalty and interest must be calculated and assessed commencing with the due date of the return.

(8) Deficiency assessments are due and payable 30 days from the date of the deficiency assessment.

(9) Interest allowed for the overpayment of taxes or fees is the same rate as is charged for unpaid or delinquent taxes. For the purposes of this subsection, interest charged for unpaid or delinquent taxes is the interest rate determined in subsection (4)(a)(i). (Bracketed language in subsection (5)(a) terminates June 30, 2020—sec. 18, Ch. 288, L. 2005.)”

Section 2. Section 17-7-102, MCA, is amended to read:

“17-7-102. Definitions. As used in this chapter, the following definitions apply:

(1) “Additional services” means different services or more of the same services.

(2) “Agency” means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.

(3) “Approving authority” means:

(a) the governor or the governor’s designated representative for executive branch agencies;

(b) the chief justice of the supreme court or the chief justice’s designated representative for judicial branch agencies;

- (c) the speaker for the house of representatives;
- (d) the president for the senate;
- (e) appropriate legislative committees or a designated representative for legislative branch agencies; or
- (f) the board of regents of higher education or its designated representative for the university system.

(4) (a) “Base budget” means the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget for the state general fund and state special revenue funds may not exceed that level of funding authorized by the previous legislature.

(b) *The term does not include funding for water adjudication if the accountability benchmarks contained in 85-2-271 are not met.*

(5) “Budget amendment” means a temporary appropriation as provided in Title 17, chapter 7, part 4.

(6) “Emergency” means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency’s appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency’s expenditure requirements for the performance of the function or functions.

(7) “Funds subject to appropriation” means those funds required to be paid out of the treasury as set forth in 17-8-101.

(8) “Necessary” means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

(9) “New proposals” means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

(10) “Present law base” means that level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

- (a) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;
- (b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;
- (c) inflationary or deflationary adjustments; and
- (d) elimination of nonrecurring appropriations.

(11) “Program” means a principal organizational or budgetary unit within an agency.

(12) “Requesting agency” means the agency of state government that has requested a specific budget amendment.

(13) “University system unit” means the board of regents of higher education; office of the commissioner of higher education; university of

Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell.”

Section 3. Section 85-2-270, MCA, is amended to read:

“85-2-270. (Temporary) Findings — purpose. (1) The purpose of ~~85-2-270 through 85-2-273, 85-2-276, and 85-2-279~~ ~~85-2-271, 85-2-280 through 85-2-283~~ ~~85-2-282, and this section is to: generate revenue to adequately fund Montana’s water adjudication program to:~~

(a) complete claims examination and the initial decree phase;

(b) reexamine claims in basins that were verified and were not subject to the supreme court examination rules when the water court has received a petition and issued an order pursuant to 85-2-282 or the water court has issued an order on its own initiative; and

(c) ensure that the product of the adjudication is enforceable decrees.

(2) With adequate funding, it is realistic and feasible for the department to complete claims examination and reexamination of verified basins for which the water court has received a petition and issued an order pursuant to 85-2-282 or the water court has issued an order on its own initiative by June 30, 2015. It is also realistic and feasible for the water court to issue a preliminary or temporary preliminary decree by June 30, 2020, for all basins in Montana.

~~(3) It is essential to preserve the trust that the water users of Montana have placed in the legislature by ensuring that the revenue generated by the water adjudication fee established in 85-2-276 is used only for the purpose of adjudicating Montana’s water rights. (Terminates June 30, 2020—sec. 18, Ch. 288, L. 2005.)”~~

Section 4. Section 85-2-271, MCA, is amended to read:

“85-2-271. (Temporary) Benchmarks — action taken if not met — claims examination priority. (1) (a) The completion of initial claims examination is of a higher priority than reexamination of claims that were subject to the verification process unless the chief water judge issues an order making reexamination a higher priority, as provided in subsection (3)(b).

(b) *The department shall develop a list of basins to be examined that is prioritized by year and updated annually. In order to facilitate the efficient use of department and water court resources, the department shall adhere to the basin priorities unless directed otherwise by the water court or the legislature.*

(2) There are approximately 57,000 water right claims that were filed pursuant to 85-2-212 that must be examined. There are approximately 98,000 claims that were verified that may be reexamined using the supreme court examination rules if the water court receives a petition and issues an order as provided in 85-2-282 or the water court issues an order on its own initiative.

(3) (a) The water court shall prioritize basins for the purpose of claims examination and reexamination by the department.

(b) The chief water judge has the authority to order that reexamination be completed for a certain basin in a higher priority than claims examination. If the chief water judge issues an order requiring the department to reexamine claims rather than examining claims, the number of claims that were reexamined must be counted against the amount of claims that the department is required to examine for that period.

(4) (a) The cumulative benchmarks that are provided in subsection (4)(b) must be met. If the benchmarks are not met, ~~the fee contained in 85-2-276 that is attached to a water right for the purpose of funding the adjudication may not be assessed the following even-numbered year money for water adjudication may not be included in the department's base budget.~~ All claims must be examined by June 30, 2015.

(b) The cumulative benchmarks are as follows:

Date	Total Number of Claims Examined
December 31, 2006	8,000
December 31, 2008	19,000
December 31, 2010	31,000
December 31, 2012	44,000
June 30, 2015	57,000

(Terminates June 30, 2020—sec. 18, Ch. 288, L. 2005.)”

Section 5. Section 85-2-280, MCA, is amended to read:

“85-2-280. (Temporary) Water adjudication account. (1) There is a water adjudication account within the state special revenue fund created in 17-2-102.

(2) (a) For the period beginning July 1, 2005, and ending June 30, 2015, there is allocated to the department and the water court up to \$2.6 million, plus the approved inflation factor contained in the revenue estimating resolution, each fiscal year from the water adjudication account for the sole purpose of funding the water adjudication program. These funds may not be used for the purpose of updating or maintaining a computer database.

(b) For the period beginning July 1, 2015, and ending June 30, 2020, there is allocated to the department and the water court up to \$1 million, plus the approved inflation factor contained in the revenue estimating resolution, each fiscal year from the account for the sole purpose of funding the water adjudication program.

(c) The allocations in subsections (2)(a) and (2)(b) are subject to appropriation by the legislature.

~~(3) (a) Subject to subsection (3)(b), the total amount of revenue deposited in the water adjudication account from the fee provided for in 85-2-276 may not exceed \$31 million.~~

~~(b) If federal funds are appropriated for the purposes of 85-2-270 through 85-2-273, 85-2-276, and 85-2-279 through 85-2-283, the maximum amount that may be deposited in the account must be reduced by the amount of federal funds appropriated.~~

~~(c) Once revenue generated from the fees provided for in 85-2-276 and any federal revenue appropriations have reached \$31 million, the fee may no longer be assessed.~~

(4)(3) Interest and income earnings on the water adjudication account must be deposited in the account.

(5)(4) *Revenue Money* remaining in the water adjudication account on June 30, 2020, must be transferred to the water right appropriation account provided for in 85-2-318.

(5) *If the accountability benchmarks contained in 85-2-271 are not met, expenditures from the account in the previous biennium may not be included in the department's base budget, as defined in 17-7-102, for the current biennium. (Terminates June 30, 2020—sec. 18, Ch. 288, L. 2005.)*"

Section 6. Funds transfer. There is transferred \$25 million from the general fund to the water adjudication account provided for in 85-2-280 to be used for the sole purpose of completing the statewide water adjudication by 2020. The transfer must take place on July 15, 2007.

Section 7. Section 85-2-281, MCA, is amended to read:

"85-2-281. (Temporary) Reporting requirements. The department and the water court shall:

(1) provide reports to the environmental quality council at each meeting during a legislative interim on:

(a) the progress of the adjudication *on a basin-by-basin basis*; and

(b) ~~the total revenue generated by the fees established in 85-2-276 and deposited in the account provided for in 85-2-280~~ *the number of basins for which examination was completed during the reporting period*;

(2) include a status report on the adjudication in their presentation to the applicable appropriation subcommittees during each legislative session *including the number of basins for which examination was completed during the reporting period*; and

(3) provide a budget that outlines how each of the entities will be funded in the next biennium, including general fund money, *and* state special revenue funds, ~~and the allocated fee revenue.~~ (Terminates June 30, 2020—sec. 18, Ch. 288, L. 2005.)"

Section 8. Collection of outstanding water adjudication fees — appeals. [This act] does not affect the department's ability to address appeals filed pursuant to former 85-2-276 or the collection of fees from a water right owner who did not pay the water adjudication fee provided for in former 85-2-276 as of [the effective date of this act]. The department of natural resources and conservation shall turn over any debt to the department of revenue for collection pursuant to Title 17, chapter 4. If efforts to collect the debt are not successful, the department of revenue may file a lien against the water right in the county where the water is put to beneficial use after notifying each entity enumerated on the water right.

Section 9. Repealer. Sections 85-2-272, 85-2-273, 85-2-276, 85-2-279, and 85-2-283, MCA, and section 15, Chapter 288, Laws of 2005, are repealed.

Section 10. Effective date. [This act] is effective July 1, 2007.

Section 11. Termination. [Sections 2 through 5 and 7] terminate June 30, 2020.

Approved April 28, 2007

CHAPTER NO. 320

[HB 490]

AN ACT ALLOWING AN INDIVIDUAL INCOME TAX CREDIT FOR THE ADOPTION OF AN ELIGIBLE CHILD; ESTABLISHING CERTAIN INFORMATION REQUIREMENTS TO CLAIM THE CREDIT; PROVIDING THAT THE CREDIT MAY BE CARRIED FORWARD; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Adoption tax credit — limitations. (1) There is allowed a tax credit against the tax imposed by 15-30-103 or 15-30-135 for the legal adoption of an eligible child for which the taxpayer qualifies for the credit for adoption expenses under section 23 of the Internal Revenue Code, 26 U.S.C. 23.

(2) The amount of the credit allowed under subsection (1) is equal to \$1,000 in the tax year the adoption is final. Only one credit is allowed for each eligible child. However, married taxpayers filing separately on the same form may allocate the credit between spouses.

(3) To claim the credit under this section, the taxpayer shall:

(a) include the name, age, and federal tax identification number, if known, of the eligible child on the tax return; and

(b) provide other information as required by the department, including identification of an agent assisting with the adoption.

(4) The credit allowed by this section may not be refunded if the taxpayer has a tax liability less than the amount of the credit. If the sum of credit carryovers from the credit, if any, and the amount of credit allowed by this section for the tax year exceed the taxpayer's tax liability for the current tax year, the excess attributable to the current tax year's credit is a credit carryover to the 5 succeeding tax years. The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must be used first.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, 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, 2006.

Approved April 28, 2007

CHAPTER NO. 321

[HB 514]

AN ACT REVISING THE SEXUAL ASSAULT AND SEXUAL INTERCOURSE WITHOUT CONSENT LAWS TO PROVIDE THAT CONSENT IS NOT EFFECTIVE IF THE VICTIM IS RECEIVING SERVICES FROM A YOUTH CARE FACILITY OR IS A PATIENT IN OR A RESIDENT OF A MENTAL HEALTH FACILITY, A RESIDENTIAL FACILITY, OR A

COMMUNITY-BASED FACILITY OR IS A RECIPIENT OF COMMUNITY-BASED SERVICES AND THE PERPETRATOR IS AN EMPLOYEE, CONTRACTOR, OR VOLUNTEER OF THE FACILITY OR COMMUNITY-BASED SERVICE; PROVIDING A LIMITED MARRIAGE EXCEPTION; AND AMENDING SECTIONS 45-5-501 AND 45-5-502, MCA.

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

Section 1. Section 45-5-501, MCA, is amended to read:

“45-5-501. Definition. (1) As used in 45-5-503, the term “without consent” means:

(a) the victim is compelled to submit by force against the victim or another;
or

(b) *subject to subsection (3)*, the victim is incapable of consent because the victim is:

(i) mentally defective or incapacitated;

(ii) physically helpless;

(iii) overcome by deception, coercion, or surprise;

(iv) less than 16 years old; or

(v) 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;

(vi) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the youth care facility; or

(vii) admitted to a mental health facility, as defined in 53-21-102, admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the facility or community-based service.

(2) As used in subsection (1), the term “force” means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

(3) Subsections (1)(b)(vi) and (1)(b)(vii) do not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service.”

Section 2. 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 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) ~~(a) Consent~~ *Subject to subsection (5)(b), consent is ineffective under this section if the victim is:*

~~(a)(i) 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)(ii) the victim is~~ less than 14 years old and the offender is 3 or more years older than the victim;

~~(iii) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:~~

~~(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and~~

~~(B) is an employee, contractor, or volunteer of the youth care facility; or~~

~~(iv) admitted to a mental health facility, as defined in 53-21-102, admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:~~

~~(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and~~

~~(B) is an employee, contractor, or volunteer of the facility or community-based service.~~

~~(b) Subsections (5)(a)(iii) and (5)(a)(iv) do not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service.”~~

Approved April 27, 2007

CHAPTER NO. 322

[HB 556]

AN ACT ALLOWING A SPECIAL FUEL USER TO USE DYED SPECIAL FUEL FOR CERTAIN CONSTRUCTION PROJECTS; PROVIDING FOR THE

ISSUANCE OF A TEMPORARY PERMIT; PROVIDING FOR THE SUSPENSION OR REVOCATION OF A TEMPORARY PERMIT; ALLOWING THE DEPARTMENT OF TRANSPORTATION TO REFUSE, UNDER CERTAIN CONDITIONS, TO ISSUE A TEMPORARY PERMIT OR A SPECIAL FUEL USER PERMIT TO A SPECIAL FUEL USER; IMPOSING PENALTIES FOR VIOLATIONS; AMENDING SECTIONS 15-70-302 AND 15-70-372, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Use of dyed special fuel allowed for certain projects — temporary permit — tax and penalty imposed for unauthorized use — grounds for refusal — rules. (1) A special fuel user who obtains a special fuel user's permit under 15-70-302 may use dyed special fuel as provided in this section.

(2) (a) A special fuel user may use dyed special fuel when used in nonlicensed motorized equipment, off-highway vehicles, or internal combustion engines, including stationary engines, that are used in connection with any work performed under a contract or subcontract for a private, nonhighway construction project. The special fuel user may use dyed special fuel supplied by the owner or operator of the project or may purchase dyed special fuel.

(b) The special fuel user shall notify the department that:

(i) the special fuel user intends to use dyed special fuel in performance of a contract or subcontract specified in subsection (2)(a);

(ii) the special fuel user intends to use at least 75,000 gallons annually in the performance of the contract or subcontract as evidenced in the contract, subcontract, or other documentation;

(iii) dyed special fuel will not be used in motor vehicles, off-highway vehicles, equipment, or internal combustion engines that are not directly used in the performance of the contract or subcontract.

(3) (a) When the department certifies that the use of dyed special fuel will be used as provided in this section, the department may issue a temporary permit to use dyed special fuel in off-highway vehicles and internal combustion engines, including stationary engines, for the duration of the contract or subcontract. The department may extend the duration of the temporary permit upon request of the special fuel user and the extension of the project.

(b) A special fuel user that is issued a temporary permit under this section shall make the original or a reproduced copy of the permit available for inspection on request of any motor carrier services division employee, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The special fuel user is responsible for reproducing clear and legible copies of the permit.

(4) The special fuel user shall, within 30 days of the completion of the contract, report the following on a form provided by the department:

(a) the number of gallons of dyed special fuel used on the project;

(b) the amount of fuel, if any, provided by the owner or operator of the project to the special fuel user;

(c) the amount of dyed special fuel purchased, if any, by the special fuel user for use on the project; and

(d) all dyed special fuel reported in a return filed in accordance with the requirements of 15-70-325.

(5) If the department determines that the special fuel user purposely overstated the number of gallons to be used on the project, the department may revoke the permit issued under this section.

(6) (a) A special fuel user that uses dyed special fuel for purposes other than those allowed under this section shall pay the tax imposed under 15-70-321 on the unauthorized use of the special fuel and is subject to penalty and interest imposed under 15-70-330 and to the civil penalties imposed under 15-70-372.

(b) If a special fuel user uses dyed special fuel for an unauthorized purpose, the department may suspend the temporary permit for a period not exceeding 30 days for the first violation. For a second violation, the department shall revoke the temporary permit. During the period of suspension, the special fuel user is required to use special fuel on which the state special fuel tax has been paid.

(7) If the department revokes a temporary permit issued under this section to a special fuel user, the department may refuse to issue a temporary permit or a special fuel user permit to the special fuel user in the same manner as provided in 15-70-305.

(8) A special fuel user that is issued a temporary permit under subsection (1) shall keep the following records:

- (a) all dyed special fuel receipts for the project;
- (b) the location of the fixed or mobile facility where the dyed special fuel is stored and withdrawn for the project;
- (c) the date of any fuel disbursement;
- (d) the number of gallons withdrawn;
- (e) the beginning and ending meter readings or other means of determining the quantity of dyed special fuel withdrawn;
- (f) the identification number, hour meter, or unit number of the off-highway vehicle, equipment, or internal combustion engine that the dyed special fuel was used in; and
- (g) the purpose of the withdrawal if the fuel is withdrawn by the special fuel user for any other purpose.

(9) The department may adopt rules for the administration and enforcement of this section.

Section 2. Section 15-70-302, MCA, is amended to read:

“15-70-302. Special fuel user’s permits required — exceptions. (1) (a) A special fuel user shall obtain a special fuel user’s permit annually from the department prior to the use of special fuel:

- (i) by a special fuel user awarded a contract or subcontract in accordance with 15-70-321; or
- (ii) in a vehicle permitted pursuant to an agreement adopted pursuant to 15-70-121.

(b) Except as provided in subsection (3), a special fuel user shall at all times display the original or a reproduced copy of the permit in each special fuel vehicle operated by the special fuel user upon the public roads and highways. The permit or copy must be exhibited for inspection on request of any motor

carrier services division employee, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The special fuel user is responsible for reproducing clear and legible copies of the permit.

(2) Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel user's courtesy vehicle permit. The permit is not transferable and is valid for 90 days. Permits must be issued at no cost to the user by the department motor carrier services enforcement officers and motor carrier services patrol officers. The department may require a user who has fuel capacity in excess of 30 gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

(3) A special fuel user need not display the original or reproduced copy of the special fuel user's permit, as required by subsection (1), if the special fuel user is registered and licensed pursuant to the International Fuel Tax Agreement, as authorized by 15-70-121, and the vehicle displays a license or decal issued pursuant to the agreement.

(4) *A Except as provided in [section 1], a special fuel user who obtains a permit under subsection (1) may use only fuel on which state fuel tax has been paid.*"

Section 3. Section 15-70-372, MCA, is amended to read:

"15-70-372. Civil penalties. (1) Except as provided in subsection (2), the department may, after giving notice and holding a hearing, if requested, pursuant to Title 2, chapter 4, part 6, impose a civil penalty not to exceed \$100 for any violation of this part. The civil penalty may be in addition to the criminal penalties imposed under 15-70-330, 15-70-336, and 15-70-366.

(2) The department shall, after giving notice and holding a hearing, if requested, impose a civil penalty not to exceed \$1,000 for the first offense and \$5,000 for the second offense for using dyed special fuel in violation of the provisions of *[section 1] and 15-70-330(3).*"

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 70, part 3, and the provisions of Title 15, chapter 70, part 3, apply to [section 1].

Section 5. Effective date. [This act] is effective July 1, 2007.

Section 6. Applicability. [This act] applies to contracts entered into after June 30, 2007.

Approved April 28, 2007

CHAPTER NO. 323

[HB 574]

AN ACT APPROPRIATING \$50,000 FROM THE GENERAL FUND TO THE DEPARTMENT OF COMMERCE TO BE USED FOR GRANTS TO ASSIST IN THE RESTORATION AND RENOVATION OF CULTURAL AND HISTORICAL ARTS CENTERS; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Appropriation. There is appropriated \$50,000 from the state general fund to the department of commerce for the biennium beginning July 1,

2007, for grants to assist in the restoration and renovation of historical and cultural arts centers impacted by a disaster, as defined in 10-3-103, in communities that are at least 25 miles from another center. The department shall use a competitive application process in awarding grants.

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved April 28, 2007

CHAPTER NO. 324

[HB 609]

AN ACT REQUIRING A SCHOOL DISTRICT TO USE SELF-INSURED HEALTH BENEFIT PLAN RESERVE FUNDS TO PAY EMPLOYEE CLAIMS AND LIABILITIES OR TO PAY EMPLOYEE BENEFIT COSTS IF A DISTRICT'S SELF-INSURED HEALTH BENEFIT PLAN IS DISSOLVED; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. District self-funded health benefit plan reserve funds — exception for dissolution of plan. (1) Except as provided in subsection (2), the trustees of a school district with a self-insured health benefit plan holding reserve funds shall use these funds to pay claims and other liabilities of the district's health benefit plan.

(2) Upon dissolution of a district's self-insured health benefit plan, all remaining reserves must be maintained by the district under the provisions of 20-3-331 and must be used to pay for employee benefit costs as determined by a collective bargaining agreement or an employer policy or as required by applicable state or federal law.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 3, part 3, and the provisions of Title 20, chapter 3, part 3, apply to [section 1].

Section 3. Effective date — applicability. [This act] is effective on passage and approval and applies to health benefit claims filed or self-insured health plans dissolved on or after [the effective date of this act].

Approved April 27, 2007

CHAPTER NO. 325

[HB 611]

AN ACT GENERALLY REVISING THE LAWS RELATING TO TELECOMMUNICATIONS ACCESS SERVICES FOR PERSONS WITH DISABILITIES; AUTHORIZING THE DEPARTMENT OF REVENUE TO COLLECT THE TELECOMMUNICATIONS ACCESS SERVICES AND SPECIALIZED TELECOMMUNICATIONS EQUIPMENT FEE, CONDUCT AUDITS, AND ENGAGE IN OTHER ENFORCEMENT ACTIVITIES; CLARIFYING THAT PROVIDERS OF PREPAID WIRELESS SERVICES ARE REQUIRED TO ASSESS AND COLLECT THE TELECOMMUNICATIONS ACCESS SERVICES AND SPECIALIZED TELECOMMUNICATIONS

EQUIPMENT FEE; AMENDING SECTIONS 2-15-2212, 53-19-302, 53-19-306, 53-19-307, 53-19-308, 53-19-310, 53-19-311, AND 69-3-1302, MCA; REPEALING SECTION 53-19-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-15-2212, MCA, is amended to read:

“2-15-2212. Committee on telecommunications access services for persons with disabilities — composition — allocation. (1) There is a committee on Montana telecommunications access services for persons with disabilities.

(2) The committee consists of 13 members appointed by the governor as follows:

(a) four members who are persons with disabilities, two of whom must be deaf or hard-of-hearing;

(b) two members who are not persons with disabilities, one of whom must be engaged in a business other than a business in the telecommunications industry and one of whom must be a senior citizen;

(c) one member from the department of public health and human services;

(d) one member from the largest ~~local exchange company~~ *service provider* in Montana;

(e) one member from an independent ~~local exchange company~~ *service provider*;

(f) one member from an interLATA interexchange carrier;

(g) one member from the public service commission;

(h) one member who is a licensed audiologist; and

(i) one member from the department of administration.

(3) The committee is allocated to the department of public health and human services for administrative purposes only as provided in 2-15-121.”

Section 2. 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.~~

(2) *“Department” means the department of revenue.*

(3) *“End user connection” means a customer’s connection to a service provider’s network.*

(4) ~~“Mobility-impaired”~~ *“Mobility-disabled”* means the condition of a person with reduced function of the arms, *legs, and or* 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.

(5) *“Net amount billed for the fee” means the gross amount billed for fees imposed by 53-19-311, less adjustments for uncollectible accounts, refunds, incorrect billings, and other appropriate adjustments.*

~~(4)~~(6) *“Person with a disability” means the condition of a person who is deaf and blind, deaf, hard-of-hearing, ~~speech-impaired~~ speech-disabled, or ~~mobility-impaired~~ mobility-disabled.*

~~(5)~~(7) *“Program” means the program established in 53-19-306.*

(8) *“Service provider” means an entity that offers services to subscribers in Montana to allow two or more persons in different locations to communicate orally, without regard to the technology or medium the entity uses to provide the telecommunications service, and access to telecommunications relay service. The term includes providers of telecommunications service including but not limited to providers of internet protocol-enabled voice communications service.*

~~(6)~~(9) *“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~~ public switched telephone network or internet protocol-enabled voice communications service. 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~~ mobility-disabled.*

(10) *“Subscriber” means an end user who receives telecommunications network access from a service provider.*

(11) *“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.*

~~(7)~~(12) *“Telecommunications relay service” means a service that permits full and simultaneous communication between those using specialized telecommunications equipment and those using conventional telephone equipment or any other technology or equipment, including but not limited to personal computers and videophones.*

~~(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 3. 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.

(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.

~~(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 4. 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 *specialized telecommunications equipment* based on family income of less than 250% of the federal poverty level;

(b) require that ~~participants in the program~~ *the person with a disability* be residents ~~a resident~~ of Montana and that residency be maintained as a condition of eligibility for ~~continued participation in the program~~ *specialized telecommunications equipment*;

(c) require that ~~participants~~ *persons with a disability* to 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~~ *equipment vendor* 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)~~*(i)* make reasonable efforts to recover equipment from those who become ineligible for continued participation in the program;

~~(k)~~*(j)* 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)~~*(k)* 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.”

Section 5. Section 53-19-308, MCA, is amended to read:

“53-19-308. Telecommunications relay service system — requirements. The committee shall contract with *a one or more* qualified ~~provider~~ *providers* to design and implement a telecommunications relay service

system that fulfills the purpose described in 53-19-306. The committee shall require, under the terms of the contract, that:

- (1) the system relay all messages promptly and accurately;
- (2) the system maintain the privacy of persons using the system; and
- (3) the provider preserve the confidentiality of all telephone communications, except in instances in which the confidentiality would further a violation of the law.”

Section 6. Section 53-19-310, MCA, is amended to read:

“53-19-310. Fund Account for telecommunications services and specialized telecommunications equipment for persons with disabilities. (1) There is an account for telecommunications services and specialized telecommunications equipment 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 fees billed and collected pursuant to 53-19-311.

(2) ~~Unless allocated to the Montana school for the deaf and blind, the~~ 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 7. Section 53-19-311, MCA, is amended to read:

“53-19-311. Special assessment. (1) A charge fee of 10 cents a month must be assessed on each telephone access line end user connection provided and billed or any prepaid options by each local exchange company service provider and is imposed for the purposes of this part.

(2) Each customer subscriber of a local exchange company service provider is liable for payment to the local exchange company service provider of any charge fee properly imposed pursuant to this part. The local exchange company service provider is not liable for any uncollected charge fee, nor does the company service provider have an obligation to take legal action to enforce the collection of any charge fee that is unpaid by its customers subscribers.

(3) (a) Each local exchange company service provider that periodically bills subscribers for its services shall bill each customer subscriber for the charge fee provided for in subsection (1). For subscribers who are not billed periodically, including but not limited to subscribers who purchase prepaid wireless telecommunication services for a flat fee, the service provider shall include in the price of the service a fee of 10 cents for each 30-day period during which the subscriber is authorized to use the service or a prepaid wireless telephone service provider shall remit an amount equal to the fees established in subsection (1) after collecting the amount using one of the following options:

(i) on a monthly basis, the prepaid service provider shall collect an amount equal to the fees established in subsection (1) from each active prepaid subscriber whose account balance is equal to or greater than the fees established in subsection (1); or

(ii) the prepaid service provider shall divide the total intrastate monthly revenue by the average revenue for each prepaid subscriber of the wireless

industry to determine the number of prepaid subscribers. The fees established in subsection (1) are then applied to the number of prepaid subscribers.

(b) Each service provider shall file a return provided by the department reporting the amount of fees collected on access line services during the quarter. Except as provided in subsection (4), all charges billed and fees collected by a local exchange company service provider must be transmitted to the state treasurer department no later than the last day of the month following the end of each calendar quarter in which the charge is billed fees are collected. All charges fees received by the state treasurer department must be deposited in the fund and account established in 53-19-310 to the credit of the committee.

(4) Each local exchange company service provider may deduct and retain 3/4 of 1% of the total charges billed and fees collected each month to cover its administrative expenses in complying with the requirements of subsection (3)."

Section 8. Section 69-3-1302, MCA, is amended to read:

"69-3-1302. Definitions. As used in this part, the following definitions apply:

(1) "Billing agent" means a telecommunications carrier that includes in a bill that it sends to a customer a charge for a product or service offered by a service provider.

(2) "Billing aggregator" means any entity, other than a service provider, that forwards the charge for a product or service offered by a service provider to a billing agent.

(3) "Customer" means a person who has purchased telecommunications services from a telecommunications carrier or who has been billed charges on a telephone bill for the services or products of another entity.

(4) "Electronic signature" has the meaning as provided in 30-18-102.

(5) "Local exchange company" ~~has the meaning as provided in 53-19-302.~~ *means a telecommunications company that provides telephone lines or wireless service to members of the general public who are its customers.*

(6) "Primary interexchange carrier" means the telecommunications carrier from which a customer chooses to purchase long-distance services.

(7) "Service provider" means any entity, other than the billing agent, that offers a product or service to a customer, the charge for which appears on the bill of a billing agent.

(8) (a) "Telecommunications carrier" or "carrier" means any provider of telecommunications services. An entity providing other products and services is considered a telecommunications carrier only to the extent that the entity is engaged in providing telecommunications services.

(b) The term does not mean aggregators of telecommunications services as defined in 47 U.S.C. 226."

Section 9. Records — audit. (1) Each service provider required to collect the fee provided for in 53-19-311 shall maintain and have available for inspection by the department books, ledgers, registers, or other documents showing the collection of the fee for telecommunications access services and specialized telecommunications equipment for persons with disabilities for the preceding 5 years or until any dispute or litigation concerning the fees is resolved, whichever is later.

(2) At the request of the committee or on its own initiative, the department or a third party designated by the department may audit the records of any service provider to ensure proper accounting of all fees billed and collected pursuant to 53-19-311. Any expenses of the audit must be paid by the program.

Section 10. Service provider required to hold fee in trust for state penalty and interest. (1) Each service provider required to collect the fee imposed by 53-19-311 holds the fee in trust for the state of Montana and for payment of the fee to the department as provided in 53-19-311.

(2) (a) A service provider that fails to file the return required in 53-19-311 must be assessed a penalty as provided in 15-1-216. The department may waive any penalty as provided in 15-1-206.

(b) A service provider that fails to make payment or fails to report and make payment as required by 53-19-311 must be assessed penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(c) Interest on fees not paid when due is assessed in the same manner as taxes not paid when due as provided in 15-1-216.

(3) (a) If a service provider fails to file the return required by 53-19-311 or if the department determines that the report understates the amount of fees due, the department may determine the amount of the fees due and assess that amount against the service provider. The provisions of 15-1-211 apply to any assessment by the department. The service provider may seek review of the assessment pursuant to 15-1-211.

(b) When a deficiency is determined and the amount due becomes final, the department shall mail a notice and demand for payment to the owner or operator. Penalty and interest must be added to any deficiency as provided in 15-1-216.

Section 11. Credit or refund for overpayment — interest on overpayment. (1) If the department determines that the amount of fees, penalty, or interest paid for any year is more than the amount due, the amount of the overpayments must be credited against any fees, penalty, or interest then due from the service provider and the balance refunded to the service provider or the service provider's successor through reorganization, merger, or consolidation, or to the service provider's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on deficiency assessments as provided in 15-1-216 from the due date of the return or from the date of overpayment, whichever date is later, to the date the department approved refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for a refund is delayed more than 30 days by reason of failure of the service provider to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed if:

(i) the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) the amount of interest is less than \$1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual liability is considered an overpayment with respect to which interest is allowed.

Section 12. Statute of limitations. (1) Except as provided in subsection (3), a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of the additional fee proposed to be assessed is mailed within 5 years from the date the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the service provider, before the expiration of the period prescribed for assessment of the fee, consents in writing to an assessment after that time, 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 allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the service provider files a claim or the department determines the existence of the overpayment and approves the refund or credit. If the service provider has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund is allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the service provider fails to file the return, the fee may be assessed or an action to collect the fee may be brought at any time. If a return is required to be filed and the service provider files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

Section 13. Service provider considered taxpayer under provisions for fee. Unless the context requires otherwise, the provisions of Title 15, referring to the audit and examination of reports and returns, determination of deficiency assessments, claims for refunds, penalties and interest, jeopardy assessments, warrants, conferences, appeals to the department, appeals to the state tax appeal board, and procedures relating to the application of this part apply as if the fee imposed in this part were a tax imposed upon or measured by net income. The provisions apply to the subscriber liable for the fee and to the service provider required to collect the fee. Any amount collected and required to be remitted to the department is considered a tax upon the service provider required to collect it, and the service provider is considered a taxpayer.

Section 14. Repealer. Section 53-19-312, MCA, is repealed.

Section 15. Codification instruction. [Sections 9 through 13] are intended to be codified as an integral part of Title 53, chapter 19, part 3, and the provisions of Title 53, chapter 19, part 3, apply to [sections 9 through 13].

Section 16. Effective date. [This act] is effective on passage and approval.

Approved April 28, 2007

CHAPTER NO. 326

[HB 677]

AN ACT PROVIDING AN APPROPRIATION TO THE BOARD OF CRIME CONTROL TO SUSTAIN FUNDING FOR EXISTING PREVENTION AND AFTER-SCHOOL PROGRAMS FOR AT-RISK YOUTH; AUTHORIZING GRANT FUNDS TO BE USED TO LEVERAGE MATCHING FUNDS; AUTHORIZING THE BOARD OF CRIME CONTROL TO USE UP TO 3 PERCENT OF THE FUNDING FOR ADMINISTRATION; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Appropriation — matching funds — administration. (1) There is appropriated from the general fund to the board of crime control \$250,000 for the biennium ending June 30, 2009, to provide grants to sustain funding for existing prevention and after-school programs for at-risk youth.

(2) The board of crime control may:

(a) use grant funds received under this section to leverage federal or private funds; and

(b) use up to 3% of the funds appropriated under this section to administer the prevention and after-school programs.

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved April 28, 2007

CHAPTER NO. 327

[HB 680]

AN ACT AUTHORIZING THE DEPARTMENT OF REVENUE TO ENTER INTO CONTRACTS FOR OUT-OF-STATE COLLECTIONS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Out-of-state collections — authority to enter into contracts — statutory appropriation. The department may enter into contracts with out-of-state attorneys, other state tax agencies, and others located outside the state for out-of-state collections of taxes, fees, and other debt owed the state when the department determines that the amount collected under a contract will likely exceed the cost of collection. The department shall deposit the gross amount collected in the account or fund to which the tax, fee, or other debt was originally owed. The costs of collection are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for the purposes of this section.

Section 2. Section 17-7-502, MCA, is amended to read:

“17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; [section 1]; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; 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, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 1, and the provisions of Title 15, chapter 1, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2007.

Approved April 27, 2007

CHAPTER NO. 328

[HB 706]

AN ACT PROVIDING FOR THE PERIODIC INFLATION ADJUSTMENT OF CAMPAIGN CONTRIBUTION LIMITS; REQUIRING THE COMMISSIONER OF POLITICAL PRACTICES TO CALCULATE THE ADJUSTED LIMITS AND TO PUBLISH THE ADJUSTED LIMITS AS A RULE; AND AMENDING SECTION 13-37-216, 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 — *adjustment*. (1) (a) ~~Aggregate~~ *Subject to adjustment as provided for in subsection (4), 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 \$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 \$250;

(iii) for a candidate for any other public office, not to exceed \$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 that is not specifically organized on behalf of a particular candidate or that is not controlled either directly or indirectly by a candidate or candidate's committee and 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, *adjusted as provided for in subsection (4)*, from all political party committees:

(a) for candidates filed jointly for the offices of governor and lieutenant governor, not to exceed \$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 \$6,500;

(c) for a candidate for public service commissioner, not to exceed \$2,600;

(d) for a candidate for the state senate, not to exceed \$1,050;

(e) for a candidate for any other public office, not to exceed \$650.

(4) (a) *The commissioner shall adjust the limitations in subsections (1) and (3) by multiplying each limit by an inflation factor, which is determined by*

dividing the consumer price index for January of the year in which an election is held by the consumer price index for January 2003.

(b) The resulting figure must be rounded up or down to the nearest:

(i) \$10 increment for the limits established in subsection (1); and

(ii) \$50 increment for the limits established in subsection (3).

(c) The commissioner shall publish the revised limitations as a rule.

~~(4)~~(5) A candidate may not accept any contributions, *including in-kind contributions*, in excess of the limits in this section.

~~(5)~~(6) 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."

Approved April 27, 2007

CHAPTER NO. 329

[HB 737]

AN ACT GENERALLY REVISING MOTOR VEHICLE LAWS; GENERALLY REVISING LICENSING REQUIREMENTS FOR THE SALE OF MOTOR VEHICLES, TRAILERS, CAMPERS, MOTORBOATS, PERSONAL WATERCRAFT, SAILBOATS, SNOWMOBILES, AND OFF-HIGHWAY VEHICLES; CONSOLIDATING MOTORBOAT, PERSONAL WATERCRAFT, SNOWMOBILE, AND OFF-HIGHWAY DEALER LICENSING UNDER TITLE 61, MCA; AUTHORIZING A SEPARATE BROKER'S LICENSE FOR CERTAIN VEHICLE TRANSACTIONS; ESTABLISHING REQUIREMENTS FOR A BROKER'S LICENSE; REVISING REQUIREMENTS FOR LICENSING CERTAIN VEHICLE MANUFACTURERS; DEFINING CERTAIN TERMS AND REVISING OTHER DEFINITIONS; REVISING AND CLARIFYING THE TITLING AND REGISTRATION PROCESS FOR CERTAIN VEHICLES; CLARIFYING RESIDENCY REQUIREMENTS FOR VEHICLE REGISTRATION; REVISING THE LIMITATION FOR VEHICLE TRANSFERS FROM A SMALL ESTATE; CLARIFYING THE AUTHORITY TO ISSUE TEMPORARY REGISTRATION PERMITS; REVISING AND CLARIFYING CERTAIN PROVISIONS FOR THE ISSUANCE OF LICENSE PLATES; ELIMINATING LIENS FOR MOTOR VEHICLE REGISTRATION FEES; CLARIFYING FEES FOR PERMANENT REGISTRATION OF LIGHT VEHICLES; REVISING AND CLARIFYING PROCEDURES FOR SUSPENDING LICENSE PLATES AND REGISTRATION FOLLOWING CERTAIN CONVICTIONS; REVISING THE FEE FOR CERTAIN RECORD SEARCHES; PROHIBITING EXHAUST NOISE IN EXCESS OF A CERTAIN LEVEL; AMENDING SECTIONS 15-1-122, 23-2-502, 23-2-515, 23-2-601, 23-2-614, 23-2-631, 23-2-634, 23-2-641, 23-2-642, 23-2-644, 61-1-101, 61-3-101, 61-3-115, 61-3-116, 61-3-206, 61-3-216, 61-3-222, 61-3-224, 61-3-301, 61-3-303, 61-3-320, 61-3-321, 61-3-332, 61-3-448, 61-3-463, 61-3-468, 61-3-503, 61-3-562, 61-4-101, 61-4-102, 61-4-104, 61-4-105, 61-4-109, 61-4-111, 61-4-112, 61-4-120, 61-4-122, 61-4-123, 61-4-124, 61-4-125, 61-4-126, 61-4-129, 61-4-130, 61-4-131, 61-4-135, 61-4-136, 61-4-137, 61-4-202, 61-4-204, 61-5-112, 61-6-304, 61-8-102,

AND 61-11-105, MCA; REPEALING SECTIONS 23-2-513, 23-2-540, 23-2-619, AND 23-2-818, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Certificate of title — custom-built motorcycle. (1) When a person applies for a certificate of title for a custom-built motorcycle and a certificate of title or an electronic record of title is created pursuant to this chapter, the certificate of title or electronic record of title must include:

(a) the make, style, year of manufacture, serial number or identification number of the motorcycle's engine, and year of manufacture for the motorcycle, which is the year that the engine was manufactured or the year that the engine was manufactured to resemble; and

(b) the make and vehicle identification number for the frame of the motorcycle.

(2) If the application for a certificate of title is not accompanied by a previously issued certificate of title that includes the required information or a certificate from the manufacturer of the motorcycle's engine or frame, the department may require a vehicle inspection to confirm the make, year of manufacture, and serial or identification number of the motorcycle's engine, the frame, or both, and, if applicable, to assign a special identification number under 61-3-107.

Section 2. Registration of custom-built motorcycle — exemptions.

(1) Upon original registration of a custom-built motorcycle, the owner of the custom-built motorcycle shall:

(a) pay the fees required in 61-3-321, plus an additional \$10 fee, to be deposited in the state general fund;

(b) certify, in writing, that the motorcycle is:

(i) not used for general transportation purposes; and

(ii) is equipped as required by the state law in effect in the year of manufacture of the motorcycle, as determined under [section 1].

(2) A custom-built motorcycle registered under this section is exempt from vehicle equipment requirements under chapter 9 of this title unless the equipment was required under state law in the year of manufacture of the motorcycle, as listed on the registration receipt for the motorcycle and determined under [section 1].

Section 3. Broker requirements — restrictions — annual report — fees. (1) A broker may not display a motor vehicle, power sports vehicle, or trailer at the broker's established place of business.

(2) A broker shall install and maintain telephone service at the broker's established place of business. The telephone service must be listed in the directory assistance that applies to the area in which the business is located, or if a cellular service is used, the broker's cell phone number must be posted at the broker's established place of business.

(3) (a) A broker shall maintain a record of every purchase, sale, or exchange of a motor vehicle, power sports vehicle, or trailer negotiated by the broker for compensation upon behalf of a client. The record must include the name, address, and customer identification number of:

(i) the broker's client;

(ii) the dealer or person from whom the client purchased, sold, or exchanged a motor vehicle, power sports vehicle, or trailer; and

(iii) the financial institution, if any, that financed the client's purchase, sale, or exchange of a motor vehicle, power sports vehicle, or trailer.

(b) The broker shall also maintain a record of each motor vehicle, power sports vehicle, or trailer for which a deal was brokered, including a description of the vehicle, power sports vehicle, or trailer, its identification number, and the source or sources of compensation received by the broker for each deal.

(c) All records must be physically located and maintained within the building referred to in 61-4-101. Records must be preserved for at least 5 years after the date of the purchase, sale, or exchange negotiated by the broker. 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.

(4) On or before December 31 of each year, a broker shall submit an annual report, in a form or manner prescribed by the department, to the department pertaining to any changes concerning owner identity, other ownership interests, felony conduct, or surety bond filings, as originally required under 61-4-101, that may have occurred that calendar year and to provide any other relevant information required by the department.

(5) The annual report must be accompanied by a \$30 filing fee. The annual report must include the number of purchases, sales, or exchanges negotiated by the broker during the calendar year for which the annual report is filed.

Section 4. Common standards — dealer plates — demonstrator plates — identification cards — fees. (1) (a) Dealer, demonstrator, and courtesy license plates authorized under this part must be designed by the department in a manner that is similar to standard license plates furnished under 61-3-332, but the word "dealer", "demonstrator", or "courtesy" must be included in the plate design.

(b) Dealer, demonstrator, and courtesy license plates must be numbered in a manner that is readily distinguishable from other plate styles issued by the department. The numbering system for dealer plates must contain the distinctive license number assigned by the department to a dealer and a number or alphanumeric that relates to the assignment of sets of dealer plates to a dealer. The numbering system for demonstrator plates may be sequential and unrelated to the number of demonstrator plates or the distinctive license number assigned to a dealer, wholesaler, or auto auction.

(c) Dealer, demonstrator, and courtesy plates issued under this part must be replaced on the same cycle that is required for standard license plates under 61-3-332.

(d) Except as provided in 61-4-124, dealer, demonstrator, and courtesy plates must display a registration decal, affixed as prescribed by the department, for the calendar year for which use of the plate or plates is authorized under this part.

(2) (a) Identification cards must be designed by the department and furnished to dealers to authorize the demonstration of a motorboat or personal watercraft, a snowmobile, or an off-highway vehicle by a dealer licensed under this part or a customer of a dealer licensed under this part. Each identification card must include the dealer's name and address and the license number assigned by the department to the dealer and must designate the type of power

sports vehicle for which its use is authorized, such as a motorboat or personal watercraft, snowmobile, or off-highway vehicle.

(b) The department may use the same numbering system for identification cards as it uses for demonstrator plates.

(3) (a) Upon issuance of a license to a dealer whose business includes the sale of motorboats or personal watercraft, snowmobiles, or off-highway vehicles, the department shall furnish identification cards to a dealer as follows:

(i) for a dealer who sells motorboats or personal watercraft, one identification card;

(ii) for a dealer who sells snowmobiles, two identification cards; and

(iii) for a dealer who sells off-highway vehicles, two identification cards.

(b) The dealer may obtain additional identification cards for \$2, as needed, and upon submitting justification for the need to the department.

(4) (a) An identification card issued to a dealer who sells motorboats or personal watercraft may be displayed on a dealer's motorboat or personal watercraft while the motorboat or personal watercraft is operating for a purpose related to the buying, selling, exchanging, or performance testing of the motorboat or personal watercraft by the dealer, manufacturer, or potential buyer.

(b) An identification card issued to a dealer who sells snowmobiles must be carried by the dealer when demonstrating the dealer's snowmobiles or by the dealer's customer.

(c) An identification card issued to a dealer who sells off-highway vehicles must be carried by the dealer when the dealer's off-highway vehicles are being demonstrated for sale purposes or by the dealer's customer.

(5) (a) All dealer, demonstrator, and courtesy plates and identification cards issued under this part expire on December 31 of the year of issue and must be renewed annually.

(b) A dealer, auto auction, or wholesaler who files the annual report required under 61-4-120, 61-4-124, or 61-4-125 on or before December 31 of the calendar year may display or use dealer or demonstrator plates and identification cards assigned for the prior calendar year through the last day of February of the following year.

Section 5. Exhaust noise limitation. (1) Except as provided in subsection (3), a person may not operate a motor vehicle with an exhaust system that emits a noise in excess of 95 decibels, as measured by the society of automotive engineers' standard j1169 (May 1998).

(2) A person charged with violating this section may not be convicted if the person had reasonable grounds to believe that the vehicle was not operated in violation of the standard in subsection (1).

(3) This section does not apply to a motorcycle or quadricycle that is subject to 61-9-418.

Section 6. 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, *a base amount of \$36,764 for fiscal year 2003. Beginning with fiscal year 2004, and* 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) ~~a base amount of \$3,050,205 in fiscal year 2006; and~~

~~(b) in each succeeding fiscal year, the amount in subsection (2)(a), increased by 1.5% in each succeeding fiscal year.~~

(3) For each 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, 1.62% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and 1.48% of the motor vehicle revenue deposited in the state general fund in succeeding each fiscal years year. The amount of 8.75% of the allocation in fiscal year 2006 and 9.48% of the allocation in each fiscal year 2007 and succeeding years must be used for the purpose of reimbursing the hired removal of abandoned vehicles. Any portion of the allocation not used for abandoned vehicle removal reimbursement must be used as provided in 75-10-532.~~

~~(b) to the noxious weed state special revenue account provided for in 80-7-816, 1.53% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and 1.50% of the motor vehicle revenue deposited in the state general fund in succeeding each fiscal years year;~~

~~(c) to the department of fish, wildlife, and parks:~~

~~(i) 0.47% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and in succeeding fiscal years, 0.46% of the motor vehicle revenue deposited in the state general fund, with the applicable percentage to be:~~

~~(A) used to:~~

~~(I) acquire and maintain pumpout equipment and other boat facilities, 5.2% in fiscal year 2006 and 4.8% in each fiscal year 2007 and succeeding years;~~

~~(II) administer and enforce the provisions of Title 23, chapter 2, part 5, 20.8% in fiscal year 2006 and 19.1% in each fiscal year 2007 and succeeding years;~~

~~(III) enforce the provisions of 23-2-804, 12.1% in fiscal year 2006 and 11.1% in each fiscal year 2007 and succeeding fiscal years; and~~

~~(IV) develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use, 18.1% in fiscal year 2006 and 16.7% in each fiscal year 2007 and succeeding fiscal years; and~~

~~(B) deposited in the state special revenue fund established in 23-1-105 in an amount equal to 43.8% in fiscal year 2006 and 48.3% in each fiscal year 2007 and succeeding fiscal years;~~

~~(ii) 0.12% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and 0.10% of the motor vehicle revenue deposited in the state general fund in each subsequent fiscal year, with 50% of the amount to be used for enforcing the purposes of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619 23-2-618, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 and 50% of the amount designated for use in the development, maintenance, and operation of snowmobile facilities; and~~

~~(iii) 0.5% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and 0.16% of the motor vehicle revenue deposited in the state~~

general fund in each succeeding fiscal year to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) ~~0.75% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and 0.64% of the motor vehicle revenue deposited in the state general fund in each succeeding fiscal year, with 21.30% in fiscal year 2006 and 24.55% in fiscal year 2007 and succeeding fiscal years to be deposited in the state veterans' cemetery account provided for in 10-2-603 and with 78.70% in fiscal year 2006 and 75.45% in fiscal year 2007 and succeeding fiscal years to be deposited in the veterans' services account provided for in 10-2-112(1);~~

(e) ~~0.59% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and 0.30% of the motor vehicle revenue deposited in the state general fund in each succeeding fiscal year 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~~

(f) ~~to the search and rescue account provided for in 10-3-801, 0.20% of the motor vehicle revenue deposited in the state general fund in fiscal year 2006 and 0.04% of the motor vehicle revenue deposited in the state general fund in each succeeding fiscal year.~~

(4) For the purposes of this section, "motor vehicle revenue deposited in the state general fund" means revenue received from:

(a) fees for issuing a motor vehicle title paid pursuant to 61-3-203;

(b) fees, fees in lieu of taxes, and taxes for vehicles, vessels, and snowmobiles registered or reregistered pursuant to 61-3-321 and 61-3-562;

(c) GVW fees for vehicles registered for licensing pursuant to Title 61, chapter 3, part 3; and

(d) all money collected pursuant to 15-1-504(3).

(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 7. 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 by the *department of justice, an authorized agent, as defined in 61-1-101, or a county treasurer* to the owner of a motorboat or sailboat ~~or by the department of justice to dealers or manufacturers~~, assigning the motorboat or sailboat an identifying number and containing other information as required by the department of justice.

(2) "Dealer" means 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.~~

(3)(2) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(4)(3) "Documented vessel" means a vessel that has and is required to have a valid marine document as a vessel of the United States.

(5)(4) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat or sailboat.

(6)(5) "Lienholder" means a person holding a security interest.

(7)(6) "Manufacturer" means 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.

(8)(7) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

(9)(8) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(10)(9) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

(11)(10) (a) "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.

(b) The term does not include a lessee under a lease not intended as security.

(12)(11) "Passenger" means each person carried on board a vessel other than:

(a) the owner or 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 any consideration for their carriage and who are paid for their services; or

(d) a guest on board a vessel that is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for the guest's carriage.

(13)(12) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(14)(13) "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.

(15)(14) "Registration decal" means an adhesive sticker produced by the department of justice and issued by the department of justice, an authorized agent as defined in 61-1-101, or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft as proof of payment of fees in lieu of tax imposed on the motorboat, sailboat, or personal watercraft for the registration period indicated on the decal as recorded by the department of justice under 61-3-101.

(16)(15) (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.

(17)(16) "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.

(18)(17) "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.

(19)(18) "Validation decal" means an adhesive sticker produced by the department and issued by the department or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft verifying the identifying number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner to meet requirements of the federal standard numbering system.

(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 8. Section 23-2-515, MCA, is amended to read:

"23-2-515. Registration decal to be displayed. (1) A Montana motorboat, sailboat, or personal watercraft numbered in accordance with the provisions of 23-2-512 ~~or 23-2-513~~ must display a registration decal. For this purpose, the county treasurer, upon proof of payment of the registration fee as required by 61-3-321(10), shall issue a registration decal prepared and furnished by the department of justice with all new certificates of number and, if applicable, all renewals of the certificates of number.

(2) (a) The registration decal must be of a style and design prescribed by the department of justice.

(b) The registration decal must be serially numbered.

(c) The registration decals issued for a motorboat, sailboat, or personal watercraft do not expire while the motorboat, sailboat, or personal watercraft remains in the same ownership.

(3) A registration decal must be displayed on the left side of the forward half, 3 inches aft of the identifying numbers."

Section 9. Section 23-2-601, MCA, is amended to read:

"23-2-601. Definition of terms. As used in 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ 23-2-618, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644, unless the context requires otherwise, the following definitions apply:

(1) "Certificate of registration" means the owner's receipt evidencing payment of fees due in order for the snowmobile to be validly registered.

(2) "Certificate of title" means the document issued by the department of justice as prima facie evidence of ownership.

(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 a snowmobile that has not been previously sold to an owner.

(6) “Operator” includes each person who operates or is in actual physical control of the operation of a snowmobile.

(7) “Owner” includes each person, other than a lienholder or person having a security interest in a snowmobile, that holds a certificate of title to a snowmobile and is entitled to the use or possession of the snowmobile.

(8) “Person” means an individual, partnership, association, corporation, and any other body or group of persons, regardless of the degree of formal organization.

(9) “Registration decal” means an adhesive sticker produced and issued by the department of justice, its authorized agent, or a county treasurer to the owner of a snowmobile as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department of justice under 61-3-101.

(10) “Roadway” means only those portions of a highway, road, or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

(11) “Snowmobile” means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, designed primarily for travel on snow or ice, that may be steered by skis or runners and that is not otherwise registered or licensed under the laws of the state of Montana.”

Section 10. Section 23-2-614, MCA, is amended to read:

“23-2-614. Exemptions. (1) (a) The provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ 23-2-618, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 with respect to registration, registration decals, certificates of title, and certificates of ownership do not apply to snowmobiles owned or used by the United States or another state or any agency or political subdivision of the United States or another state.

(b) Snowmobiles owned by the state of Montana or any agency or political subdivision of this state are exempt only from the payment of fees and must otherwise comply with all the requirements of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ 23-2-618, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644.

(2) The provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ 23-2-618, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 with respect to registration, registration decals, certificates of title, and certificates of ownership do not apply to unregistered snowmobiles owned by nonresidents 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 11. 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 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, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ 23-2-618, 23-2-621, 23-2-622, 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, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ 23-2-618, 23-2-621, 23-2-622, 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, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ 23-2-618, 23-2-621, 23-2-622, 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 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 12. Section 23-2-634, MCA, is amended to read:

“23-2-634. Regulation of snowmobile noise. (1) Except as provided in this section, 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) 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. Each person who owns or operates a snowmobile manufactured after June 30, 1975, shall maintain the machine in 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, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ 23-2-618, 23-2-621, 23-2-622, 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, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ 23-2-618, 23-2-621, 23-2-622, 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 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 13. 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, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ 23-2-618, 23-2-621, 23-2-622, 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, 23-2-602, 23-2-611,

23-2-614 through ~~23-2-619~~ 23-2-618, 23-2-621, 23-2-622, 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 14. Section 23-2-642, MCA, is amended to read:

“23-2-642. Penalties. (1) The failure to display a current registration decal on a snowmobile is a misdemeanor, punishable by a fine in an amount equal to five times the applicable registration fee payable under 61-3-321.

(2) A person who violates any other provision of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ 23-2-618, 23-2-621, 23-2-622, 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 meets the sound level limitations imposed by 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ 23-2-618, 23-2-621, 23-2-622, 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 the machine so certified does not meet the appropriate sound level limitation. For the purposes of this section, each sale of a new snowmobile that does not meet the sound level limitations imposed by 23-2-601, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ 23-2-618, 23-2-621, 23-2-622, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 constitutes a separate violation.”

Section 15. 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, 23-2-602, 23-2-611, 23-2-614 through ~~23-2-619~~ 23-2-618, 23-2-621, 23-2-622, 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 state, as provided in 15-1-504, for deposit in the state general fund.”

Section 16. Section 61-1-101, MCA, is amended to read:

“61-1-101. Definitions. As used in this title, unless the context indicates otherwise, the following definitions apply:

(1) (a) “Authorized agent” means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department’s motor vehicle titling, registration, or driver records, using an approved automated interface, for specific functions or purposes upon behalf of a third party.

(b) For purposes of this subsection (1), “person” means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.

(2) “Authorized agent agreement” means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent must operate in performing specific motor vehicle or driver-related record functions.

(3) “Bus” means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(4) (a) *“Business entity” means a corporation, association, partnership, limited liability partnership, limited liability company, or other legal entity recognized under state law.*

(b) *The term does not include an individual.*

(4)(5) (a) “Camper” means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(b) The term does not include a truck canopy cover or topper.

(5)(6) “Certificate of title” means the paper record issued by the department 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.

(6)(7) “Commercial driver’s license” means:

(a) a driver’s license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; and

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver’s license.

(7)(8) (a) “Commercial motor vehicle” means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(i) 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;

(ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(iii) is designed to transport at least 16 passengers, including the driver;

(iv) is a school bus; or

(v) is of any size and is used in the transportation of hazardous materials as defined in 61-8-801.

(b) The following vehicles are not commercial motor vehicles:

(i) an authorized emergency service vehicle:

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) entitled to the exemptions granted under 61-8-107;

(ii) a vehicle:

(A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;

(B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm 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

(C) not used to transport goods for compensation or for hire; or

(iii) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in part-time national guard training, and national guard military technicians, or active duty United States coast guard personnel.

(c) For purposes of this subsection ~~(7)~~ (8):

(i) "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;

(ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle;

(iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; and

(iv) "school bus" has the meaning provided in 49 CFR 383.5.

~~(8)~~(9) "Commission" means the state transportation commission.

~~(9)~~ "County where a vehicle is domiciled" means the county in which the vehicle owner permanently resides or, if a vehicle is owned by a corporation or is leased or used for commercial purposes, the county in which the vehicle is permanently assigned or most frequently used, dispatched, or controlled.

(10) "Custom-built motorcycle" means a motorcycle that is equipped with:

(a) an engine manufactured 20 years prior to the current calendar year and that has been altered from the manufacturer's original design;

(b) an engine manufactured to resemble an engine 20 or more years old and that has been constructed in whole or in part from nonoriginal materials.

~~(10)~~(11) "Custom vehicle" means a motor vehicle other than a motorcycle that:

(a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or

(ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(12) "Customer identification number" means:

(a) a driver's license or identification card number when the customer is an individual who has been issued a driver's license or identification card by a state driver licensing authority;

(b) a federal employer or tax identification number when the customer is a business entity that has been issued a federal employer or tax identification number;

(c) the identification number assigned by the secretary of state to a business entity authorized to do business in this state under Title 35 if the customer is a business entity that does not have a federal employer or tax identification number other than a social security number; or

(d) if the customer has not been issued one of the numbers described in subsections (12)(a) through (12)(c), a number assigned to the customer by the department when a transaction is initiated under this title.

~~(11)(13)~~ (a) "Dealer" means a person, ~~firm, association, or corporation~~ that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, or accepting on consignment, ~~or acting as a broker, as defined in 61-4-131,~~ of new or used motor vehicles, trailers, semitrailers, ~~or pole trailers, travel trailers, motorboats, sailboats, snowmobiles, off-highway vehicles, or special mobile equipment~~ that ~~are~~ is not registered in the name of the person, ~~firm, association, or corporation~~ and that are required to be licensed under chapter 4 of this title.

(b) The term does not include the following:

(i) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(ii) employees of the persons included in subsection ~~(11)(b)(i)~~ (13)(b)(i) when engaged in the specific performance of their duties as employees; or

(iii) public officers while performing or in the operation of their duties.

~~(12)(14)~~ "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.

~~(13)(15)~~ "Department" means the department of justice acting directly or through its duly authorized officers or agents.

(14)(16) "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.

(17) "Domiciled" means a place where:

(a) an individual establishes residence;

(b) a business entity maintains its principal place of business;

(c) the business entity's registered agent maintains an address; or

(d) a business entity most frequently uses, dispatches, or controls a motor vehicle, trailer, semitrailer, or pole trailer that it owns or leases.

~~(15)(18)~~ "Driver" means a person who drives or is in actual physical control of a vehicle.

(16)(19) "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

- (a) any temporary license or instruction permit;
- (b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;
- (c) any nonresident's driving privilege;
- (d) a motorcycle endorsement; or
- (e) a commercial driver's license.

(17)(20) "Electric personal assistive mobility device" means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour.

(18)(21) "For hire" means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(19)(22) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

(20)(23) "Highway" or "public highway" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

(21)(24) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(22)(25) "Implement of husbandry" means a vehicle that is designed for agricultural purposes and exclusively used by the owner of the vehicle in the conduct of the owner's agricultural operations.

(23)(26) "Kit vehicle" is a motor vehicle assembled from a manufactured kit either as:

- (a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle; or
- (b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain, commonly referred to as a donor vehicle.

(24)(27) "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

(25)(28) "Manufactured home" has the meaning provided in ~~15-1-101~~ 15-24-201.

(26)(29) "Manufacturer" includes any person, ~~firm, corporation, or association~~ engaged in the manufacture of motor vehicles, trailers, ~~or semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, or off-highway vehicles~~ as a regular business.

(27)(30) "Manufacturer's certificate of origin" means the original paper record produced and issued by the manufacturer of a vehicle 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.

~~(28)~~(31) "Mobile home" or "housetrailer" has the meaning provided in ~~15-1-101~~ 15-24-201.

(32) "Montana resident" means:

(a) *an individual who resides in Montana as determined under 1-1-215;*

(b) *for the purposes of chapter 3, a business entity that maintains a principal place of business or a registered agent in this state.*

~~(29)~~(33) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

~~(30)~~(34) (a) "Motor carrier" means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles upon a public highway in this state for the transportation of property for hire on a commercial basis.

(b) The term does not include motor carriers regulated under Title 69, chapter 12.

~~(31)~~(35) (a) "Motorcycle" means a motor vehicle ~~having that has a seat or saddle for the use of the operator and that is designated to travel on not more than three wheels in contact with the ground and a saddle on which the operator sits or a platform on which the operator stands and a driving wheel in contact with the ground in addition to the wheels of the vehicle itself.~~ A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.

(b) The term does not include a tractor, a bicycle as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.

~~(32)~~(36) (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.

(b) The term does not include a bicycle, as defined in 61-8-102, or a motorized nonstandard vehicle.

~~(33)~~(37) "Motor home" means a motor vehicle:

(a) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

(b) containing permanently installed independent life support systems that meet the ANSIA/A119.2 standard; and

(c) providing at least four of the following types of facilities:

(i) cooking, refrigeration, or icebox;

(ii) self-contained toilet;

(iii) heating or air-conditioning, or both;

(iv) potable water supply, including a faucet and sink; or

(v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply; or both.

~~(34)~~(38) (a) "Motorized nonstandard vehicle" means a vehicle, upon or by which a person may be transported, that:

(i) is propelled by its own power, using an internal combustion engine or an electric motor;

(ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(c) The term does not include an electric personal assistive mobility device or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

~~(35)~~(39) (a) "Motor vehicle" means:

(i) a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state; *and*

(ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9.

(b) The term does not include a bicycle as defined in 61-8-102, an electric personal assistive mobility device, a motorized nonstandard vehicle, or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

~~(36)~~(40) "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.

~~(37)~~(41) "Nonresident" means a person who is not a *Montana* resident of this state.

~~(38)~~(42) (a) "Not used for general transportation purposes" means the operation of a motor vehicle, registered as a collector's item, a custom vehicle, or a street rod, or a custom-built motorcycle to or from a car or motorcycle club activity or event or an exhibit, show, cruise night, or parade, or other occasional transportation activity.

(b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.

~~(39)~~(43) (a) "Off-highway vehicle" means a self-propelled vehicle used designed 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) The term does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) ~~motor vehicles otherwise issued a certificate of title and registered under the laws of the state~~ *designed to transport persons or property upon the highways*, unless the vehicle is used for off-road recreation on public lands.

(40)(44) "Operator" means a person who is in actual physical control of a motor vehicle.

(41)(45) "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested the right of possession or control.

(42)(46) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

(43)(47) "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.

(44)(48) "Pole trailer" means a vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

(45)(49) "Police officer" means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(46)(50) (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor capable of producing not more than 50 horsepower.

(b) The term does not include golf carts.

(47)(51) "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

(48)(52) (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated upon rails.

(b) The term does not include streetcars.

(49)(53) "Recreational vehicle" includes ~~self-propelled vehicles originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use~~ *a motor home, travel trailer, or camper*.

(50)(54) "Registration" or "register" means the act or process of creating an electronic record, maintained by the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records.

(51)(55) "Registration decal" means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county

treasurer to the owner of a motor vehicle, trailer, semitrailer, or pole trailer, *motorboat, sailboat, personal watercraft, or snowmobile* as proof of payment of all fees imposed for the registration period indicated on the sticker as recorded by the department under 61-3-101.

(52)(56) "Registration receipt" means a paper record that is produced and issued or, if authorized by the department, an electronic record that is 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.

(53)(57) "Retail sale" means the sale of a ~~new motor vehicle or used motor vehicle, a recreational vehicle,~~ a trailer, *a semi-trailer, a pole trailer,* a travel trailer, *a motorboat, a snowmobile, an off-highway vehicle,* ~~a motorcycle, a quadricycle,~~ or special mobile equipment by a dealer to a person for purposes other than resale.

(54)(58) "Revocation" means that the driver's license and privilege to drive a motor vehicle on the public highways are terminated and may not be renewed or restored. An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.

(55)(59) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways, the term refers to any roadway separately but not to all roadways collectively.

(56)(60) (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.

(57)(61) "Semitrailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.

(58)(62) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, that is designed primarily for travel on snow or ice, that may be steered by skis or runners, and that is not otherwise registered or licensed under the laws of the state of Montana.

(59)(63) "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this subsection is partial and does not exclude other vehicles that are within the general terms of this subsection.

(60)(64) (a) "Specially constructed vehicle" means a motor vehicle, including a motorcycle, that:

(i) was not originally constructed under a distinctive make, model, or type by a generally recognized manufacturer of motor vehicles;

(ii) has been structurally modified so that it does not have the same appearance as similar vehicles from a generally recognized manufacturer of motor vehicles;

(iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from other vehicles;

(iv) has been constructed or assembled by using major component parts from one or more manufactured vehicles and that cannot be identified as a specific make or model; or

(v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.

(b) The term does not include a motor vehicle that has been repaired or restored to its original design by replacing parts.

~~(61)~~(65) (a) "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use.

(b) The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.

~~(62)~~(66) (a) "Stop", when required, means complete cessation from movement.

(b) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrol officer, or traffic control sign or signal.

~~(63)~~(67) "Street" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

~~(64)~~(68) "Street rod" means a motor vehicle, other than a motorcycle, that:

(a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949, including a kit vehicle intended to resemble a vehicle manufactured before 1949; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

~~(65)~~(69) "Suspension" means that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn, but only during the period of suspension.

~~(66)~~(70) "Temporary registration permit" means a paper record:

(a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:

(i) required vehicle and owner information; and

(ii) the purpose for which the record was generated; and

(b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs.

(67)(71) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

(68)(72) (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

(69)(73) "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.

(70)(74) "Travel trailer" means a vehicle:

- (a) that is 40 feet or less in length;
- (b) that is of a size or weight that does not require special permits when towed by a motor vehicle;
- (c) with gross trailer area of less than 320 square feet; and
- (d) that is designed to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.

(71)(75) "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

(72)(76) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

(73)(77) "Under the influence" has the meaning provided in 61-8-401.

(74)(78) "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, given away, or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as "secondhand" within the ordinary meaning of that term.

(75)(79) "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.

(76)(80) (a) "Vehicle" means a device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks.

(b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

(77)(81) "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 motor vehicle or a component part of the motor vehicle.

(78)(82) "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.

(79)(83) "Wholesaler" means a person, ~~firm, partnership, association, or corporation~~ that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, ~~recreational vehicle,~~ trailer, semitrailer, pole trailer, *travel trailer*, *motorboat*, *snowmobile*, *off-highway vehicle*, or special mobile equipment, ~~motoreycle, or quadricycle~~ only to vehicle dealers and auto auctions licensed under chapter 4, part 1."

Section 17. Section 61-3-101, MCA, is amended to read:

"61-3-101. Duties of department — records. (1) (a) The department shall create and maintain a central registry of electronic files that includes an electronic record of title as specified in this section for motor vehicles, trailers, semitrailers, pole trailers, *travel trailers*, campers, motorboats, personal watercraft, sailboats, and snowmobiles, *and off-highway vehicle* 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 motor vehicle, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, and snowmobile, *and off-highway 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, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, or snowmobile, *or off-highway vehicle* must contain the following information:

(a) the *owner's* name, *Montana* residence, and, *if different*, mailing address, ~~of the owner and customer identification number:~~

(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) a description of the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, or snowmobile, *or off-highway vehicle*, including, as pertinent to the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, or snowmobile, *or off-highway vehicle*:

(i) the manufacturer of the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile, *or off-highway vehicle*;

(ii) the manufacturer's designation of the style of the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile, *or off-highway vehicle*;

(iii) the identifying number;

(iv) the manufacturer's designated model year of manufacture and the odometer reading, if applicable, at the time of the transfer of ownership;

(v) the character of the motive power and the shipping weight of the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile, *or off-highway vehicle* as shown by the manufacturer;

(vi) the distinctive license number assigned to the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile, *or off-highway vehicle*, if any;

(vii) the gross vehicle weight and gross vehicle weight rating, as determined by the manufacturer, or, for a trailer operating interstate, the declared weight;

(viii) the unique transaction record number, when available and assigned by the department, for each transaction pertaining to the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile, *or off-highway 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 motor vehicle, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile, *or off-highway vehicle* has been or is currently registered in this state, the distinctive license plate number or certificate number assigned to the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile, *or off-highway vehicle* and a record of all fees and local option taxes, if applicable, paid for the current and preceding registration periods; and

(xi) other information that may be required for registration or may from time to time be found desirable.

(3) The electronic record of registration for a motor vehicle, trailer, semitrailer, pole trailer, *travel trailer*, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile, *or off-highway vehicle* must contain, at a minimum, the following information:

(a) the *owner's* name, *Montana* residence, and, *if different*, mailing address, ~~of the owner and the driver's license or customer identification card data required in subsections (2)(a)(i) and (2)(a)(ii)~~ *number*;

(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) 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 motor vehicles, trailers, semitrailers, pole trailers, *travel trailers*, motorboats, personal watercraft, sailboats, ~~or~~

snowmobiles, *or off-highway vehicles* that have not been registered within the preceding 4 years and that do not have an active lien.

(5) Subject to the provisions of Title 61, chapter 11, part 5, motor 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 18. Section 61-3-115, MCA, is amended to read:

“61-3-115. Customer service accounts — electronic updates or changes to motor vehicle, ~~or~~ driver, or dealer licensing records. (1) The department may provide secure electronic applications to permit a person, for specific purposes and as determined by the department, to access or update:

(a) an electronic record of title or registration for any vehicle registered to that person; ~~or~~

(b) an electronic individual Montana driving record for that person; *or*

(c) *an electronic record pertaining to a license issued by the department under chapter 4 of this title.*

(2) Purposes for which a person may access or update an electronic record of title or registration for a vehicle registered to or acquired by the person may include but are not limited to:

(a) issuing a temporary registration permit for a newly acquired vehicle;

(b) renewing vehicle registration on an annual or periodic basis;

(c) updating or changing personal information, including residence or mailing addresses; and

(d) changing the anniversary date and registration period for a vehicle registered to the person.

(3) Purposes for which a person may access or update an electronic individual Montana driving record for that person may include but are not limited to the following:

(a) updating or changing personal information, including residence or mailing addresses;

(b) obtaining a copy of the person’s individual Montana driving record;

(c) paying a reinstatement fee owed to the department; and

(d) applying for a replacement driver’s license.”

Section 19. Section 61-3-116, MCA, is amended to read:

“61-3-116. Services that may be performed by authorized agent. (1) The department may authorize a person to perform, on the department’s behalf, specific motor vehicle titling, registration, or driver licensing functions assigned to or administered by the department under ~~Title 23, chapter 2, parts 5, 6, and 8~~ *or* this title. The authorization must be evidenced by an authorized agent agreement.

(2) An authorized agent must meet all of the requirements established by the department.

(3) An authorized agent shall submit to the department or its designee all statutorily prescribed fees, taxes, or penalties the authorized agent collects.

(4) (a) Except when specifically prohibited by statute or the authorized agent agreement, in addition to statutorily prescribed fees, taxes, and penalties, an authorized agent may collect and retain a reasonable convenience fee for services provided.

(b) If an authorized agent is a municipal or county officer, the convenience fee may be charged and collected as permitted under 7-5-2133 or 7-5-4125.

(5) The department may provide an automated mechanism to ensure that any statutorily prescribed fee, tax, or penalty collected by an authorized agent or a county treasurer in a county other than the county where *the owner* of a vehicle is domiciled is transferred to the county treasurer of the county where the *owner* of a vehicle is domiciled.

(6) ~~As used in this section, "person" has the meaning provided in 61-1-101(1)(b)."~~

Section 20. 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 title the odometer reading at the time of transfer or, if the certificate of 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 motor 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 motor 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, trailer, semitrailer, pole trailer, *travel trailer*, camper, or sailboat that is not self-propelled;
 - (c) a new motor vehicle transferred between dealers or wholesalers prior to its first retail sale, unless the motor vehicle has been used as a demonstrator;
 - (d) a motor vehicle having a gross weight rating of more than 16,000 pounds;
- or
- (e) a motor vehicle sold directly by the manufacturer to an agency of the United States.

(4) A dealer, *an auto auction*, or a 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 21. Section 61-3-216, MCA, is amended to read:

“61-3-216. Certificates of title — application — contents — issuance.

(1) The owner of a motor vehicle, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile, *or off-highway 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 *owner's* name, *Montana* residence, and, *if different*, mailing address, ~~of the owner and customer identification number:~~

~~(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 motor vehicle, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile, *or off-highway vehicle*, including, as available and pertinent to the vehicle:

(i) the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile, *or off-highway 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, if applicable, at the time of transfer of ownership;

(iii) the gross vehicle weight rating, gross vehicle weight, or shipping weight, if applicable, as determined by the manufacturer;

(iv) whether the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, ~~or~~ snowmobile, *or off-highway vehicle* was new or used at the time of transfer; and

(v) for a trailer operating intrastate, its declared weight;

(c) the date on which the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, or snowmobile, or *off-highway vehicle* was purchased by or was transferred to the applicant, the name and address of the person from whom the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, or snowmobile, or *off-highway 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 motor vehicle, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, or snowmobile, or *off-highway 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 motor vehicle, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, or snowmobile, or *off-highway 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 motor vehicle, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, or snowmobile, or *off-highway vehicle*, issue a transaction summary receipt, and postpone the issuance of a certificate of a title until the motor vehicle, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, or snowmobile, or *off-highway 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, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, or snowmobile, or *off-highway 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, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, or snowmobile, or *off-highway 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 motor vehicle, trailer, semitrailer, pole trailer, *travel trailer*, camper, motorboat, personal watercraft, sailboat, or snowmobile, or *off-highway 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 current registration receipt for the motorboat, personal watercraft, sailboat, or snowmobile, 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, sailboat, or snowmobile from the immediate prior owner to the applicant.”

Section 22. Section 61-3-222, MCA, is amended to read:

“61-3-222. Surviving spouse or heir — small estates. (1) Subject to the ~~limitations~~ *requirements* 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, trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, or snowmobiles for which a certificate of title was issued under this chapter if:

(a) the ~~combined~~ value of the ~~interests~~ *entire estate, including any vehicles, vessels, or snowmobiles for which transfer of ownership is sought, less liens and encumbrances*, does not exceed ~~\$20,000~~ *the limit set forth in 72-3-1101*;

(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 23. Section 61-3-224, MCA, is amended to read:

“61-3-224. Temporary registration permit — issuance — placement — fees. (1) (a) The department, an authorized agent, or a county treasurer may issue a temporary registration permit to:

(~~a~~)*(i)* a Montana resident who acquires a new or used motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for operation of the vehicle or vessel prior to titling and registration of the vehicle under this chapter;

(~~b~~)*(ii)* the owner of a salvage vehicle for moving the vehicle to and from a designated inspection site prior to applying for a new certificate of title under 61-3-212;

(~~e~~)*(iii)* the owner of a motor vehicle, trailer, semitrailer, or pole trailer registered in this state for operation of the vehicle while awaiting production

and receipt of special or duplicate license plates ordered for the vehicle under this chapter;

(d)(iv) a nonresident of this state who acquires a motor vehicle, trailer, semitrailer, or pole trailer in this state for operation of the vehicle prior to its titling and registration under the laws of the nonresident's jurisdiction of residence;

(e)(v) a dealer licensed in another state who brings a motor vehicle or trailer designed and used to apply fertilizer to agricultural lands into the state for special demonstration in this state; or

(f)(vi) a financial institution located in Montana for a prospective purchaser to demonstrate a motor vehicle that the financial institution has obtained following repossession.

(b) An authorized agent or a county treasurer may issue a temporary registration permit without use of the department-approved electronic interface only if authorized by the department.

(2) A person, using a department-approved electronic interface, may issue a temporary registration permit for the specified purposes if the person is:

(a) a Montana resident who acquires a new or used motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for operation of the vehicle or vessel prior to titling and registration of the vehicle under this chapter;

(b) the owner of a salvage vehicle for moving the vehicle to and from a designated inspection site prior to applying for a new certificate of title under 61-3-212;

(c) a nonresident of this state who acquires a motor vehicle, trailer, semitrailer, or pole trailer in this state for operation of the vehicle prior to its titling and registration under the laws of the nonresident's jurisdiction of residence; or

(d) a financial institution located in Montana that intends to allow a prospective purchaser to demonstrate a motor vehicle that the financial institution has obtained following repossession.

(3) A temporary registration permit issued under this section must contain the following information:

(a) a temporary plate 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 motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile, including year, make, model, and vehicle identification number, the name of the person from whom ownership of the motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile was transferred, the name, mailing address, and residence address of the person to whom ownership of the motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile has been transferred, and the date of issuance.

(4) A temporary registration permit for:

(a) a motor vehicle, trailer, semitrailer, or pole trailer must be plainly visible and firmly attached to the rear exterior of the vehicle where a license plate is required to be displayed; and

(b) a motorboat, a sailboat that is 12 feet in length or longer, a snowmobile, or an off-highway vehicle must be plainly visible and firmly attached to the vehicle or vessel.

(5) (a) Except as provided in 61-3-431 and subsection (5)(b) of this section, a \$3 fee is imposed upon issuance of a temporary registration permit by the department, an authorized agent, or a county treasurer. The fee must be paid by the owner of the vehicle or vessel and collected by the department, the authorized agent, or a county treasurer when the vehicle is registered.

(b) Except as provided in 61-3-431, a fee of \$8 is imposed and must be paid upon issuance of a temporary registration permit by:

(i) the department, an authorized agent, or a county treasurer to a nonresident of this state who acquires a vehicle or vessel in this state; or

(ii) a person who issued a temporary registration permit using a department-approved electronic interface.

(6) The fees imposed under this section, upon collection, must be forwarded to the state and deposited in the motor vehicle electronic commerce operating account provided for in 61-3-118.

(7) If a temporary registration permit is issued under this section to a person to whom ownership of a vehicle or vessel has been transferred, the permit holder shall title and register the vehicle or vessel in this or another jurisdiction before the ownership of the vehicle or vessel may be transferred to another person.”

Section 24. Section 61-3-301, MCA, is amended to read:

“61-3-301. Registration — license plate required — display. (1) (a) Except as provided in 61-4-120, 61-4-129, and subsection (1)(b) of this section, a person may not operate a motor vehicle, trailer, semitrailer, or pole trailer upon the public highways of Montana unless the motor vehicle, trailer, semitrailer, or pole trailer is properly registered and has the proper license plates conspicuously displayed, one on the front and one on the rear of the motor vehicle, trailer, semitrailer, or pole trailer, each securely fastened to prevent it from swinging and unobstructed from plain view.

(b) A motorcycle, quadricycle, trailer, semitrailer, pole trailer, or travel trailer must display a single license plate on the rear of the vehicle. A custom vehicle or street rod registered under 61-3-320(1)(b) or (1)(c)(iii) may display a single license plate firmly attached to the rear exterior of the custom vehicle or street rod.

(c) A person may not display on a motor vehicle, trailer, semitrailer, or pole trailer at the same time a number assigned to it under any motor vehicle law except as provided in this chapter.

(2) A person may not purchase or display on a motor vehicle, trailer, semitrailer, or pole trailer a license plate bearing the number assigned to any county, as provided in 61-3-332, other than the county where the motor vehicle, trailer, semitrailer, or pole trailer is domiciled at the time of application for registration.

(3) It is unlawful to:

(a) display license plates issued to one motor vehicle, trailer, semitrailer, or pole trailer on any other motor vehicle, trailer, semitrailer, pole trailer, or travel trailer unless legally transferred as provided by statute;

(b) repaint old license plates to resemble current license plates; or

(c) display a prior design of standard license plates issued under 61-3-332(3)(a) or special license plates issued under 61-3-332(8) or 61-3-421 more than 18 months after a new design of standard license plates or special license plates has been issued, except as provided in ~~61-3-332(3)(c)~~ ~~61-3-332(3)(b)~~ and ~~(3)(d)~~ (3)(c), 61-3-448, or 61-3-468.

(4) For the purposes of this section, “conspicuously displayed” means that the required license plates are obviously visible and firmly attached to:

(a) the front and the rear bumper of a motor vehicle, trailer, semitrailer, or pole trailer equipped with front and rear bumpers; or

(b) other clearly visible locations on the front and the rear exteriors of a motor vehicle, trailer, semitrailer, or pole trailer.”

Section 25. Section 61-3-303, MCA, is amended to read:

“61-3-303. Original registration — process — fees. (1) Except as provided in 61-3-324, a Montana resident who owns a motor vehicle, trailer, semitrailer, or pole trailer operated or driven upon the public highways of this state shall register the motor vehicle, trailer, semitrailer, or pole trailer in the office of the county treasurer in the county where the owner ~~permanently resides or, if the motor vehicle, trailer, semitrailer, or pole trailer is owned by a corporation or used primarily for commercial purposes, in the county where the motor vehicle, trailer, semitrailer, or pole trailer is domiciled.~~

(2) Except as provided in subsection (3), the county treasurer shall register any vehicle for which:

(a) as of the date that the motor vehicle, trailer, semitrailer, or pole trailer 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

(b) the county treasurer confirms that the department has an electronic record of title for the motor vehicle, trailer, semitrailer, or pole trailer as provided under 61-3-101.

(3) (a) A county treasurer may register a motor vehicle, trailer, semitrailer, or pole trailer 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 motor vehicle, trailer, semitrailer, or pole trailer 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, trailer, semitrailer, or pole trailer for which the new owner cannot, due to circumstances beyond the new owner’s control, surrender a previously assigned certificate of title. The new owner may submit an application for certificate of title, subject to the registration renewal limitations of 61-3-312.

(4) Upon registering a motor vehicle, trailer, semitrailer, or pole trailer for the first time in this state, the county treasurer shall:

(a) update the electronic record of title, if any, maintained for the vehicle by the department under 61-3-101;

(b) assign a registration period for the vehicle under 61-3-311;

(c) determine the vehicle's age, if required, under 61-3-501;

(d) determine the amount of fees, including local option taxes or fees, to be paid under subsection (5); and

(e) assign and issue license plates for the vehicle under 61-3-331.

(5) Unless otherwise provided by law, a person registering a motor vehicle shall pay to the county treasurer:

(a) the fees in lieu of tax or registration fees as required for:

(i) a light vehicle under ~~61-3-321~~(2) 61-3-321 or 61-3-562, in addition to, if applicable, any local option tax or fee under 61-3-537 or 61-3-570;

(ii) a motor home under 61-3-321;

(iii) a travel trailer under 61-3-321;

(iv) a motorcycle or quadricycle under 61-3-321;

(v) a bus, a truck having a manufacturer's rated capacity of more than 1 ton, or a truck tractor under 61-3-321 and 61-3-529; or

(vi) a trailer under 61-3-321;

(b) a donation of \$1 or more if the person indicates 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

(c) a donation of \$1 or more if the person indicates that the person wishes to donate to promote education on, support for, and awareness of traumatic brain injury.

(6) The county treasurer may not issue a registration receipt or license plates for the motor vehicle, trailer, semitrailer, or pole trailer to the owner unless the owner makes the payments required by subsection (5).

(7) The department may make full and complete investigation of the registration status of the motor vehicle, trailer, semitrailer, or pole trailer. A person seeking to register a motor vehicle, trailer, semitrailer, or pole trailer under this section shall provide additional information to support the registration to the department if requested.

(8) Revenue that accrues from the voluntary donation provided in subsection (5)(b) 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) (a) Except as provided in subsection (9)(b), the fees in lieu of tax, taxes, and fees imposed on or collected from the registration of a travel trailer, motorcycle, or quadricycle or a trailer, semitrailer, or pole trailer that has a declared weight of less than 26,000 pounds are required to be paid only once during the time that the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is owned by the same person who registered the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer. Once registered, a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is registered permanently unless ownership is transferred.

(b) Whenever ownership of a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer is transferred, the new owner is required to register the travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer as if it were being registered for the first time, including paying all of the required fees in lieu of tax, taxes, and fees.

(10) Revenue that accrues from the voluntary donation provided in subsection (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 the account established in 2-15-2218 to support activities related to education regarding prevention of traumatic brain injury.”

Section 26. Section 61-3-320, MCA, is amended to read:

“61-3-320. Registration — custom vehicle, street rod, *originally equipped older vehicle, kit vehicle, or specially constructed vehicle.*

(1) (a) A custom vehicle or street rod:

(i) that is more than 30 years old may be registered under 61-3-411 as a collector’s item; or

(ii) may be registered, depending on the vehicle type, as a motor home, a bus, a truck having a manufacturer’s rated capacity of more than 1 ton, a truck tractor, or a light vehicle upon payment of the registration fee required in 61-3-321, the applicable fee or fee in lieu of tax provided for in 61-3-529 or 61-3-562, and, if applicable, any local option tax or fee under 61-3-537 or 61-3-570.

(b) The owner of a custom vehicle or street rod that is originally registered under subsection (1)(a) or that was registered prior to January 1, 2006, may be authorized to operate the custom vehicle or street rod while displaying only one license plate on the rear exterior of the vehicle if the owner certifies that the custom vehicle or street rod is not used for general transportation purposes and pays an additional \$10 fee, to be deposited in the state general fund.

(c) (i) Upon original registration of a custom vehicle or street rod under subsection (1)(a)(i), either a set of pioneer or vintage license plates, as described in 61-3-411(2), or a set of original Montana license plates, as allowed under 61-3-412(1), must be assigned and issued to the custom vehicle or street rod.

(ii) Upon original registration of a custom vehicle or street rod under subsection (1)(a)(ii) and unless the owner has applied for personalized license plates, special license plates for military personnel, veterans, or spouses, collegiate plates, or generic specialty license plates or has met the requirements of subsection (1)(b), a set of standard license plates must be assigned to the vehicle under 61-3-331.

(iii) Upon original registration of a custom vehicle or street rod under subsection (1)(a)(ii) and if the owner of a custom vehicle or street rod has met the requirements of subsection (1)(b), a single license plate, including a personalized standard license plate, special license plate for military personnel, veterans, or spouses, collegiate plate, or generic specialty license plate, if otherwise available to the vehicle owner or vehicle type, may be issued for the custom vehicle or street rod.

(d) *The owner of an originally equipped motor vehicle, other than a motorcycle, that is more than 30 years old and that is not registered as a collector’s item under 61-3-411 may be authorized to operate the motor vehicle while displaying only one license plate on the rear exterior of the vehicle, as if it were a custom vehicle or street rod, if the owner:*

(i) certifies that the originally equipped motor vehicle is not used for general transportation purposes;

(ii) pays any fees required under 61-3-321, 61-3-529, or 61-3-562 and, if applicable, a local option tax or fee under 61-3-537 or 61-3-570, plus an additional \$10 fee, to be deposited in the state general fund; and

(iii) is otherwise eligible, based on the owner's status and the vehicle type, for one of the single license plate options available to an owner of a custom vehicle or street rod under this subsection (1).

(2) (a) The owner of a kit vehicle shall pay the registration fees provided for in 61-3-321 and, if applicable, any local option tax or fee under 61-3-537 or 61-3-570.

(b) Upon original registration of a kit vehicle and unless the owner has applied for special license plates, collegiate plates, or generic specialty license plates, standard license plates must be assigned and issued to the kit vehicle under 61-3-331.

(3) (a) Depending on whether the specially constructed vehicle is a motor home, bus, truck having a manufacturer's rated capacity of more than 1 ton, truck tractor, or light vehicle, the owner of a specially constructed vehicle shall pay the registration fees provided for in 61-3-321, any registration fee or fee in lieu of tax provided for in 61-3-529, and, if applicable, any local option tax or fee under 61-3-537 or 61-3-570.

(b) Upon original registration of a specially constructed vehicle and unless the owner has applied for special license plates, collegiate plates, or generic specialty license plates, standard license plates must be assigned and issued to the specially constructed vehicle under 61-3-331."

Section 27. Section 61-3-321, MCA, is amended to read:

"61-3-321. Registration fees of vehicles and vessels — certain vehicles exempt from registration fees — disposition of fees. (1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, renewal of registration of motor vehicles, snowmobiles, watercraft, trailers, semitrailers, and pole trailers as provided in subsections (2) through (18):

(2) (a) Except as provided in subsection (2)(b), there is a registration fee imposed on light vehicles. The registration fee is in addition to other annual registration fees.

(b) The following vehicles are exempt from the registration fee imposed in this subsection (2):

(i) light vehicles that meet the description of property exempt from taxation under 15-6-201(1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j), (1)(l), or (1)(m), 15-6-203, or 15-6-215, except as provided in 61-3-520;

(ii) a light vehicle owned by a person eligible for a waiver of registration fees under 61-3-460;

(iii) a light vehicle registered under 61-3-456.

(c) 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.

(d) The annual registration fee for light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton is as follows:

- (i) if the vehicle is 4 or less years old, \$217;
- (ii) if the vehicle is 5 through 10 years old, \$87; and
- (iii) if the vehicle is 11 or more years old, \$28;

(e) The owner of a light vehicle 11 years old or older may permanently register the light vehicle as provided in 61-3-562.

(3) (a) Except as provided in subsection (3)(c), the owner of a trailer, semitrailer, or pole trailer that has a declared weight of less than 6,000 pounds shall pay a one-time fee of \$61.25.

(b) The owner of a trailer, semitrailer, or pole trailer with a declared weight of 6,000 pounds or more shall pay a one-time fee of \$148.25.

(c) Except as provided in subsection (17), whenever a transfer of ownership of a trailer, semitrailer, or pole trailer described in subsection (3)(a) or (3)(b) occurs, the one-time fee required under subsection (3)(a) or (3)(b) must be paid by the new owner.

(4) The annual registration fee for motor vehicles owned and operated solely as collector's items pursuant to 61-3-411 that are for motor vehicles:

- (a) 2,850 pounds and over, \$10; and
- (b) under 2,850 pounds, \$5.

(5) (a) The registration fee for off-highway vehicles is \$61.25. This fee is a one-time fee, except upon transfer of ownership of an off-highway vehicle. Except as provided in subsection (17), whenever a transfer of ownership of an off-highway vehicle occurs, the one-time fee required under this subsection must be paid by the new owner.

(b) The application for registration for an off-highway vehicle must be made to the county treasurer of the county in which the owner resides, on a form furnished by the department for that purpose. The application must contain:

- (i) the name and home mailing address of the owner;
- (ii) the certificate of title number;
- (iii) the name of the manufacturer of the off-highway vehicle;
- (iv) the model number or name;
- (v) the year of manufacture;
- (vi) a statement evidencing payment of the fee in lieu of property tax; and
- (vii) other information that the department may require.

(c) 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 containing the information considered necessary by the department. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(6) The annual registration fee for heavy trucks, buses, and logging trucks in excess of 1 ton is \$22.75.

(7) (a) The owner of a motor home shall pay an annual fee based on the age of the motor home according to the following schedule:

- (i) less than 2 years old, \$282.50;
- (ii) 2 years old and less than 5 years old, \$224.25;
- (iii) 5 years old and less than 8 years old, \$132.50; and
- (iv) 8 years old and older, \$97.50.

(b) (i) Except as provided in subsection (7)(b)(ii), the age of a motor home is determined by subtracting the manufacturer's designated model year from the current calendar year.

(ii) If the purchase year of a motor home precedes the designated model year of the motor home and the motor home 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.

(c) (i) The owner of a motor home 11 years old or older subject to the registration fee under subsection (7)(a) may permanently register the motor home upon payment of:

- (A) a fee of \$237.50; and
- (B) if applicable, five times the personalized license plate fees under 61-3-406.

(ii) The following series of license plates may not be used for purposes of permanent registration of a motor home:

- (A) Montana national guard license plates issued under 61-3-458(2)(b);
- (B) reserve armed forces license plates issued under 61-3-458(2)(c);
- (C) license plates bearing a wheelchair design as a symbol of a person with a disability issued under 61-3-332(9);
- (D) amateur radio operator license plates issued under 61-3-422;
- (E) collegiate license plates issued under 61-3-465; and
- (F) generic specialty license plates issued under 61-3-479.

(iii) Except as provided in subsection (17), whenever a transfer of ownership of a permanently registered motor home occurs, the applicable fees required under this subsection (7) must be paid by the new owner.

(8) (a) The registration fee for motorcycles and quadricycles registered for use on public highways is \$53.25, and the registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is \$114.50.

(b) An additional fee of \$5 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, an additional fee of \$16 must be collected for the registration of each motorcycle or quadricycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(c) The registration fees in this subsection (8) are a one-time fee, except upon transfer of ownership of a motorcycle or quadricycle.

(9) (a) The registration fee for travel trailers under 16 feet in length is \$72 and the registration fee for travel trailers 16 feet in length or longer is \$152. This fee is a one-time fee, except upon transfer of ownership of a travel trailer.

(b) Except as provided in subsection (17), whenever a transfer of ownership of a travel trailer occurs, the one-time fee required under subsection (9)(a) must be paid by the new owner.

(10) (a) The owner of each motorboat, sailboat, personal watercraft, or motorized pontoon requiring numbering by this state shall file an application for number in the office of the county treasurer in the county where the motorboat, sailboat, personal watercraft, or motorized pontoon is owned, on forms prepared and furnished by the department. The application must be signed by the owner of the motorboat, sailboat, personal watercraft, or motorized pontoon and be accompanied by the appropriate registration fee. The owner of a motorboat, sailboat, personal watercraft, or motorized pontoon shall pay a one-time fee as follows:

(i) for a personal watercraft or a motorboat, sailboat, or motorized pontoon less than 16 feet in length, \$65.50;

(ii) for a motorboat, sailboat, or motorized pontoon at least 16 feet in length but less than 19 feet in length, \$125.50; and

(iii) for a motorboat, sailboat, or motorized pontoon 19 feet in length or longer, \$295.50.

(b) This fee is a one-time fee, except upon transfer of ownership of the motorboat, sailboat, personal watercraft, or motorized pontoon.

(11) (a) Except as provided in subsection (11)(b), the one-time registration fee for a snowmobile is \$60.50.

(b) If a snowmobile is licensed by a Montana business and is owned exclusively for the purpose of daily rental to customers, the business is assessed:

(i) a fee of \$40.50 in the first year of registration; and

(ii) if the business reregisters the snowmobile for a second year, a fee of \$20. If the business reregisters the snowmobile for a third year, the snowmobile must be permanently registered and the business is assessed the fee in lieu of tax imposed in subsection (11)(a).

(c) Except as provided in subsection (17), whenever a transfer of ownership of a snowmobile occurs, the applicable fee required under this subsection (11) must be paid by the new owner.

(12) A fee of \$5 must be collected when a new set of standard license plates, or a new single standard license plate, or a replacement set of special license plates required ~~provided for~~ under 61-3-332 is issued.

(13) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, snowmobiles, watercraft, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.

(14) When the license plates for a registered motor vehicle are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335, the owner of the motor vehicle shall pay a registration fee as follows:

(a) heavy trucks, buses, and logging trucks in excess of 1 ton, 75 cents;

(b) light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton:

(i) if the vehicle is 4 years old or less, \$195.75;

- (ii) if the vehicle is 5 years old through 10 years old, \$65.75; and
- (iii) if the vehicle is 11 years old or older, \$6.75;
- (c) motor homes:
 - (i) less than 2 years old, \$250.50;
 - (ii) 2 years old and less than 5 years old, \$192.25;
 - (iii) 5 years old and less than 8 years old, \$100.50; and
 - (iv) 8 years old and older, \$65.50;
- (d) motorcycles and quadricycles registered for use on the public highways, \$42, and motorcycles and quadricycles registered for both off-road use and for use on the public highways, \$103.25. This fee is a one-time fee, except upon transfer of ownership.
- (e) travel trailers under 16 feet in length, \$50.50, and travel trailers 16 feet in length or longer, \$130.50. This fee is a one-time fee, except upon transfer of ownership.
- (f) trailers, semitrailers, or pole trailers with a declared weight of less than 6,000 pounds, \$52. This fee is a one-time fee, except upon transfer of ownership.
- (g) trailers, semitrailers, or pole trailers with a declared weight of 6,000 pounds or more, \$139. This fee is a one-time fee, except upon transfer of ownership.
- (15) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.
- (16) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.
- (17) The fees imposed by subsections (2) through (11) are not required to be paid by a dealer for the enumerated vehicles or vessels that constitute inventory of the dealership.
- (18) (a) Unless a person exercises the option in subsection (18)(b), an additional fee of \$4 must be collected for each light vehicle registered for licensing pursuant to this part. This fee must be accounted for and transmitted separately from the registration fee. The fee must be deposited in an account in the state special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities. Of the \$4 fee, the department shall use \$3.50 for state parks, 25 cents for fishing access sites, and 25 cents for the operation of state-owned facilities at Virginia City and Nevada City.
- (b) A person who registers a light vehicle may, at the time of annual registration, certify that the person does not intend to use the vehicle to visit state parks and fishing access sites and may make a written election not to pay the additional \$4 fee provided for in subsection (18)(a). If a written election is made, the fee may not be collected.
- (19) For each light vehicle, trailer, semitrailer, pole trailer, heavy truck, motor home, motorcycle, quadricycle, and travel trailer subject to a registration fee under this section, an additional fee of \$5 must be collected and forwarded to the state for deposit in the account established in 44-1-504.
- (20) This section does not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is governed by 61-3-721.”

Section 28. Section 61-3-332, MCA, is amended to read:

“61-3-332. Standard license plates. (1) In addition to special license plates, collegiate license plates, generic specialty license plates, and fleet license plates authorized under this chapter, a separate series of standard license plates must be issued for motor vehicles, quadricycles, travel trailers, trailers, semitrailers, and pole trailers registered in this state or offered for sale by a vehicle dealer licensed in this state. Standard license plates issued to licensed vehicle dealers must be readily distinguishable from license plates issued to vehicles owned by other persons.

(2) (a) Except as provided in 61-3-479 and subsections (2)(b), ~~(3)(e)~~ (3)(b), and ~~(3)(d)~~ (3)(c) of this section, all standard license plates for motor vehicles, trailers, semitrailers, or pole trailers must be issued for a minimum period of 4 years, bear a distinctive marking, as determined by the department, and be furnished by the department. In years when standard license plates are not issued, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-562 and motor vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the motor vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered motor vehicle.

(3) ~~(a) Subject to the provisions of this section, the department shall create a new design for standard license plates as provided in this section, and it shall manufacture the newly designed standard license plates for issuance after December 31, 2005, to replace at renewal, as required in 61-3-312, standard license plates that were displayed on motor vehicles before that date.~~

~~(b)(a) Beginning January 1, 2006 2010, and every 4 years after that date, the department shall manufacture and issue new standard license plates after the existing plates have been used for a minimum period of 4 years to replace previously issued standard license plates upon renewal.~~

~~(e)(b) A motor vehicle that is registered for a 13-month to a 24-month period, as provided in 61-3-311 and 61-3-321(2), may display the license plate and plate design in effect at the time of registration for the entire registration period.~~

~~(d)(c) A light vehicle described in subsection (2)(b) or a motor home that is permanently registered may display the license plate and plate design in effect at the time of registration for the entire period that the light vehicle or motor home is permanently registered.~~

(4) For passenger motor 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 all license plates, and the word “Montana” must be placed on each license plate. All license plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers for standard license plates must begin with a number one or with a letter-number combination, such as “A 1” or “AA 1”, or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, generic specialty license plates, and fleet license plates, the distinctive registration number or letter-number combination assigned to the motor vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same

horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles, trailers, semitrailers, or pole trailers and motor vehicles, trailers, semitrailers, or pole trailers that are exempt from the registration fee as provided in 61-3-321, in addition to the markings provided in this section, standard license plates must bear the following distinctive markings:

(a) For motor vehicles, trailers, semitrailers, or pole trailers owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For motor vehicles, trailers, semitrailers, or pole trailers that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for motor vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the standard license plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles, trailers, semitrailers, or pole trailers of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these standard license plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the license plates requires it and a year number may not be displayed on the plates.

(7) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(8) (a) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs *that distinguishes each separate*

plate series. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular standard license plates, must be placed or mounted on a motor vehicle, trailer, semitrailer, or pole trailer owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the motor vehicle, trailer, semitrailer, or pole trailer, and must be removed upon sale or other disposition of the motor vehicle, trailer, semitrailer, or pole trailer.

(b) Beginning January 1, 2008, and every succeeding 4 years, the department shall manufacture and issue a new set of special license plates, bearing the same design and, if requested by the owner, the same plate number to replace, upon renewal of the registration of a motor vehicle under 61-3-314 and payment of the new plate fee provided for in 61-3-321, any special license plates issued prior to the prescribed date. This requirement applies to collegiate license plates authorized under 61-3-461 through 61-3-468, generic specialty license plates authorized under 61-3-472 through 61-3-481, and commemorative centennial license plates authorized under 61-3-448.

(9) (a) 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.

(b) If the motor vehicle to which the license plate is attached is permanently registered, the owner of the motor vehicle shall provide, upon request of a person authorized to enforce special parking laws or ordinances in this or any state, evidence of continued eligibility to use the license plate in the form of a valid special parking permit issued to or renewed by the vehicle owner under 49-4-304 and 49-4-305.

(c) A person with a permanent condition, as provided in 49-4-301(2)(b), who has been issued a special license plate upon written application, as provided in this subsection (9), is not required to reapply upon reregistration of the motor vehicle.

(10) The provisions of this section do not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733.”

Section 29. Section 61-3-448, MCA, is amended to read:

“61-3-448. Commemorative centennial license plates — continued use and replacement authorized. (1) ~~A~~ *Subject to the limitation set forth in 61-3-332, a person who owns and displays owned and displayed commemorative centennial license plates on a motor vehicle on or before June 30, 1996, may continue to display the commemorative centennial plates on the motor vehicle after that date as long as the plates remain legible or as long as replacement plates are available from the department, whichever is later as long as the motor vehicle is registered under this chapter.*

~~(2) The department shall authorize the continued display of commemorative centennial license plates after June 30, 1996, as provided for in subsection (1), and shall replace commemorative centennial license plates for persons who owned and displayed the plates on or before June 30, 1996, as long as replacement stock owned by the department on October 1, 1993, remains available and usable.”~~

Section 30. Section 61-3-463, MCA, is amended to read:

“61-3-463. Collegiate license plates. (1) Subject to the provisions of ~~61-3-332(3)~~ 61-3-332(8) and the requirement that collegiate license plates must have a white reflectorized background, the department shall design, cause to be manufactured, and issue collegiate license plates as provided in 61-3-464 through 61-3-466.

(2) After consultation with each institution, the department shall prescribe the color and insignia to be displayed on the collegiate license plates for each institution.

(3) In addition to each institution’s distinctive color and insignia provided in subsection (2), each collegiate license plate must:

(a) be imprinted consecutively with distinctive numerals from 1 through 99999, capital letters A through Z, or a combination of numerals and letters; and

(b) bear a registration decal as provided in 61-3-332.

(4) The department shall determine the minimum and maximum number of characters, including both numerals and letters, on the collegiate license plates.

(5) An issue of collegiate license plates may not be ordered or manufactured for any individual institution unless at least 400 sets of plates are ordered and prepaid.”

Section 31. Section 61-3-468, MCA, is amended to read:

“61-3-468. Collegiate license plates — continued use with institution’s former name authorized — replacement. ~~(1) A Subject to the limitation set forth in 61-3-332, a person who owns and displays on the person’s motor vehicle, collegiate license plates that bear the name of an institution that has been renamed by its governing body or as part of the Montana university system reorganization may continue to display on the vehicle the license plate bearing the former name of the institution as long as the plates remain legible or as long as replacement plates are available from the department, whichever is later motor vehicle is registered under this chapter.~~

~~(2) The department may issue or replace a collegiate license plate bearing the former name of an institution, as defined in 61-3-462, as long as replacement stock owned by the department of corrections is available.”~~

Section 32. Section 61-3-503, MCA, is amended to read:

“61-3-503. Assessment — definition. (1) (a) Except as provided in 61-3-520, light vehicles subject to a local option motor vehicle tax under 61-3-537 must be assessed the tax as of the first day of the registration period, using the depreciated value of the manufacturer’s suggested retail price as determined in subsection (2).

~~(b) A lien for taxes and fees due on the motor vehicle occurs on the anniversary date of the registration and continues until the fees and taxes have been paid. If the depreciated value is less than \$500, the department shall value the motor vehicle at \$500.~~

(2) (a) Except as provided in subsections (2)(c) and (2)(d), the depreciated value for the taxation of light vehicles is computed by multiplying the manufacturer’s suggested retail price by a percentage multiplier based on the type and age of the light vehicle determined from the following table:

Age of Vehicle (in years)	Type of Vehicle			
	Automobile	Truck	Van	Sport Utility
-1	100%	100%	100%	100%
0	90	96	93	98
1	80	91	86	94
2	69	86	78	90
3	58	80	69	84
4	49	73	60	76
5	41	66	52	67
6	33	57	45	57
7	26	49	38	48
8	21	43	32	39
9	17	37	27	33
10	14	31	22	29
11	12	26	18	25
12	10	22	15	22
13	09	18	13	21
14	09	15	11	19
15	09	13	09	17
16	09	12	09	15

(b) The age for the light vehicle is determined under 61-3-501.

(c) If the value of the light vehicle determined under subsection (2)(a) is \$500 or less, the value of the light vehicle is \$500 and the value must remain at that amount as long as the light vehicle is registered.

(d) The depreciated value of a light vehicle that is 17 years old or older is computed by depreciating the value obtained for the vehicle at 16 years old, as determined under subsection (2)(a), by 10% a year until a minimum value of \$500 is attained. The value must remain at that amount as long as the light vehicle is registered.

(3) (a) For the purposes of this section, “manufacturer’s suggested retail price” means the price suggested by the manufacturer for each given type, style, or model of light vehicle produced and first made available for retail sale by the manufacturer.

(b) The manufacturer’s suggested retail price is based on standard equipment of a light vehicle and does not contain price additions or deductions for optional accessories.

(c) When a manufacturer’s suggested retail price is unavailable for a motor vehicle, the department shall determine an alternative valuation for the motor vehicle.”

Section 33. Section 61-3-562, MCA, is amended to read:

“61-3-562. Permanent registration — transfer of light vehicle ownership — rules. (1) (a) Except as provided in subsection (1)(b), the owner of a light vehicle 11 years old or older subject to the registration fee, as provided in 61-3-321(2), may permanently register the light vehicle upon payment of a

\$87.50 registration fee, the applicable registration and license fees under 61-3-412, and an amount equal to five times the applicable fees imposed for each of the following:

(i) the local option motor vehicle tax or flat fee on vehicles under 61-3-537; and,

(ii) if applicable, *when personalized plates under 61-3-406 are being issued or renewed, either:*

(i) *the original fee and four times the renewal fee for personalized plates;* or

(ii) *five times the renewal fees for personalized plates under 61-3-406.*

(b) The following series of license plates may not be used for purposes of permanent registration of a light vehicle:

(i) Montana national guard license plates issued under 61-3-458(2)(b);

(ii) reserve armed forces license plates issued under 61-3-458(2)(c);

(iii) amateur radio operator license plates issued under 61-3-422;

(iv) collegiate license plates issued under 61-3-465; and

(v) generic specialty license plates issued under 61-3-479.

(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 motor vehicle that is permanently registered under this section is not subject to additional registration fees 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 once each month remit to the state the amounts collected under this section, other than the local option motor vehicle tax or flat fee, for the purposes of 61-3-321(2) and 61-10-201. The county treasurer shall retain the local option motor vehicle tax or flat fee.

(5) (a) The permanent registration of a light vehicle allowed by this section may not be transferred to a new owner. If the light vehicle is transferred to a new owner, the department shall cancel the light vehicle's permanent registration.

(b) Upon transfer of a light vehicle registered under this section to a new owner, the new owner shall apply for a certificate of title under 61-3-201 and 61-3-216 and register the light vehicle under 61-3-303."

Section 34. Section 61-4-101, MCA, is amended to read:

"61-4-101. Dealer's license — types *Types of licenses and terms — plates common application — bonds — zoning.* (1) Except as provided in 61-4-120 and 61-4-125, a person may not engage in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker of a ~~new motor vehicle, or used motor vehicle, new or used recreational vehicle, motor home, trailer (except a trailer having an unloaded weight of less than 500 pounds), travel trailer, semitrailer, pole trailer, motorcycle, quadricycle, motorboat, personal watercraft, snowmobile, off-highway vehicle,~~ or special mobile equipment that is not registered in the person's name unless the person is the holder of a ~~dealer's~~ license issued by the department under this part.

(2) (a) ~~(i) The department is authorized to~~ *may* issue a *new dealer's license, a used dealer's license, a broker's license, an auto auction license, or a wholesaler license* for one or more ~~specified vehicle types~~ to any person it determines is

qualified to hold a *the* license under the provisions of this section. A dealer's license may be issued for and restricted to one or more of the following vehicle types:

~~(i) new motor vehicles, including new trucks, buses, and light vehicles covered under the franchise the dealer holds as franchisee and used trucks, buses, recreational vehicles, light vehicles, and trailers;~~

~~(ii) used motor vehicles, including used trucks, buses, and light vehicles;~~

~~(iii) new recreational vehicles, including new motor homes and travel trailers covered under the franchise the dealer holds as franchisee and used motor homes and travel trailers;~~

~~(iv) used recreational vehicles, including used motor homes and travel trailers;~~

~~(v) trailers, including semitrailers and pole trailers, but excluding travel trailers;~~

~~(vi) special mobile equipment; or~~

~~(vii) motoreycles or quadricycles, including new or used motoreycles or quadricycles, but excluding new off-highway vehicles unless the dealer is licensed under Title 23.~~

~~(b) The department shall design and issue dealer and demonstrator plates as provided in 61-4-102 and 61-4-129.~~

~~(c) A dealer licensed for a particular type of vehicle may sell, trade, or accept on consignment only vehicles of the type for which the license is authorized under subsection (2)(a):~~

~~(ii) A new dealer's license authorizes the holder to sell:~~

~~(A) any new motor vehicle, new power sports vehicle, or new trailer that is covered under a franchise agreement between the holder and the manufacturer, importer, or distributor of the line of vehicle or trailer offered for sale; and~~

~~(B) any used motor vehicle, used power sports vehicle, or used trailer.~~

~~(iii) A used dealer license authorizes the holder to sell any used motor vehicle, used power sports vehicle, or used trailer.~~

~~(iv) A broker's license authorizes the holder to negotiate the purchase, sale, or exchange of a motor vehicle, power sports vehicle, or trailer from a dealer or another person upon behalf of a client, when the broker does not store, display, or take ownership of the motor vehicle, power sports vehicle, or trailer being purchased, sold, or exchanged.~~

~~(v) Except as provided in 61-4-120, an auto auction license authorizes the holder to take possession of a used vehicle owned by another person through consignment, bailment, or any other arrangement and to sell to the highest bidder when all bidders are licensed vehicle dealers, wholesalers, or wrecking facilities.~~

~~(vi) A wholesaler license authorizes the holder to sell used vehicles to a new or used vehicle dealer, an auto auction, or another wholesaler.~~

~~(d)(3) Subject to the provisions of 61-4-120, 61-4-124, and 61-4-125, a dealer's license issued by the department is valid until:~~

~~(i)(a) voluntarily returned to the department for surrender and cancellation upon the cessation of the dealer's licensee's business operations; or~~

(ii)(b) suspended or revoked for a violation of this chapter or any other laws relating to the sale of motor vehicles, *power sports vehicles*, or *trailers*.

~~(3)(4)~~ (a) An applicant for a *new dealer's license*, a *used dealer's license*, a *broker's license*, an *auto auction license*, or a *wholesaler license* shall submit a written application for a dealer's license to the department, ~~specifying the type or types of dealer's license sought~~. The application must be signed by the applicant and contain a verification by the applicant, under penalty of law, that the information contained in the application is true and correct. Any information provided in the license application process is subject to independent verification by the department or an authorized representative of the department.

(b) After examining a license application and conducting an investigation necessary to verify the information contained in the application and if the department is satisfied that the applicant qualifies for the issuance of a license under the provisions of this chapter, the department may issue the license. The department may refuse, after examination and investigation, to issue a license to an applicant who is not qualified for licensure or whose prior financial or other activities or criminal record, as determined by the department:

(i) poses a threat to the effective regulation of dealers, wholesalers, or auto auctions;

(ii) poses a threat to the public interest of the state; or

(iii) creates a danger of illegal or deceptive practices being used in the conduct of the proposed dealership, wholesaler, or auto auction.

~~(4)(5)~~ To be qualified for licensure as a dealer, an applicant shall provide to the department the following *information*:

(a) the name under which the applicant intends to conduct business and the applicant's name, the street address and, if different, mailing address for the business, ~~date of birth~~, and customer identification number;

(b) the name, date of birth, and social security number of any person who:

(i) possesses or will possess an ownership interest in the business for which the license is sought;

(ii) is a corporate officer or the managing member of a business entity applying for the license; or

(iii) is or will be. ~~If the applicant is a corporation, the personal information required in this subsection (4)(a) must be provided for each corporate officer and the person designated by the corporation applicant to manage or oversee the dealership applicant's business.;~~

~~(b)(c)~~ for each person subject to the provisions of subsection ~~(4)(a)~~ (5)(b), information concerning whether the person has:

(i) an ownership interest in a vehicle dealership, *auto auction*, or a wholesaler business in Montana or ~~another jurisdiction~~ *any other state* and, if so, the name and address of each dealership, *auto auction*, or wholesaler; and

(ii) been found guilty of, or pleaded guilty to, a felony in this or any other jurisdiction and, if so, shall provide a summary of the conduct resulting in the felony charge, including the dates of the conduct and any court proceedings pertaining to the conduct and the name and address of any court in which the matter was heard;

(e)(d) the name, address, and telephone number of the insurance carrier from whom the applicant has acquired general liability insurance, naming the department as a certificate holder of the policy, and the name, address, and telephone number of the local insurance agent for the carrier and the applicant's policy number. The insurance must cover any *motor* vehicle bearing dealer or demonstrator license plates and any *motorboat, snowmobile, or off-highway vehicle displaying a dealer's identification card* that is offered for demonstration or loan to a customer or otherwise operated by a customer in the regular course of the applicant's business and must be for a minimum of 1 year;

(e)(e) the geographic location of the physical lot or lots upon which vehicles will be displayed for sale, *if applicable*, and of a permanent nonresidential building that will be maintained to store the actual physical or electronic records resulting from the purchase, sale, trade, or consignment of vehicles for which licensure is sought. An applicant may use more than one location to display vehicles for sale if the maximum distance between each display lot does not exceed 200 feet and if the distance between a display lot and the building in which vehicle sales records are stored does not exceed 1,000 feet.

(e)(f) for each geographic location specified in the application, evidence of the applicant's compliance with applicable local land use planning, zoning, and business permitting requirements, if any. Evidence of compliance may be documented by means of a written verification of compliance signed by the authorized representative of the local land use planning or zoning board or the local business-permitting agency.

(e)(g) a diagram or plat showing the geographic location, lot dimensions, *if applicable*, and building and sign placement for the applicant's proposed established place of business, along with two or more photographs of the geographic location, building premises, and sign, as prescribed by the department;

~~(g) a certification by the applicant that the applicant is a bona fide dealer in new motor vehicles, used motor vehicles, new recreational vehicles, used recreational vehicles, motor homes, travel trailers, trailers, semitrailers, pole trailers, motorcycles, quadricycles, or special mobile equipment;~~

(h) if the applicant is seeking a new motor vehicle dealer's license:

(i) the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle, *power sports vehicle, or trailer* franchise or sales agreement, *the term of the agreement*, and the name and make of all motor vehicles, *power sports vehicles, or trailers* to be handled by the applicant;

(ii) the geographic location or locations, specified in writing, upon which the applicant will provide and maintain a permanent building to display and sell new motor vehicles, *power sports vehicles, or trailers* and offer and maintain a bona fide service department for the repair, service, and maintenance of the motor vehicles, *power sports vehicles, or trailers*; and

(iii) verification that the applicant otherwise meets the requirements of part 2 of this chapter; and

~~(i) if the applicant is applying for a new recreational vehicle dealer's license, new travel trailer dealer's license, or new motor home dealer's license, certification that the person is recognized by a manufacturer, importer, or distributor as a dealer in new recreational vehicles, new motor homes, or new travel trailers.~~

~~(5)(6) If an applicant for a new motor vehicle or used motor vehicle, new or used recreational vehicle, new or used motor home, new or used travel trailer, or trailer dealer's license wants to maintain more than one established place of business, the applicant shall file a separate license application for each proposed place of business and otherwise qualify for licensure at each place separately.~~

~~(6)(7) Each application under this section must be accompanied by an application fee of \$5 and one or more of the following license fees based on the type of dealer's license being sought:~~

~~(a) \$25 for a new or used motor vehicle dealer's license, a broker's license, or a wholesaler's license, \$30; and~~

~~(b) \$25 for a used motor vehicle dealer's license;~~

~~(c) \$25 for a new or used recreational vehicle, motor home, or travel trailer dealer's license; or~~

~~(d) \$25 for a motorcycle or trailer, semitrailer, or pole trailer dealer's license for an auto auction license, the fee provided for in 61-4-120.~~

~~(7)(8) (a) The Except as provided in subsection (8)(b), an applicant for a dealer's license, broker's license, wholesaler's license, or auto auction license shall also file with the application a bond of \$50,000 for a license as a new motor vehicle dealer, a used motor vehicle dealer, a new or used recreational vehicle, motor home, or travel trailer dealer, or a trailer dealer. Applicants for a motorcycle dealer's license shall file a bond in the sum of \$15,000.~~

~~(b) An applicant whose business will be restricted to the sale of motorcycles or quadricycles shall file a bond of \$15,000. An applicant whose business will be restricted to the sale of motorboats, personal watercraft, snowmobiles, or off-highway vehicles, other than motorcycles originally equipped for use on the highway, shall file a bond of \$5,000.~~

~~(c) All bonds must be conditioned that the applicant shall conduct the business in accordance with the requirements of the law. The bond may extend to any other type of dealer license issued to the applicant at the same geographic location if all types of licenses are indicated on the face of the bond. All bonds must be approved by the department, must be filed in its office, and must be renewed annually."~~

Section 35. Section 61-4-102, MCA, is amended to read:

"61-4-102. Dealer's license numbers—assignment, numbering, and limitation of dealer Dealer plates — restriction of use — fees. (1) Upon the licensing of a dealer *Except as provided in subsection (2)*, the department shall assign to the dealer a distinctive serial license number as a dealer and furnish the a dealer licensed under this part with one or more sets of numbered dealer plates in accordance with the provisions of this section.

~~(2) (a) Dealer plates designed by the department must be similar to the standard license plates furnished to owners of motor vehicles under 61-3-332, but they must bear:~~

~~(i) the license number assigned to the dealer;~~

~~(ii) an abbreviation for the vehicle type of the dealer's license issued, as follows:~~

~~(A) the letter "D" for a new motor vehicle dealer;~~

~~(B) the letters "UD" for a used motor vehicle dealer; or~~

(C) the letters "RV" for a new or used recreational vehicle, motor home, or travel trailer dealer; and

(iii) the actual number of sets of dealer plates issued to the dealer.

(b) Dealer plates may not be issued to a motorcycle or trailer dealer or a wholesaler *new or used dealer whose business is restricted to the sale of motorcycles, power sports vehicles, or trailers.*

(3) Dealer plates must contain the prefix of the county in which the dealer's established place of business is located, followed by the dealer's license type abbreviation, the dealer's license number, and the number of sets of dealer plates issued to that dealer. For example, new motor vehicle dealer number 4 in Lewis and Clark County would be numbered 5D-4, and if the dealer were issued three sets of dealer plates, they would be numbered consecutively as follows, 5D-4-1, 5D-4-2, and 5D-4-3.

(4)(3) (a) In addition to the fees required under the provisions of 61-4-101 and 61-4-124, an applicant for a dealer's license shall pay an annual fee of \$25 for each set of numbered dealer plates requested and issued.

(b) The number of dealer plates that may be issued to a dealer must be determined as follows:

(i) a dealer is entitled to one set of dealer plates upon the issuance of an original license or a renewed license;

(ii) an applicant qualified for a license renewal is entitled to additional sets of numbered plates based on the following formula:

(A) 5% of the first 100 motor vehicle sales for the previous year; plus

(B) 3% of the next 100 motor vehicle sales for the previous year; plus

(C) 2% of motor vehicle sales in excess of 200 for the previous year; and

(iii) a dealer is entitled to additional sets of dealer plates during a license term as the dealer's sales incrementally meet or exceed the requirements of the formula established in subsection (4)(b)(ii) (3)(b)(ii). However, the aggregate number of sets of dealer plates issued to a dealer under this subsection (4)(b)(iii) (3)(b)(iii) may not exceed the combined number allowed under subsections (4)(b)(i) (3)(b)(i) and (4)(b)(ii) (3)(b)(ii).

(5)(4) (a) A dealer is authorized to use and display dealer plates on a motor vehicle, *except a motorcycle*, held for bona fide sale by the dealer and that is operated by or under the control of the dealer, the dealer's spouse, officers, or employees.

(b) For purposes of this subsection (5) (4):

(i) the term "officers" includes only the persons listed on the manufacturer's franchise agreement or the importer's distribution agreement and the term "employees" means persons upon whom the dealer has paid social security taxes as a full-time employee; and

(ii) the display of a Monroney label or a buyer's guide label, as required by 61-4-123(2), on a motor vehicle bearing dealer plates is prima facie evidence that the motor vehicle is offered for bona fide sale by the dealer.

(6)(5) Dealer plates may not be used or displayed on motor vehicles used for hire, lease, or rental.

(7)(6) (a) A dealer is accountable for each set of numbered dealer plates issued and, except as provided in subsection (7)(b) (6)(b), shall file an annual

report with the department certifying the disposition of each set of dealer plates assigned to the dealer and specifying the name, address, and occupation of the person primarily using each set of plates.

(b) Upon reassignment of one or more sets of dealer plates to another person, within 15 days of the reassignment, the dealer shall notify the department, in a manner prescribed by the department, of the name, address, and occupation of the person to whom the plates were assigned.

~~(8) (a) All numbered dealer plates expire on December 31 of the year of issue and must be renewed annually.~~

~~(b) A dealer who files the annual report required under 61-4-124 on or before December 31 of the calendar year may display or use dealer plates assigned and registered for the prior calendar year through the last day of February of the following year, as provided in 61-4-124(5)."~~

Section 36. Section 61-4-104, MCA, is amended to read:

"61-4-104. Record of purchase or sale. (1) (a) A dealer, ~~or~~ wholesaler, *or auto auction* licensed under ~~61-4-101~~ *this part* 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 date of purchase, sale, or consignment and the name and address of:

(i) the person from whom the dealer or wholesaler acquired the vehicle's ownership or, if consigned, possessory interest in the vehicle;

(ii) the person to whom the dealer, ~~or~~ wholesaler, *or auto auction* assigned the vehicle; and

(iii) a secured party with a perfected security interest in the vehicle to which the ~~dealer~~ *dealer's*, ~~or~~ wholesaler's, *or auto auction's* interest is subordinate, if any.

(b) The vehicle description 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, pole trailer, or special mobile equipment, the record must include the manufacturer's number and other numbers or identification marks that appear on the trailer, semitrailer, pole trailer, or special mobile equipment.

(2) The dealer, ~~or~~ wholesaler, *or auto auction* must also have an assigned certificate of ownership or certificate of title from the owner of the motor vehicle, *power sports vehicle, or trailer* to the dealer, ~~or~~ wholesaler, *or auto auction* from the time the motor vehicle is delivered to the dealer, ~~or~~ wholesaler, *or auto auction* until it has been disposed of by the dealer, ~~or~~ wholesaler, *or auto auction*. It is a violation of this part for a dealer, ~~or~~ wholesaler, *or auto auction* to fail to take assignment of all certificates of ownership, certificates of title, or manufacturer's certificates of origin for motor vehicles acquired by the licensee or to fail to assign the certificate of ownership, certificate of title, or manufacturer's certificate of origin for motor vehicles sold.

(3) 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 37. Section 61-4-105, MCA, is amended to read:

“61-4-105. Criminal penalty — civil penalty imposed by agency. (1) Except as provided in 61-4-143, a person violating the provisions of this part is guilty of a misdemeanor and subject to a fine in an amount of not less than \$250 and not more than \$500. For the purposes of this section, every sale of a ~~motor~~ vehicle in violation of the provisions of this part is a separate offense.

(2) In addition to all other penalties created by this part, the department is authorized to take appropriate enforcement action on its own initiative. Except as provided in 61-4-143, a person violating the provisions of this part may be subject to administrative action, in accordance with the contested case procedures of Title 2, chapter 4, as follows:

- (a) a civil penalty not to exceed \$1,000 for each violation;
- (b) suspension of the ~~motor vehicle~~ dealer, *broker*, wholesaler, or auto auction license not to exceed 7 days;
- (c) revocation of the ~~motor vehicle~~ dealer, *broker*, wholesaler, or auto auction license; or
- (d) any combination of subsections (2)(a) through (2)(c).”

Section 38. Section 61-4-109, MCA, is amended to read:

“61-4-109. Privileges incident to license — withdrawal upon certain conditions. (1) The privileges of a dealer licensed under the provisions of this part to use and display a set of dealer plates or a demonstrator plate on a motor vehicle *or trailer* held for sale by the dealer, *to use and display an identification card on a power sports vehicle held for sale*, and to issue a ~~20-day temporary registration~~ permit, under the authority of 61-4-111 or 61-4-112, upon the sale of a motor vehicle, *a power sports vehicle, or a trailer* by the dealer are specifically conditioned on the dealer’s satisfaction of the bond requirements of 61-4-101(7) and the general liability insurance coverage requirements of 61-4-123, without interruption or lapse.

(2) If the department is notified or determines that a dealer’s bond or general liability insurance has lapsed or been canceled, all dealer plates, demonstrator plates, and ~~20-day permits assigned or identification cards~~ issued to the dealer *are subject to immediate confiscation and the dealer’s authority, as an authorized agent, to issue temporary registration permits are* subject to immediate withdrawal ~~and confiscation~~, upon demand, by the department or by a compliance specialist on behalf of the department. *The dealer plates, demonstrator plates, and identification cards and* may not be returned to the dealer until the bond and general liability insurance requirements have been satisfied.

(3) A dealer whose privileges are withdrawn under this section may otherwise engage in the dealer’s business operations during the period of withdrawal.

(4) If the lapse of bond or general liability insurance is not corrected with 30 days, the department may initiate administrative action to suspend or revoke the dealer’s license under 61-4-105(2).”

Section 39. Section 61-4-111, MCA, is amended to read:

“61-4-111. Used ~~motor~~ vehicles — transfer to and from dealers. (1) Except as provided in 61-4-124(6), a ~~licensed dealer, broker, or wholesaler~~ who intends to resell a used motor vehicle, *power sports vehicle, or trailer* and who operates the *motor vehicle, power sports vehicle, or trailer* only for demonstration purposes:

(a) is exempt from registration under *23-2-515*, *23-2-616*, *23-2-804*, or 61-3-302(3) when applying for a certificate of title; and

(b) may transfer or receive ownership of a motor vehicle, *power sports vehicle*, or *trailer* by use of a dealer reassignment section on a certificate of title. However, when the allotted number of dealer reassignment sections on a certificate of title has been completed, ownership of the *motor vehicle*, *power sports vehicle*, or *trailer* may not be transferred until an application for a certificate of title has been submitted by the dealer to the department and a new certificate of title has been issued.

(2) Upon the transfer of a used motor vehicle, *power sports vehicle*, or trailer to a person other than a licensed dealer, broker, or wholesaler, a temporary registration permit may be issued under 61-3-224 to the person to whom the used motor vehicle, *power sports vehicle*, or trailer was transferred if the dealer is an authorized agent, as defined in 61-1-101. In addition, the following acts are required of the dealer on or before the times set forth in this subsection:

(a) Within 30 calendar days following the date of delivery of the motor vehicle, *power sports vehicle*, or trailer, the dealer shall forward to the county treasurer of the county where the *owner of the motor vehicle*, *power sports vehicle*, or *trailer* is domiciled:

(i) the assigned certificate of title or, if a certificate of title for the motor vehicle, *power sports vehicle*, or trailer has not been issued in this state, a copy of the then-current registration receipt or certificate in the dealer's possession; and

(ii) an application for a certificate of title executed by the new owner in accordance with the provisions of 61-3-216 and 61-3-220.

(b) Transmission of the documents by the dealer to the county treasurer may be accomplished either by personal delivery, by first-class mail, or by electronic means, as authorized by the department.

(c) If the dealer is unable to forward the certificate of title or, if applicable, registration receipt within the time set forth in subsection (2)(a) 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)(a) 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, *power sports vehicle*, or trailer is considered to have passed to the purchaser as of the date of the delivery of the motor vehicle, *power sports vehicle*, or trailer 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 61-3-216(2)(f); and~~

~~(c) comply with the applicable provisions of Title 61, chapter 3, parts 1 through 3."~~

Section 40. Section 61-4-112, MCA, is amended to read:

“61-4-112. New motor vehicles — transfers by dealers. (1) (a) When a motor vehicle dealer transfers a new motor vehicle, *power sports vehicle*, or *trailer* to a purchaser or other recipient, the dealer shall, within 30 calendar days following the date of delivery of the new motor vehicle, *power sports vehicle*, or *trailer* forward to the county treasurer of the county where the *owner of the* motor vehicle, *power sports vehicle*, or *trailer* is domiciled:

(i)(a) an application for a certificate of title with a notice of security interest, if any, executed by the purchaser or recipient; and

(ii)(b) a manufacturer’s certificate of origin that shows that the motor vehicle, *power sports vehicle*, or *trailer* has not previously been registered or owned, except as otherwise provided in this section, by any person other than a new motor vehicle dealer holding a franchise or distribution agreement from a new car the manufacturer, distributor, or importer of the new motor vehicle, *power sports vehicle*, or *trailer*.

(b)(2) If the dealer is an authorized agent, as defined in 61-1-101, a temporary registration permit may be issued under 61-3-224 to the person to whom the new motor vehicle, *power sports vehicle*, or *trailer* was transferred.

(2) Upon receipt from the county treasurer of the documents required under subsection (1), the department shall issue a certificate of title if requested under 61-3-216(2)(f) and otherwise comply with the provisions of Title 61, chapter 3, parts 1 through 3, as applicable.”

Section 41. Section 61-4-120, MCA, is amended to read:

“61-4-120. Application for auto Auction license — general regulations restrictions — annual report — issuance, use, and fees for demonstrator plates. (1) (a) An auto auction may not sell used motor vehicles by retail sale. A person 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 motor 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.

(b) ~~A licensed An auto auction licensed under this part may not auction a new motor vehicle except when only if the auto auction is 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 \$50,000 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. On or before December 31 of each year, an auto auction shall submit an annual report, in a form or manner prescribed by the department, to the department to advise the department of any changes that may have occurred in that calendar year affecting the information originally filed under 61-4-101. The report must contain information concerning owner identity, other ownership interests, felony conduct, general liability insurance status, surety bond filings, and any other relevant information requested by the department. The fee required for each first-time applicant is \$500, and for subsequent renewal applications is when the annual report is filed in subsequent years, it must be accompanied by a filing fee of \$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 An auto auction that is an authorized agent may issue a temporary registration permits, which may be displayed and used by a buyer to operate an unregistered motor vehicle purchased from the auto auction. The temporary registration permit to a person who buys a motor vehicle, power sports vehicle, or trailer at the auction, pursuant to 61-3-224. Within 30 days following the date of delivery of the motor vehicle, power sports vehicle, or trailer, the auto auction shall provide the purchaser with the assigned certificate of title or, if a certificate of title for the motor vehicle, power sports vehicle, or trailer has not been issued in this state, a copy of the then-current registration receipt or the certificate and any related documents for each motor vehicle, power sports vehicle, or trailer. 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 motor 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 motor 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 motor 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 for each motor vehicle, *power sports vehicle*, or *trailer* sale.

(4) (a) ~~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~~ *Upon the issuance of an auto auction license and payment of a \$5 fee for each plate, the department shall furnish to the auto auction one or more demonstrator plates that may be used to transport inventory motor vehicles to and from a point of storage or a point of delivery in this state and to and from the auto auction's place of business, for road testing authorized motor vehicles, or for moving motor 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 motor vehicle.*

(b) Auto auctions may appoint designated persons, 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 motor vehicle.

(c) ~~Upon application for an auto auction license, the applicant, if requesting the~~ *When applying for license plates, an auto auction 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 change has occurred.*

(d) 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 *auto* auction issues, authorizes the use of, or uses a temporary registration permit or ~~the an auto auction~~ 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 motor 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, *a power sports vehicle*, or *a trailer* through its auction by stamping its name and license number upon the certificate of title at a location on 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 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 ~~motor vehicle~~ year, make, model, and identification number *of the motor vehicle, power sports vehicle, or trailer*;

(ii) name, address, and signature of the transferor;

(iii) name, license number, and signature of the transferee; and

(iv) date the motor vehicle was sold through the auction.

(e)(b) The invoice must be attached to the certificate of 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 42. Section 61-4-122, MCA, is amended to read:

"61-4-122. Compliance specialists as peace officers. (1) The department may designate and train civilian employees as compliance specialists within the motor vehicle division. Each compliance specialist is a peace officer whose jurisdiction is limited to enforcement of violations of Title 61, chapter 3, parts 1, 2, 3, 4, and 6, and chapter 4.

(2) As a peace officer, a trained compliance specialist may:

(a) issue citations and make arrests;

(b) issue summonses;

(c) accept bail;

(d) serve warrants of arrest;

(e) make reasonable inspections of ~~a dealer's~~ *the* established place of business and, *if applicable, motor vehicle inventory of a dealer, a broker, a wholesaler, or an auto auction;* and

(f) require production of documents relating to the sale, purchase, exchange, or consignment of any motor vehicle, *power sports vehicle, or trailer* currently or previously in ~~a dealer's~~ *the* inventory *of,* or displayed for sale by, ~~the~~ *a* dealer, *a broker, a wholesaler, or an auto auction* or relating to any obligation imposed on a dealer, *broker, wholesaler, or auto auction* under this title.

(3) ~~For purposes of this section, the term "dealer" includes a dealer of any motor vehicle type, a wholesaler, or an auto auction, any of which is subject to licensure by the department under this chapter."~~

Section 43. Section 61-4-123, MCA, is amended to read:

“61-4-123. Dealer requirements and restrictions. (1) ~~A used dealer may not offer for sale, trade, or consignment any motor vehicle type not authorized by the license issued to the dealer by the department or use a dealer or demonstrator plate on a motor vehicle of a type for which the dealer is not licensed~~ *sell a new motor vehicle, a new power sports vehicle, or a new trailer.*

(2) A dealer may not display at the dealer’s established place of business or any approved off-premises sale location a motor vehicle offered for sale, trade, or consignment unless the Monroney label required for new motor vehicles pursuant to 15 U.S.C. 1232 or the buyer’s guide label required for used motor vehicles pursuant to 16 CFR, part 455, is affixed to the side window of the motor vehicle or is conspicuously displayed within the motor vehicle in a fashion that is readily readable by a customer.

(3) Except as provided in subsection (4), a dealer may not sell or display a motor vehicle, *power sports vehicle, or trailer* offered for sale at any geographic location other than that of the dealer’s established place of business as listed on the dealer’s license.

(4) (a) ~~Upon prior notice to the department, a dealer may conduct an off-premises display and sale at a geographic location other than that of the dealer’s established place of business as listed on the dealer’s license if the dealer notifies the department 10 days in advance, on a form prescribed by the department, of the opening date and location of an off-premises display and sale and obtains a permit from the department. The department may require proof from the dealer that the location proposed for the off-premises display and sale is in compliance with local zoning ordinances. Except for recreational vehicle, motor home, or travel trailer dealers, an~~ *An off-premises display and sale must be conducted within the county of the dealer’s licensed location unless the off-premises display and sale are restricted to recreational vehicles or power sports vehicles.* The display and sale may not exceed 10 consecutive days, and a licensed dealer may not conduct more than 10 off-premises displays and sales during any 1 calendar year.

(b) A dealer may display one or more motor vehicles, *power sports vehicles, or trailers* inside an airport terminal or shopping mall without obtaining an off-premises display and sale permit if no actual sales are made, or could be made, at the terminal or mall.

(c) Upon prior written notice to the department, a dealer may display one motor vehicle, *power sports vehicle, or trailer* at a geographic location other than that of the dealer’s established place of business as listed on the dealer’s license if no actual sales are made, or could be made, at the display location and the display:

(i) conspicuously promotes or supports an event or a program sponsored by a nonprofit corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes and the motor vehicle, *power sports vehicle, or trailer* is displayed at a location where the event is being held or the program is being promoted; or

(ii) conspicuously promotes a joint commercial endeavor between the dealer and another clearly identified business entity and the motor vehicle, *power sports vehicle, or trailer* is displayed on premises owned or leased by the other business entity and where the other entity regularly conducts its business. A display under this subsection (4)(c)(ii) may not exceed 90 days *in a calendar year.*

(5) If more than one dealer displays motor vehicles, *power sports vehicles, or trailers* and maintains an established place of business at the same geographic location as another dealer's established place of business, each dealer shall ensure that all motor vehicle records, office facilities, and inventory, if applicable, are physically segregated from those of the other dealer and clearly identified and attributed to the appropriate dealer.

(6) A dealer shall install and maintain telephone service at the dealer's established place of business. The telephone service must be listed in the directory assistance that applies to the area in which the business is located, or if a cellular service is used, the dealer's cell phone number must be posted at the dealer's established place of business.

(7) A dealer shall conspicuously post at the dealer's established place of business written notice indicating the regular and customary office hours maintained by the dealer.

(8) (a) A dealer shall carry and continuously maintain a general liability insurance policy that covers any motor vehicle bearing a set of dealer plates or a demonstrator plate and any power sports vehicle displaying a dealer's identification card that is offered for demonstration or loan to a customer or that otherwise may be operated by a customer in the regular course of the dealer's business operations.

(b) A dealer shall ensure that the department is named as a certificate holder on any general liability insurance policy held by the dealer, that the minimum term of the policy is 1 year, and that a lapse of insurance does not occur as a result of cancellation or termination of a previously certified policy.

(c) This subsection (8) does not relieve a dealer of the mandatory motor vehicle liability insurance obligation imposed under chapter 6 of this title.

(9) A dealer shall display at the dealer's established place of business at least one sign stating the name of the business and indicating that motor vehicles, *power sports vehicles, or trailers* are offered for sale, trade, or consignment. The letters of the sign must be at least 6 inches in height and clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet."

Section 44. Section 61-4-124, MCA, is amended to read:

"61-4-124. Annual report — filing and registration fees — grace period for dealer and demonstrator plates — restrictions imposed upon failure to file. (1) On or before December 31 of each year, a dealer shall submit an annual report, in a form or manner prescribed by the department, to the department to advise the department of any changes concerning owner identity, other ownership interests, felony conduct, general liability insurance status, and surety bond filings, as originally required under 61-4-101, that may have occurred in that calendar year and to provide any other relevant information requested by the department.

(2) (a) The department may require a dealer to submit one or more current photographs of the dealer's established place of business or the signage for the business with the dealer's annual report.

(b) If a dealer seeks to change the geographic location of the dealer's established place of business, the dealer shall also provide information concerning local land use planning, zoning, and business permitting compliance, if applicable, and a diagram or plat for the proposed location, consistent with the requirements of 61-4-101.

(3) Except as provided in subsection (4)(c), the annual report must be accompanied by a ~~\$5 \$30~~ filing fee and one or more of the following dealer registration fees, based on the type of license held by the dealer:

(a) ~~\$25 for a new motor vehicle, used motor vehicle, new recreational vehicle, or used recreational vehicle dealer's license; and~~

(b) ~~\$25 for a motoreycle or trailer dealer's license.~~

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a used ~~motor vehicle~~ dealer shall also certify, under penalty of law, to the retail sale of 12 or more used motor vehicles, *power sport vehicles*, or *trailers* during the calendar year for which the annual report is filed. A used ~~motor vehicle~~ dealer licensed for less than a full calendar year in the year for which the report is filed shall certify, under penalty of law, to the retail sale of an average of at least one used motor vehicle, *power sport vehicle*, or *trailer* for each calendar month or portion of a calendar month that the license was in effect.

(b) ~~The minimum retail sales requirements of this subsection (4) do not apply to a dealer filing an annual report for a used motor vehicle dealer's license and either a new motor vehicle dealer's license or a new recreational vehicle dealer's license.~~

(e) (i) A used ~~motor vehicle~~ dealer who cannot certify, under penalty of law, to the number of retail sales required under subsection (4)(a) in a calendar year for which the report is filed must pay a fee of \$25 in addition to the filing and registration fees *fee* required in subsection (3).

(ii) A used ~~motor vehicle~~ dealer who is also a qualified tow truck operator, as defined in 61-8-903, and who, in the dealer's annual report, cannot certify, under penalty of law, to the retail sale of five or more used motor vehicles, *power sport vehicles*, or *trailers* during the calendar year for which the report is filed, shall pay a fee of \$25 in addition to the filing and registration fees *fee* required in subsection (3).

(iii) A dealer licensed as a motor vehicle wrecking facility under Title 75, chapter 10, part 5, is exempt from the minimum retail sales reporting requirements of subsection (4)(a), as well as the lower minimum sales requirements of this subsection (4).

(5) A dealer whose annual report is received by the department on or before December 31 of the calendar year may display or use dealer or demonstrator plates or *identification cards* assigned and registered for the prior calendar year through the last day of February of the following year.

(6) (a) On or after January 1 of the year following the calendar year for which an annual report and filing and registration fees are due under this section, the department may not renew dealer or demonstrator plates or *identification cards* for a dealer who has not filed the annual report and paid the fees due under this section.

(b) On or after March 1 of the year following the calendar year for which an annual report and filing and registration fees are due under this section, the department may not issue or transfer a title under the provisions of 61-4-111(1) to or from a dealer who has not filed the annual report and paid the fees, and the department shall initiate an administrative action under the provisions of 61-4-105(2) to revoke the dealer's license unless the dealer voluntarily surrenders the license, along with any previously assigned dealer and demonstrator plates or *identification cards*, to the department for cancellation."

Section 45. Section 61-4-125, MCA, is amended to read:

~~“61-4-125. Wholesaler’s license~~ *Wholesaler restrictions — demonstrator plates — annual report.* (1) ~~(a) The department is authorized to issue a wholesaler’s license to any person it determines is qualified to hold a license under the provisions of this section. *The retail sale of used vehicles by a wholesaler is prohibited.*~~

~~(b) A wholesaler is authorized to sell used motor vehicles, used recreational vehicles, used motor homes, used travel trailers, trailers, motorcycles, quadricycles, or special mobile equipment. However, a wholesaler may sell a motor vehicle, recreational vehicle, trailer, motorcycle, quadricycle, or special mobile equipment only to a dealer, an auto auction, or another wholesaler. Retail sale of motor vehicles, recreational vehicles, motor homes, travel trailers, trailers, motorcycles, quadricycles, or special mobile equipment by a wholesaler is not allowed.~~

~~(c) A wholesaler’s license issued by the department has a term of 1 calendar year, commencing on or after January 1 in the year of issue and expiring on December 31 of the same year.~~

~~(d) The department shall design and issue wholesaler demonstrator plates of a similar sequence to demonstrator plates issued to dealers but that conspicuously display the term “wholesaler” or the abbreviation “W”.~~

~~(2) To qualify for a wholesaler’s license, an applicant shall submit a completed application, in a form prescribed by the department, that provides the following:~~

~~(a) the name under which the applicant intends to conduct business and the name, address, date of birth, and social security number of any person who possesses or will possess an ownership interest in the business for which the license is sought. If the applicant is a corporation, the personal information required in this subsection (2)(a) must be provided for each corporate officer and the person designated by the corporation to manage or oversee the dealership.~~

~~(b) for each person subject to the provisions of subsection (2)(a), information concerning whether the person has:~~

~~(i) an ownership interest in a motor vehicle dealership or wholesaler business in Montana or another jurisdiction and, if so, the name and address of each dealership or wholesaler; and~~

~~(ii) been found guilty of or pleaded guilty to a felony in this or any other jurisdiction and, if so, the applicant shall provide a summary of the conduct resulting in the felony charge, including the dates of the conduct and any judicial proceeding pertaining to the conduct and the name and address of any court in which the matter was heard;~~

~~(c) the name, address, and telephone number of the insurance carrier from whom the applicant has acquired general liability insurance, naming the department as a certificate holder under the policy, and the name, address, and telephone number of the local insurance agent for the carrier and the applicant’s policy number. The insurance must cover any motor vehicle bearing a wholesaler demonstrator plate that is offered for demonstration or loan to, or otherwise operated by, a customer in the regular course of the applicant’s business and must be for a minimum of 1 year.~~

~~(d) the street address of the permanent nonresidential building or office where business records will be kept and will be made available for inspection by the department; and~~

~~(e) a bond of \$50,000 filed with the department on behalf of the applicant. The bond must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. The bond must be approved by the department and subject to annual renewal.~~

~~(3) The application fee for a wholesaler's license is \$5, and the license fee is \$25. Both fees must accompany an original or renewal wholesaler's license application.~~

~~(4)(2) Wholesalers may not be issued or use dealer plates, as provided in 61-4-102. However, a wholesaler may be issued and is authorized to display and use a wholesaler demonstrator plate plates, as provided in 61-4-129, for use on any type of motor vehicle or trailer that a wholesaler is authorized to sell. The fee for a wholesaler demonstrator plate is \$5. To the extent not inconsistent with this section, use of wholesaler demonstrator plates is otherwise governed by 61-4-129.~~

~~(5)(3) (a) A wholesaler's license must be renewed annually, and application for renewal must be filed on or before December 31 of the expiring license term.~~

~~(b) To qualify for renewal of a wholesaler's license, a wholesaler shall submit a completed application, in a form prescribed by the department, updating prior submitted information, as originally supplied under subsection (2). On or before December 31 of each year, a wholesaler shall submit an annual report, in a form or manner prescribed by the department, to the department to advise the department of any changes that may have occurred in that calendar year affecting the information originally filed under 61-4-101. The report must contain information concerning owner identity, other ownership interests, felony conduct, general liability insurance status, surety bond filings, and any other relevant information requested by the department. A \$30 filing fee must be submitted with the report.~~

~~(e)(b) Additionally, the wholesaler shall certify, under penalty of law, that the wholesaler sold 12 or more motor vehicles, power sports vehicles, or trailers of the type authorized under the license were sold by the wholesaler to a dealer, auto auction, or another wholesaler during the expiring license term calendar year for which the annual report is filed. A wholesaler who was licensed for less than a full calendar year in the expiring term shall certify, under penalty of law, to the sale of an average of at least one motor vehicle, power sports vehicle, or trailer a calendar month or portion of a calendar month during which the expiring license was in effect.~~

~~(d)(c) A wholesaler who cannot, under penalty of law, certify the number of motor vehicle sales required under subsection (5)(e) (3)(b) shall pay a fee of \$25 in addition to the fees filing fee required in subsection (3)(a).~~

~~(6) A wholesaler whose completed renewal application has been received by the department on or before December 31 of the expiring license term may, if necessary, operate the business and display wholesaler demonstrator plates under the expired license through the last day of February of the following year."~~

Section 46. Section 61-4-126, MCA, is amended to read:

"61-4-126. Claims against dealer, broker, wholesaler, or auto auction bonds. (1) A person who suffers loss or damage due to because of the

unlawful conduct of a dealer, *broker*, wholesaler, or auto auction licensed under this title shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond of the dealer, *broker*, wholesaler, or auto auction. The judgment must set out a specific loss or damage amount and establish that the licensee's unlawful conduct caused the loss or damage, before payment on the bond is required.

(2) If claim is made on a bond by two or more persons who have obtained a judgment against a dealer, *broker*, wholesaler, or auto auction based on the unlawful conduct of the dealer, *broker*, wholesaler, or auto auction and the judgments in the aggregate exceed the amount of the bond, the proceeds of the bond must be divided between or among the claimants on a pro rata basis."

Section 47. Section 61-4-129, MCA, is amended to read:

"61-4-129. Assignment of demonstrator plates. (1) (a) A dealer or wholesaler may purchase demonstrator plates at a fee of \$5 a plate.

(b) Demonstrator plates ~~must~~ *may not* be issued for each motor vehicle type for which a dealer's license is required under 61-4-102. Demonstrator plates must be designed by the department in a manner that distinguishes demonstrator plates from dealer plates to a new or used dealer whose business is restricted to the sale of power sports vehicles.

(2) (a) Except as provided in subsection (2)(c), ~~new and used motor vehicle, recreational vehicle, motor home, or travel trailer~~ demonstrator plates may be used on a motor vehicle displaying a Monroney label or a buyer's guide label, as required by 61-4-123(2), *or a travel trailer* that is:

(i) being demonstrated and offered for sale, for not more than 72 hours when operated by an individual holding a valid operator's license;

(ii) owned by the dealership when operated by an officer or bona fide full-time employee of the dealer or wholesaler and used to transport the dealer's or wholesaler's own tools, parts, and equipment;

(iii) being tested for repair;

(iv) being moved to or from a dealer's place of business for sale;

(v) being moved to or from service and repair facilities before sale; and

(vi) being moved to or from exhibitions within the state, provided the exhibition does not exceed a period of 20 days.

(b) ~~Mobile home and trailer demonstrator~~ *Demonstrator* plates may be used:

(i) on ~~units trailers~~ being hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer;

(ii) on ~~mobile homes being hauled to a customer's location for setup after sale;~~

~~(iii) on travel trailers held for sale to demonstrate the towing capability of the motor vehicle, provided that a dated demonstration permit, valid for not more than 72 hours, is carried with the motor vehicle at all times;~~

~~(iv)~~ *(iii)* on any motor vehicle owned by the dealer that is used only to move mobile homes and travel trailers legally bearing mobile home and a travel trailer dealer's license plates of the dealer owning the motor vehicle *that is in the dealer's inventory;* and

~~(v)~~(iv) on units *trailers* being moved to or from exhibitions within the state, provided if the exhibition does not exceed a period of 20 days.

(c) Extra demonstrator plates may be made available to dealers eligible for demonstrator plates under subsection (2)(a) to provide to one or more service repair facilities to be used when moving a motor ~~vehicles~~ *vehicle* in the dealer's inventory to and from the dealer's place of business and the service and repair facility prior to sale. A motor vehicle displaying demonstrator plates under this subsection is not required to have a Monroney label or a buyer's guide label as required by 61-4-123(2).

(d) A motor vehicle being operated in accordance with this subsection (2) need only display one demonstrator plate conspicuously on the rear of the motor vehicle.

~~(3) A dealer who files the annual report required under 61-4-124 on or before December 31 of the calendar year may display or use demonstrator plates assigned and registered for the calendar year through the last day of February of the following year, as provided in 61-4-124(5)."~~

Section 48. Section 61-4-130, MCA, is amended to read:

~~"61-4-130. Courtesy license plates — design and issuance — restrictions on use.~~ (1) The department may design courtesy license plates to be issued to a new or used motor vehicle dealer for use in accordance with this section. ~~The plates must bear the license number assigned to the dealer, an abbreviation for the vehicle type of the dealer's license, and the word "COURTESY".~~

~~(2)~~(1) Upon application and payment of an annual fee of \$150 a set, the department may issue up to two sets of courtesy plates to a dealer.

~~(3)~~(2) Courtesy license plates may be displayed only on a motor vehicle that the dealer loans, without charge or fee, exclusively for religious, charitable, scientific, or educational purposes. A loan of a vehicle displaying courtesy license plates may not exceed 30 days in a year.

~~(4)~~(3) A dealer shall maintain records detailing to whom a vehicle bearing courtesy plates has been loaned, the date of the loan, the date on which the vehicle bearing courtesy plates is to be returned, and the actual date of the vehicle's return. These records must include the name, address, and telephone number of the person or entity to whom the vehicle has been loaned and the name of a contact person who will oversee the actual operation and use of the vehicle. The records are subject to audit by the department.

~~(5)~~(4) It is the dealer's responsibility to ensure that courtesy plates are not used by an eligible person or entity for more than 30 days in a year.

~~(6)~~(5) It is the responsibility of the person or entity to whom the vehicle bearing courtesy plates was loaned to carry, while operating or in actual physical control of the vehicle, adequate proof of the status of the person or entity under this section.

~~(7)~~(6) If a dealer allows a person or entity to operate or retain actual physical control of a vehicle bearing courtesy plates in violation of this section, the department may suspend the right to use the courtesy plates for a period not to exceed 6 months."

Section 49. Section 61-4-131, MCA, is amended to read:

“61-4-131. Definitions. As used in this part, the following definitions apply:

(1) “Broker” means a person:

(a) ~~engaged~~ *who engages* in the business of offering to procure or procuring a motor ~~vehicles~~ *vehicle, a trailer, a semitrailer, a pole trailer, a travel trailer, a motorboat, a personal watercraft, a snowmobile, or an off-highway vehicle upon behalf of another; or*

(b) who represents to the public through solicitation, advertisement, or otherwise that the person is one who offers to procure or procures a motor ~~vehicles~~ *vehicle, a trailer, semitrailer, a pole trailer, a travel trailer, a motorboat, a personal watercraft, a snowmobile, or an off-highway vehicle* by negotiating purchases, contracts, sales, or exchanges *on behalf of another* and who does not store, display, or take ownership of ~~any vehicles for the purpose of selling vehicles~~ *a motor vehicle, a trailer, a semitrailer, a pole trailer, a travel trailer, a motorboat, a personal watercraft, a snowmobile, or an off-highway vehicle.*

(2) (a) “Dealer”, *except as provided in subsection (2)(b)*, includes a *new dealer or a used dealer licensed under this part.*

(b) *For purposes of 61-4-132 through 61-4-135, 61-4-137, 61-4-141, and 61-4-150, the term is limited to a new motor vehicle dealer as defined in 61-4-201.*

(3) (a) “Designated family member” means the spouse, child, grandchild, parent, brother, or sister of a *new motor vehicle dealer, as defined in 61-4-201, who:*

(i) in the case of a deceased dealer:

(A) is entitled to inherit the dealer’s ownership interest in the dealership under the terms of the dealer’s will or under the laws of intestate succession of this state; or

(B) has otherwise been designated in writing by a deceased dealer to succeed the deceased in the motor vehicle dealership; or

(ii) in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer’s property.

(b) The term includes the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

(4) (a) “Established place of business” means the geographic location upon which a permanent building is located that is actually occupied either continuously or at regular periods by a ~~dealer~~ *person licensed under this part.* A building is actually occupied ~~by a dealer~~ if the ~~dealer’s licensee’s~~ *books and records are kept in the building and, except for approved off-premises sales, the dealer’s licensee’s business is transacted within the building.*

(b) A ~~dealer’s licensee’s~~ *established place of business* may also include the geographic location of one or more physical lots upon which vehicles are displayed for sale, as long as the requirements of ~~61-4-101(4)(d)~~ *61-4-101(5)(e)* regulating the distance between display lots and the recordkeeping building are met.

(c) The geographic location of the permanent building actually occupied by the ~~dealer licensee~~ *or the geographic location of the physical lots upon which vehicles are displayed for sale* may be identified by street address, legal description, or other reasonably identifiable description, as prescribed by the department.

(5) *“New”, when describing a motor vehicle, power sports vehicle, or trailer, means that the motor vehicle, power sports vehicle, or trailer has not been the subject of a retail sale.*

(5)(6) *“Parking”, when prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.*

(7) (a) *“Power sports vehicle” includes a motorboat, a personal watercraft, a snowmobile, or an off-highway vehicle.*

(b) *A motorcycle or quadricycle must be treated as an off-highway vehicle if the motorcycle or quadricycle is not originally equipped for use on a highway.*

(c) *A sailboat that is 12 feet in length or longer is treated as a motorboat.*

(6) ~~“Trailer dealer” means any person, firm, or corporation engaged in whole or in part in the business of buying or selling trailers or semitrailers, with facilities for displaying one or more trailers or semitrailers.~~

(8) (a) *“Trailer” has the meaning provided in 61-1-101, but does not include a trailer that has an unloaded weight of less than 500 pounds.*

(b) *A travel trailer, semitrailer, or pole trailer is treated as a trailer under this part.*

(9) *“Used”, when describing a motor vehicle, power sports vehicle, or trailer, means that title to the motor vehicle, power sports vehicle, or trailer has been transferred because of a prior retail sale.”*

Section 50. Section 61-4-135, MCA, is amended to read:

“61-4-135. Written designation of succession unaffected. Sections ~~61-4-131~~ 61-4-132 through 61-4-137 do not preclude a new dealer from designating any person as ~~his~~ *the new dealer’s* successor by written instrument filed with the manufacturer, factory branch, distributor, or importer.”

Section 51. Section 61-4-136, MCA, is amended to read:

“61-4-136. Violation — penalty. Any person violating the provisions of ~~61-4-131~~ 61-4-132 through 61-4-137 shall upon conviction be fined no more than \$5,000.”

Section 52. Section 61-4-137, MCA, is amended to read:

“61-4-137. Civil damages. Any new dealer suffering pecuniary loss ~~due to~~ *because of* a violation of ~~61-4-131~~ 61-4-132 through ~~61-4-137~~ 61-4-136, upon prevailing in a civil action ~~therefor~~ *for a violation*, is entitled to damages equal to three times the pecuniary loss, together with court costs and reasonable ~~attorneys’~~ *attorney* fees.”

Section 53. Section 61-4-202, MCA, is amended to read:

“61-4-202. License requirements — fee exemption. (1) A new motor vehicle dealer, manufacturer, distributor, factory branch, distributor branch, importer, or ~~franchiser~~ *franchisor* may not engage in business in Montana except in accordance with the requirements of this part. The provisions of this part do not apply to a public officer engaged in the discharge of official duties or to a trustee, receiver, or other officer acting under the jurisdiction of a court, to financial institutions disposing of repossessed vehicles, or to a person disposing of a personal motor vehicle. The provisions of this part regulating and licensing new motor vehicle dealers, manufacturers, distributors, factory branches, distributor branches, importers, and franchisors apply only to those new motor

vehicle dealers, manufacturers, distributors, factory branches, distributor branches, importers, and franchisors of motor vehicles as defined by this part.

(2) (a) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor transacting business within Montana by offering, selling, trading, consigning, or otherwise transferring a new motor vehicle to a new motor vehicle dealer must be licensed by the state of Montana. The department shall issue licenses to qualified applicants upon receipt of a license fee in the amount of \$15 accompanied by the information required in this section.

~~(b) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor of a personal watercraft, a snowmobile, or an off-highway vehicle is not required to pay the \$15 fee required in subsection (2)(a).~~

(3) The following information, if applicable, must be submitted by an applicant upon forms supplied by the department:

- (a) the name and address of the applicant;
- (b) the make and model of each new motor vehicle to be franchised;
- (c) the name and address of each of the applicant's franchisees within the state; and
- (d) the name and address of each factory branch, distributor branch, agent, or representative within the state.

(4) ~~(a) Except as provided in subsection (4)(b), a~~ A license may be renewed each year if the applicant is in compliance with the provisions of this part, remits a renewal fee in the amount of \$15, and notifies the department of any changes in the information previously supplied.

~~(b) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor of a personal watercraft, a snowmobile, or an off-highway vehicle is not required to pay the \$15 fee required in subsection (4)(a) but is required to annually apply to renew its license on a form provided by the department.~~

(5) (a) A new motor vehicle may not be sold in this state unless either the manufacturer on direct dealership of domestic motor vehicles, the importer of foreign manufactured motor vehicles on direct dealership, or the distributor on indirect dealerships of either domestic or foreign motor vehicles is licensed as provided in this part.

(b) Notwithstanding any other licensing provision contained in Montana law, every new motor vehicle dealer shall obtain a license under part 1 of this chapter.

(c) The obtaining of a license under ~~this part~~ or Title 61, chapter 4, part 1, or *this part* conclusively establishes that a new motor vehicle dealer, manufacturer, distributor, or importer is subject to the laws of this state regulating new motor vehicle dealers, manufacturers, importers, and distributors.

~~(d) The provisions of subsection (5)(b) do not apply to dealers of personal watercraft, snowmobiles, or off-highway vehicles licensed under the provisions of Title 23."~~

Section 54. Section 61-4-204, MCA, is amended to read:

“61-4-204. Filing agreement — product liability. (1) A franchisee shall, at the time of application for a new motor vehicle dealer license under the provisions of ~~Title 23 or~~ 61-4-101, file with the department a certified copy of the franchisee’s written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic motor vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign-made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor’s certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured motor vehicles or by an authorized agent of the manufacturer or importer of foreign-made motor vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that the franchisee has filed with the department one agreement together with a list of franchised dealers or distributors.

(3) A manufacturer, distributor, or importer shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer shall file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer’s only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer’s product or warranty liability only. However, this section may not affect the obligations of new motor vehicle dealers to perform warranty repair and maintenance that may be required by law or contract. Except with regard to household appliances, including but not limited to ranges, refrigerators, and water heaters, in a recreational vehicle and except with regard to a truck rated at more than 10,000 pounds gross vehicle weight, the manufacturer shall compensate an authorized dealer for labor, parts, and other expenses incurred by a dealer who performs work to rectify the manufacturer’s product or warranty defect or for delivery and preparation obligations at the same rate and time the dealer charges to its retail customers for nonwarranty work of a like kind, based upon a published, nationally recognized, retail flat rate labor time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail work.

(5) (a) All claims made by the dealer pursuant to this section for compensation for delivery, preparation, warranty, and recall service, including labor, parts, and other expenses, must be paid by the manufacturer within 30 days of receipt of the claim from the dealer, except that a manufacturer of a motor home shall pay any claim within 60 days of receipt from the dealer.

(b) If a claim is disapproved, the dealer must be notified in writing of the grounds for disapproval. A claim that has not been disapproved in writing within 30 days of having been received must be considered approved, and payment is due to the claimant immediately. However, the manufacturer retains the right to audit a claim for a period of 12 months following the payment of the claim.

(c) A claim that has been approved and paid may not be charged back to the dealer unless the manufacturer proves that:

- (i) the claim was false or fraudulent;
- (ii) the repairs were not properly made; or
- (iii) the repairs were not necessary to correct the defective condition.

(d) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the dealer has provided reasonably sufficient documentation demonstrating that the dealer performed the services in compliance with the written policies and procedures of the manufacturer.

(e) A franchisor may reasonably and periodically audit a motor vehicle dealer to determine the validity of paid claims or chargebacks for customer or dealer incentives. An audit of incentive payments may apply only to the 18-month period immediately preceding the date on which the dealer was notified of an impending audit.

(6) The dealer shall furnish the purchaser of a new motor vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed."

Section 55. Section 61-5-112, MCA, is amended to read:

"61-5-112. Types and classes of commercial driver's licenses — classification — rulemaking — reciprocity agreements. (1) The department shall adopt rules that it considers necessary for the safety and welfare of the traveling public governing the classification of commercial driver's licenses and related endorsements and the examination of commercial driver's license applicants and renewal applicants. The rules must:

(a) subject to the exceptions provided in this section, comport with the licensing standards and requirements of 49 CFR, part 383, the medical qualifications of 49 CFR, part 391, and the security threat assessment provisions of 49 CFR, part 1572;

(b) allow for the issuance of a type 2 (intrastate only) commercial driver's license in accordance with medical qualification and visual acuity standards prescribed by the department;

(c) allow for the issuance of a type 2 commercial driver's license to a person who is 18 years of age or older;

(d) allow for issuance of a seasonal commercial driver's license based on standards established by the department for the waiver of the knowledge and road or skills test for a qualified person employed in farm-related service industries who has a good driving record and sufficient prior driving experience;

(e) prescribe the operational and seasonal restrictions for a seasonal commercial driver's license;

(f) prescribe the requirements for the medical statement that must be submitted in order for a person to be qualified for a type 2 commercial driver's license; and

(g) prescribe the minimum standards for certification of a third-party commercial driver testing program and any test waiver under 61-5-118.

(2) The department is authorized to enter into reciprocal agreements with adjacent states that would allow certain drivers of vehicles transporting farm products, farm machinery, or farm supplies within 150 miles of a farm to operate without a commercial driver's license because the vehicles are not considered commercial motor vehicles as provided in ~~61-1-101(7)(b)(ii)~~ *61-1-101(8)(b)(ii)*."

Section 56. Section 61-6-304, MCA, is amended to read:

"61-6-304. Penalties. (1) Conviction of a first offense under 61-6-301 or 61-6-302 is punishable by a fine of not less than \$250 or more than \$500 or by imprisonment in the county jail for not more than 10 days, or both. A second conviction is punishable by a fine of \$350 or by imprisonment in the county jail for not more than 10 days, or both. A third or subsequent conviction is punishable by a fine of \$500 or by imprisonment in the county jail for not more than 6 months, or both.

(2) Upon a second or subsequent conviction under 61-6-301 or 61-6-302, the sentencing court shall order the surrender of the vehicle registration receipt and license plates for the vehicle operated at the time of the offense if that vehicle was operated by the registered owner or a member of the registered owner's immediate family or by a person whose operation of that vehicle was authorized by the registered owner. ~~The court shall send the receipt and plates, along with a copy of the complaint and dispositional order, report the surrender of the registration receipt and license plates to the department, which shall immediately suspend the receipt and plates~~ *vehicle's registration.* The receipt and plates *vehicle's registration status* may not be reinstated until proof of compliance with 61-6-301 is furnished to the department, but if the vehicle is transferred to a new owner, the new owner is entitled to register the vehicle. *The surrendered license plates must be recycled or destroyed by the court unless the court decides to retain the license plates for the owner until the registration suspension has been completed or the requirements for a restricted registration receipt have been met.* Upon proof of compliance with 61-6-301 and payment of fees required under 61-3-333 for replacement license plates and registration decal and under 61-3-341 for a replacement registration receipt, during the period of 90 days from the date of a second conviction or 180 days from the date of a third or subsequent conviction, the department shall issue a restricted registration receipt and ~~return the license plates to the offender.~~ A restricted registration receipt limits the use of the motor vehicle operated at the time of the offense to use solely for employment purposes *until the date indicated on the restricted registration receipt.* ~~Upon the expiration of the appropriate time period, the department shall issue a regular registration receipt to the owner of the vehicle. The department may establish fees for the restricted registration receipts issued pursuant to this subsection.~~

(3) Upon a fourth or subsequent conviction under 61-6-301 or 61-6-302, the court shall order the surrender of the driver's license of the offender, if the vehicle operated at the time of the offense was registered to the offender or a member of the offender's immediate family. The court shall send the driver's license, along with a copy of the complaint and the dispositional order, to the department, which shall immediately suspend the driver's license. The department may not reinstate a driver's license suspended under this subsection until the registered owner provides the department proof of

compliance with 61-6-301 and the department determines that the registered owner is otherwise eligible for licensure.

(4) The court may suspend a required fine only upon a determination that the offender is or will be unable to pay the fine.

(5) A court may not defer imposition of penalties provided by this section.

(6) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction.”

Section 57. Section 61-8-102, MCA, is amended to read:

“61-8-102. Uniformity of interpretation — definitions. (1) Interpretation of this chapter in this state must be as consistent as possible with the interpretation of similar laws in other states.

(2) As used in this chapter, unless the context requires otherwise, the following definitions apply:

(a) “Authorized emergency vehicle” means a vehicle of the fire department or fire patrol, an ambulance, and an emergency vehicle designated or authorized by the department.

(b) “Bicycle” means:

(i) a vehicle propelled solely by human power upon which any person may ride and that has two tandem wheels and a seat height of more than 25 inches from the ground when the seat is raised to its highest position, except scooters and similar devices; or

(ii) a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion, and an independent power source providing a maximum of 2 brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement may not exceed 3.05 cubic inches (50 centimeters) regardless of the number of chambers in the power source. The power source may not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour (48.28 kilometers an hour) on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged.

(c) “Business district” means the territory contiguous to and including a highway when within any 600 feet along a highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings that occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

(d) “Controlled-access highway” means a highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the highway, street, or roadway except at the points and in the manner as determined by the public authority having jurisdiction over the highway, street, or roadway.

(e) “Crosswalk” means:

(i) that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway;

(ii) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrians crossing by lines or other markings on the surface.

(f) “Flag person” means a person who directs, controls, or alters the normal flow of vehicular traffic upon a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person, except a uniformed traffic enforcement officer exercising the officer’s duty as a result of a planned vehicular traffic hazard, must be equipped as required by the rules of the department of transportation.

(g) “Highway” has the meaning provided in 61-1-101, but includes ways that have been or are later dedicated to public use.

(h) “Ignition interlock device” means ignition equipment that:

(i) analyzes the breath to determine blood alcohol concentration;

(ii) is approved by the department pursuant to 61-8-441; and

(iii) is designed to prevent a motor vehicle from being operated by a person who has consumed a specific amount of an alcoholic beverage.

(i) (i) “Intersection” means the area embraced within the prolongation or connection of the lateral curb lines or if there are no curb lines then the lateral boundary lines of the roadways of two highways that join one another at or approximately at right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(ii) When a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of the divided highway by an intersecting highway must be regarded as a separate intersection. If the intersecting highways also include two roadways 30 feet or more apart, then every crossing of two roadways of the highways must be regarded as a separate intersection.

(j) “Local authorities” means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

(k) “Noncommercial motor vehicle” or “noncommercial vehicle” means any motor vehicle or combination of motor vehicles that is not included in the definition of commercial motor vehicle in 61-1-101 and includes but is not limited to the vehicles listed in ~~61-1-101(7)(b)~~ 61-1-101(8)(b).

(l) “Official traffic control devices” means all signs, signals, markings, and devices not inconsistent with this title that are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(m) “Pedestrian” means any person on foot or any person in a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(n) “Police vehicle” means a vehicle used in the service of any law enforcement agency.

(o) “Private road” or “driveway” means a way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(p) “Residence district” means the territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of 300 feet or more is primarily improved with residences or residences and buildings in use for business.

(q) "Right-of-way" means the privilege of the immediate use of the roadway.

(r) "School bus" has the meaning provided in 20-10-101.

(s) "Sidewalk" means that portion of a street that is between the curb lines or the lateral lines of a roadway and the adjacent property lines and that is intended for use by pedestrians.

(t) "Traffic control signal" means a device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

(u) "Urban district" means the territory contiguous to and including any street that is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of one-fourth mile or more."

Section 58. Section 61-11-105, MCA, is amended to read:

"61-11-105. Release of information — fees. (1) Subject to the limitations of this section, the department shall, upon request, furnish a person the individual Montana driving record of a driver or licensee, 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;

(c) convictions of the driver or licensee; and

(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.

(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.

(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(5), is requested. A fee of 86 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) 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 61-11-510(3) and subsection (5) of this section, 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 59. Repealer. Sections 23-2-513, 23-2-540, 23-2-619, and 23-2-818, MCA, are repealed.

Section 60. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, part 1, and the provisions of Title 61, chapter 3, part 1, apply to [section 1].

(2) [Section 2] is 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 [section 2].

(3) [Sections 3 and 4] are intended to be codified as an integral part of Title 61, chapter 4, part 1, and the provisions of Title 61, chapter 4, part 1, apply to [sections 3 and 4].

(4) [Section 5] is 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 [section 5].

Section 61. Effective date. [This act] is effective January 1, 2008.

Approved April 27, 2007

CHAPTER NO. 330

[HB 738]

AN ACT REVISING WORKERS' COMPENSATION LAWS; PROVIDING THAT THE DEPARTMENT OF LABOR AND INDUSTRY MAY NOT SET THE RATE FOR MEDICAL SERVICES AT A RATE GREATER THAN 10 PERCENT ABOVE THE AVERAGE OF THE CONVERSION FACTORS USED BY THE TOP FIVE INSURERS OR THIRD-PARTY ADMINISTRATORS PROVIDING DISABILITY INSURANCE WITHIN THIS STATE WHO USE THE RESOURCE-BASED RELATIVE VALUE SCALE TO DETERMINE FEES FOR COVERED SERVICES; MODIFYING DEPARTMENT PROCEDURES FOR ESTABLISHING FEE SCHEDULES FOR MEDICAL SERVICES AND PRESCRIPTION DRUGS; PROVIDING FOR UTILIZATION AND TREATMENT GUIDELINES TO BE ESTABLISHED BY RULE; AMENDING SECTIONS 39-71-704 AND 39-71-743, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES.

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 were required.

(e) Pursuant to rules adopted by the department, an insurer shall reimburse a catastrophically injured worker's family or, if a family member is unavailable, a person designated by the injured worker or approved by the insurer for travel assistance expenditures in an amount not to exceed \$2,500 to be used as a match to those funds raised by community service organizations to help defray the costs of travel and lodging expenses incurred by the family member or designated person when traveling to be with the injured worker. These funds must be paid in addition to any travel expenses paid by an insurer for a travel companion when it is medically necessary for a travel companion to accompany the catastrophically injured worker.

(f) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury or *occupational disease*, the benefits provided for in this

section terminate ~~when they are not used for a period of 60 consecutive months as provided in 39-71-601(3).~~

(g) 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)(g) 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.

(h) 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) (a) 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. *Until the department adopts a fee schedule applicable to medical services provided by a hospital, insurers shall pay at the rate payable on June 30, 2007, for those services provided by the hospital. The rate must be adjusted by the annual percentage increase in the state's average weekly wage, as defined in 39-71-116, factoring in changes in the hospital's medical service charges.*

(b) *The department may not set the rate for medical services at a rate greater than 10% above the average of the conversion factors used by the top five insurers or third-party administrators providing disability insurance within this state who use the resource-based relative value scale to determine fees for covered services. The top five insurers or third-party administrators shall provide their standard conversion rates to the department. The department may use the conversion rates only for the purpose of determining average conversion rates under this subsection (2), and the department shall maintain the confidentiality of the conversion rates.*

(c) *The fee schedule rates established in subsection (2)(b) apply to medical services covered by the American medical association current procedural terminology codes in effect at the time the services are provided regardless of where the services are provided.*

(d) *The department may establish coding standards to be utilized by providers when billing for medical services under this section.*

(3) (a) *The department may establish by rule evidence-based utilization and treatment guidelines for primary and secondary medical services. There is a rebuttable presumption that the utilization and treatment guidelines*

established by the department are correct medical treatment for the injured worker.

(b) An insurer and an injured worker are not responsible for treatment or services that do not fall within the utilization and treatment guidelines adopted by the department unless the provider obtains prior authorization from the insurer.

(c) The department may establish by rule an independent medical review process for treatment or services denied by an insurer pursuant to this subsection (3) prior to mediation under 39-71-2401.

~~(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)(4) 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)(5) For a medical assistance facility or a critical access hospital licensed pursuant to Title 50, chapter 5, the rate for services is the usual and customary charge. Fees paid to a licensed medical assistance facility or critical access hospital 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)(6) 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)(7) 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)(8) (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.~~

(b) "Visit", as used in this subsection (7) (8), 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.

(c) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) (8)(a) if the visit is for treatment requested by an insurer."

Section 2. Section 39-71-743, MCA, is amended to read:

"39-71-743. Assignment or attachment of payments. (1) Payments under this chapter may not be assignable, subject to attachment or garnishment, or held liable in any way for debts, except:

(a) as provided in 71-3-1118;

(b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established by order of a court of competent jurisdiction or by order rendered in an administrative process authorized by state law;

(c) as provided in 53-2-612 or 53-2-613 for medical benefits paid pursuant to this chapter; or

(d) for workers' compensation benefits payable to an injured worker to pay restitution to an insurer whenever the injured worker is subject to court-ordered restitution for theft of workers' compensation benefits. The insurer shall notify the injured worker in writing of the withholding of any court-ordered restitution from the injured worker's benefits.

(2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support as follows:

(a) for any periodic payment, an amount up to the percentage amount established in the guidelines promulgated by the department of public health and human services pursuant to 40-5-209; or

(b) for any lump-sum award, an amount up to that portion of the award that is necessary to pay current child support and a past-due child support obligation.

(3) After determination that the claim is covered under the Workers' Compensation Act, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. Except as provided in 39-71-704(7) 39-71-704(8), a fee or charge is not payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer."

Section 3. Coordination instruction. If Senate Bill No. 108 and [this act] are both passed and approved and if they contain a section that amends 39-71-704, then the sections amending 39-71-704 are void and 39-71-704 must be amended as follows:

"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 were required.

(e) Pursuant to rules adopted by the department, an insurer shall reimburse a catastrophically injured worker's family or, if a family member is unavailable, a person designated by the injured worker or approved by the insurer for travel assistance expenditures in an amount not to exceed \$2,500 to be used as a match to those funds raised by community service organizations to help defray the costs of travel and lodging expenses incurred by the family member or designated person when traveling to be with the injured worker. These funds must be paid in addition to any travel expenses paid by an insurer for a travel companion when it is medically necessary for a travel companion to accompany the catastrophically injured worker.

(f) 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.

(g) 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)(g) 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.

(h) 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) (a) 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. *Until the department adopts a fee schedule applicable to medical services provided by a hospital, insurers shall pay at the rate payable on June 30, 2007, for those services provided by a hospital. The rate must be adjusted by the annual percentage increase in the state's average weekly wage, as defined in 39-71-116, factoring in changes in the hospital's medical service charges.*

(b) (i) *The department may not set the rate for medical services at a rate greater than 10% above the average of the conversion factors used by the top five insurers or third-party administrators providing disability insurance within this state who use the resource-based relative value scale to determine fees for covered services.*

(ii) *The top five insurers or third-party administrators shall provide their standard conversion rates to the department.*

(iii) *The department may use the conversion rates only for the purpose of determining average conversion rates under this subsection (2).*

(iv) *The department shall maintain the confidentiality of the conversion rates.*

(c) *The fee schedule rates established in subsection (2)(b) apply to medical services covered by the American medical association current procedural terminology codes in effect at the time the services are provided regardless of where the services are provided.*

(d) *The department may establish coding standards to be utilized by providers when billing for medical services under this section.*

(3) (a) *The department may establish by rule evidence-based utilization and treatment guidelines for primary and secondary medical services. There is a*

rebuttable presumption that the utilization and treatment guidelines established by the department are correct medical treatment for the injured worker.

(b) An insurer is not responsible for treatment or services that do not fall within the utilization and treatment guidelines adopted by the department unless the provider obtains prior authorization from the insurer. If prior authorization is not requested or obtained from the insurer, an injured worker is not responsible for payment of the medical treatment or services.

(c) The department may establish by rule an independent medical review process for treatment or services denied by an insurer pursuant to this subsection (3) prior to mediation under 39-71-2401.

~~(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)(4) 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)(5) For a medical assistance facility or a critical access hospital licensed pursuant to Title 50, chapter 5, the rate for services is the usual and customary charge. Fees paid to a licensed medical assistance facility or critical access hospital 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)(6) 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)(7) Disputes After mediation pursuant to department rules, 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)(8) (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.

(b) "Visit", as used in 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.

(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 4. Effective date. [This act] is effective July 1, 2007.

Section 5. Applicability dates. (1) [Section 3(3)(a) through (3)(c)] applies to injuries or occupational diseases occurring on or after July 1, 2007.

(2) [Section 3(2)(b) through (2)(d)] applies to medical treatment or services furnished on or after January 1, 2008.

Approved April 27, 2007

CHAPTER NO. 331

[HB 755]

AN ACT PROVIDING THAT THE UNIFORM UNCLAIMED PROPERTY ACT DOES NOT APPLY TO CERTAIN GIFT CERTIFICATES; AMENDING SECTIONS 30-14-102, 70-9-802, AND 70-9-803, 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 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.

(2) "Department" means the department of justice created in 2-15-2001.

(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.

(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.

(5) (a) "Gift certificate" means a record, including a gift card or stored value card, that is provided for paid consideration and that indicates a promise by the issuer or seller of the record that goods or services will be provided to the possessor of the record for the value that is shown on the record or contained within the record by means of a microprocessor chip, magnetic stripe, bar code, or other electronic information storage device. The consideration provided for

the gift certificate must be made in advance. The value of the gift certificate is reduced by the amount spent with each use. A gift certificate is considered trust property of the possessor if the issuer or seller of the gift certificate declares bankruptcy after issuing or selling the gift certificate. The value represented by the gift certificate belongs to the possessor, to the extent provided by law, and not to the issuer or seller.

(b) The term does not ~~mean~~ *include*:

(i) prepaid telecommunications and technology cards, including but not limited to prepaid telephone calling cards, prepaid technical support cards, and prepaid internet disks that have been distributed to or purchased by a consumer;

(ii) a coupon provided to a consumer pursuant to any award, loyalty, or promotion program without any money or consideration being given in exchange for the card; or

(iii) a gift certificate usable with multiple sellers of goods or services.

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

(7) "Possessor" means a natural person who has physical control over a gift certificate.

(8) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services, any property, tangible or intangible, real, personal, or mixed, 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 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) "*Gift certificate*" has the meaning provided in 30-14-102.

(6)(7) "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)(8) "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)~~(9) "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)~~(10) "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)~~(11) (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)~~(12) "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)~~(13) "Person" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

~~(13)~~(14) (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) (14)(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:

(i) money, check, draft, deposit, interest, or dividend;

(ii) credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

(iii) stock or other evidence of ownership of an interest in a business association or financial organization;

(iv) bond, debenture, note, or other evidence of indebtedness;

(v) money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;

(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

(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)(15) "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)(16) "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)(17) "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 3. Section 70-9-803, MCA, is amended to read:

"70-9-803. Presumptions of abandonment. (1) Except as provided in subsection (6), property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(a) traveler's check, 15 years after issuance;

(b) money order, 7 years after issuance;

(c) stock or other equity interest in a business association or financial organization, including a security entitlement under Title 30, chapter 8, 5 years after the earlier of:

(i) the date of the most recent dividend, stock split, or other distribution that was unclaimed by the apparent owner; or

(ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the apparent owner;

(d) debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, 5 years after the date of the most recent interest payment that was unclaimed by the apparent owner;

(e) demand, savings, or time deposit, including a deposit that is automatically renewable, 5 years after the earlier of maturity or the date of the last indication by the owner of interest in the property; however, a deposit that is automatically renewable is considered matured for purposes of this section upon its initial date of maturity unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;

(f) money or credits owed to a customer as a result of a retail business transaction, 3 years after the obligation accrued;

~~(g)~~ gift certificate, 3 years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is considered to be 60% of the certificate's face value;

(g) gift certificate, 3 years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is considered to be 60% of the certificate's face value. A gift certificate is not presumed abandoned if the gift certificate was sold by a person who in the past fiscal year sold no more than \$200,000 in gift certificates, which amount must be adjusted by November of each year by the inflation factor defined in 15-30-101. The amount considered abandoned for a person who sells more than the amount that triggers presumption of abandonment is the value of gift certificates greater than that trigger.

~~(h)~~(h) amount that is owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, 3 years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, 3 years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

~~(i)~~(i) property distributable by a business association or financial organization in a course of dissolution, 1 year after the property becomes distributable;

~~(j)~~(j) property received by a court as proceeds of a class action and not distributed pursuant to the judgment, 1 year after the distribution date;

~~(k)~~(k) property held by a court, government, governmental subdivision, agency, or instrumentality, 1 year after the property becomes distributable;

~~(l)~~(l) wages or other compensation for personal services, 1 year after the compensation becomes payable;

~~(m)~~(m) deposit or refund owed to a subscriber by a utility, 1 year after the deposit or refund becomes payable;

~~(n)~~(n) property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, 3 years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

~~(o)~~(o) a patronage refund owed to a member of a rural electric or telephone cooperative organized under Title 35, chapter 18, that is not used by the cooperative for educational purposes, 5 years after the distribution date;

~~(p)~~(p) an unclaimed share in a cooperative that is not used for charitable or civic purposes in the community in which the cooperative is located, 5 years after the distribution date; and

~~(q)~~(q) all other property, 5 years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(2) At the time that an interest is presumed abandoned under subsection (1), any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(3) Property is unclaimed if, for the applicable period set forth in subsection (1), the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder with the holder concerning the property or the account in which the property is held and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

(4) An indication of an owner's interest in property includes:

(a) the presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(b) owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(c) the making of a deposit to or withdrawal from an account in a financial organization; and

(d) the payment of a premium with respect to a property interest in an insurance policy; however, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(5) Property is payable or distributable for purposes of this part notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

(6) The presumption provided in subsection (1) does not apply to:

(a) unclaimed patronage refunds of a rural electric or telephone cooperative if the cooperative uses the refunds exclusively for educational purposes; or

(b) unclaimed shares in a nonutility cooperative if the cooperative uses the shares for charitable or civic purposes in the community in which the cooperative is located."

Section 4. Effective date — retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to gift certificates issued or sold after September 30, 2005.

Approved April 27, 2007

CHAPTER NO. 332

[HB 759]

AN ACT REVISING SEARCH AND RESCUE LAWS; PROVIDING THAT MONEY IN THE SPECIAL REVENUE ACCOUNT ADMINISTERED BY THE DISASTER AND EMERGENCY SERVICES DIVISION FOR SEARCH AND RESCUE OPERATIONS BE REIMBURSED TO LOCAL SEARCH AND RESCUE UNITS TO DEFRAY COSTS OF SEARCH AND RESCUE

MISSIONS; PROVIDING THAT MONEY IN THE FISH, WILDLIFE, AND PARKS SPECIAL REVENUE ACCOUNT FOR SEARCH AND RESCUE REMAIN AVAILABLE FOR REIMBURSEMENT OF SEARCH AND RESCUE MISSIONS AND TO PROVIDE MATCHING FUNDS TO REIMBURSE COUNTIES FOR SEARCH AND RESCUE TRAINING AND EQUIPMENT COSTS ON AN ONGOING BASIS; AMENDING SECTIONS 10-3-801 AND 87-1-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 10-3-801, MCA, is amended to read:

“10-3-801. 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)(f);

(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.~~

(3) (a) *Not less than 50% of the money in the account must be used by the department to defray costs of:*

(i) *local search and rescue units for search and rescue missions conducted through 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. To fulfill the purposes of this subsection (3)(a)(i), the department shall transmit reimbursement money to the county treasurer, who shall deposit the funds in a separate search and rescue fund accessible by the local search and rescue unit that requested the reimbursement. The county treasurer shall notify the reimbursed local search and rescue unit by mail when the deposit occurs.*

(ii) *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 a county sheriff's office *local search and rescue units or a county sheriff's office*, 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; *and*

(d) *a method for compiling and keeping current a contact list of all search and rescue units in Montana and in neighboring states and provinces in order to ensure collaboration, communication, and cooperation between the various county search and rescue units and between the department and the county units and dedication of a page on the department's website for posting the contact list and other relevant search and rescue information."*

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 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, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) 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 Title 87 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) Except as provided in section 2(3), Chapter 560, Laws of 2005, 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 10-3-801.

(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 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

(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) Any money deposited in the special revenue account ~~in a fiscal year~~ is available for reimbursement of search and rescue missions and to provide matching funds *to reimburse counties for search and rescue training and*

equipment costs. during the fiscal year when the money is deposited and during the following fiscal year. After this period, 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 3. Effective date. [This act] is effective on passage and approval.

Approved April 27, 2007

CHAPTER NO. 333

[HB 764]

AN ACT REQUIRING THE INSURANCE COMMISSIONER PURSUANT TO A DIRECTIVE FROM THE UNITED STATES CONGRESS TO WORK COLLECTIVELY WITH OTHER STATES TO DEVELOP AND IMPLEMENT APPROPRIATE STANDARDS TO PROTECT ACTIVE DUTY MEMBERS OF THE ARMED FORCES FROM DISHONEST AND PREDATORY INSURANCE SALES PRACTICES WHILE LOCATED IN THIS STATE; AUTHORIZING THE INSURANCE COMMISSIONER TO IMPLEMENT A SYSTEM FOR THE RECEIPT AND DISSEMINATION OF REPORTS FROM GOVERNMENTAL AGENCIES AND INSURERS OF DISCIPLINARY ACTIONS TAKEN BY FEDERAL OR STATE GOVERNMENT ENTITIES OR INSURERS AGAINST PERSONS THAT SELL OR SOLICIT THE SALE OF ANY LIFE INSURANCE PRODUCT TO ACTIVE DUTY MEMBERS OF THE ARMED FORCES; AUTHORIZING THE INSURANCE COMMISSIONER TO ADOPT RULES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Protection of active duty members of armed forces — rulemaking authority. (1) (a) As used in this section, “life insurance product” means any product, including individual and group life insurance, funding agreements, and annuities, that provides insurance for which the probabilities of the duration of human life or the rate of mortality are an element or condition of insurance.

(b) The term includes the granting of:

(i) endowment benefits;

(ii) additional benefits in the event of death by accident or accidental means;

(iii) disability income benefits;

(iv) additional disability benefits that operate to safeguard the contract from lapse or to provide a special surrender value or special benefit in the event of total and permanent disability;

(v) benefits that provide payment or reimbursement for long-term home health care or long-term care in a nursing home or other related facility;

(vi) burial insurance; and

(vii) optional modes of settlement or proceeds of life insurance.

(c) The term does not include workers’ compensation insurance, health insurance, disability insurance, property and casualty insurance, or life insurance products specifically contracted by or through the federal government.

(2) As provided in Public Law 109-290, in cooperation with the national association of insurance commissioners, the commissioner shall:

(a) work collectively with other states to develop and implement appropriate standards to protect active duty members of the armed forces from dishonest and predatory insurance sales practices;

(b) identify this state's role in promoting standards developed pursuant to subsection (2)(a); and

(c) work collectively with other states to implement a system to receive and disseminate reports of disciplinary actions taken by federal or state government entities or insurers against persons that sell or solicit the sale of any life insurance product to active duty members of the armed forces.

(3) (a) The commissioner may adopt rules for:

(i) written disclosures to be used in the sale or solicitation of any life insurance product to active duty members of the armed forces and their dependents to protect the members or the members' dependents from dishonest and predatory insurance sales practices while located in this state;

(ii) requiring insurers to implement a system to report to the commissioner:

(A) disciplinary actions taken by a federal or state government entity with respect to sales or solicitations of life insurance products to active duty members of the armed forces that the insurer knows or in the exercise of due diligence should have known were taken; and

(B) significant disciplinary action taken by the insurer with respect to sales or solicitations of life insurance products to active duty members of the armed forces of this state.

(b) Rules adopted by the commissioner must be consistent with and may not go beyond the scope of:

(i) any model regulations that are adopted by the national association of insurance commissioners in response to a directive from the United States congress in Public Law 109-290, directing that the states ensure implementation of appropriate standards to protect active duty members of the armed forces from dishonest and predatory insurance sales practices;

(ii) rules or regulations adopted by the secretary of defense pursuant to Public Law 109-290; and

(iii) the requirements of Public Law 109-290.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 1, and the provisions of Title 33, chapter 18, part 1, apply to [section 1].

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

Approved April 27, 2007

CHAPTER NO. 334

[HB 765]

AN ACT ALLOWING A LEGISLATOR TO CONTINUE ACTIVE MEMBERSHIP IN THE PUBLIC RETIREMENT SYSTEM OF WHICH THE LEGISLATOR IS A MEMBER; AMENDING SECTIONS 5-2-304 AND

19-3-412, 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 5-2-304, MCA, is amended to read:

“5-2-304. ~~Continued participation~~ *Participation in public retirement systems.* (1) The purpose of this section is to ~~provide a means whereby persons serving in~~ *allow a person who is elected or appointed to the Montana legislature may and who is also a member of a retirement system provided for in Title 19, chapter 3, 5, 6, 7, 8, 9, 13, 20, or 21, by virtue of the person’s nonlegislative employment, to continue their the person’s participation in the public retirement systems governed by state law system of which the person is a member.*

(2) This section is not intended to provide duplicate credit for the same service in two retirement systems supported wholly or in part by public funds. This section does not affect contribution rates or benefit payments specifically provided for in the laws governing the operation of individual retirement systems.

(3) (a) *A person who is an inactive or retired member of a retirement system provided for in Title 19, chapter 5, 6, 7, 8, 9, 13, 20, or 21, and who is elected or appointed to be a legislator may:*

(i) *return to active membership in the system of which the person is an inactive or retired member under the requirements of that system, or*

(ii) *remain an inactive or retired member of the retirement system and become an active member of the public employees’ retirement system pursuant to 19-3-412.*

(b) *A person who is an inactive or retired member of the public employees’ retirement system provided for in Title 19, chapter 3, and who is elected or appointed to the legislature may return to active membership in the public employees’ retirement system but cannot simultaneously be an inactive or retired member of the system as a result of prior covered terminated employment and an active member of the retirement system under 19-3-412 or this section.*

~~(2)(4)~~ (a) *A person who is engaged in official duties as a member of the Montana legislature and who is a an active member of a public retirement system governed by state law and who is elected or appointed to be a legislator may, but is not required to, continue the person’s participation in that public retirement system while engaged in official duties as a legislator.*

(b) *To continue participation as an active member in the public retirement system, a legislator shall, within 180 days of taking office and in a manner prescribed by the appropriate board, file an irrevocable written election with the teachers’ retirement board or the public employees’ retirement board.*

~~(3)(5)~~ (a) *A legislator who elects to continue participation as an active member as provided in subsection ~~(2)~~ (4) shall continue the payments into the fund of the retirement system at the rate currently in effect in the system based on the legislator’s monthly salary as a member of that system.*

~~(4)(6)~~ (b) *The state contribution must be made by legislative appropriation. It must equal the appropriate employer contribution at the rate currently in effect in the system.”*

Section 2. Section 19-3-412, MCA, is amended to read:

“19-3-412. Optional membership. (1) Except as provided in *5-2-304 and subsection (2) of this section*, the following employees and elected officials in covered positions shall elect either to become active members of the retirement system or to decline this optional membership by filing an irrevocable, written application with the board in the manner prescribed in subsection (3):

(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 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).

(c) A member who after April 17, 2003, 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) (a) The board shall prescribe the form of the written application required pursuant to subsection (1) and provide written application forms to each employer.

(b) Each employee or elected official in a position covered under subsection (1) shall obtain the written application form from the employer and complete and return it to the board.

(c) The written application must be filed with the board within 180 days of the commencement of the employee's or elected official's employment.

(d) The employer shall retain a copy of the employee's or elected official's written application.

(4) If the employee or elected official fails to file the written application required under subsection (1) with the board within the time allowed in subsection (3), the employee or elected official waives membership.

(5) An employee or elected official who declines optional membership may not receive membership service or service credit for the employment for which membership was declined.

(6) An employee or elected official 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.

(7) Except as provided in subsection (2)(c), membership in the retirement system is not optional for an employee or elected official 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.

(8) (a) An employee or elected official who declines membership for a position for which membership is optional may not later become a member while still employed in that position.

(b) If, after a break in service of 30 days or more, an employee who was employed 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.

(c) 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.

(9) 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."

Section 3. Transition. (1) A person who is subject to the provisions of 5-2-304 who made an irrevocable election under 5-2-304 after January 1, 2003, and before [the effective date of this act] may rescind the election.

(2) A person who is eligible under subsection (1) to rescind an election previously made by the person pursuant to 5-2-304 shall notify the public employees' retirement board in writing prior to July 1, 2007, that the person has rescinded the person's prior election.

(3) A person who rescinds, under subsection (2), the person's previous election is:

(a) subject to the applicable options available under 5-2-304 and 19-3-412 as provided for in [this act]; and

(b) is eligible to receive retroactively to January 1, 2007, the retirement benefits for which the person would have been eligible absent the original election.

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 January 1, 2003.

Approved April 27, 2007

CHAPTER NO. 335

[SB 50]

AN ACT REVISING THE PROVISION IN THE SEXUAL ASSAULT AND SEXUAL INTERCOURSE WITHOUT CONSENT LAWS TO PROVIDE THAT CONSENT IS NOT EFFECTIVE IF THE VICTIM IS ON PROBATION OR PAROLE AND THE PERPETRATOR IS AN EMPLOYEE, CONTRACTOR, OR VOLUNTEER OF THE SUPERVISING AUTHORITY WITH AUTHORITY OVER THE VICTIM; PROVIDING A LIMITED MARRIAGE EXCEPTION; REMOVING THE SPECIFIC SENTENCE FOR SEXUAL INTERCOURSE WITHOUT CONSENT BY CORRECTIONAL FACILITY EMPLOYEES; AND AMENDING SECTIONS 45-5-501, 45-5-502, AND 45-5-503, MCA.

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

Section 1. Section 45-5-501, MCA, is amended to read:

“45-5-501. Definition Definitions. (1) As used in 45-5-503, the term “without consent” means:

(a) the victim is compelled to submit by force against the victim or another;
or

(b) *subject to subsection (2)*, the victim is incapable of consent because the victim is:

(i) mentally defective or incapacitated;

(ii) physically helpless;

(iii) overcome by deception, coercion, or surprise;

(iv) less than 16 years old; ~~or~~ or

(v) incarcerated in an adult or juvenile correctional, detention, or treatment facility *or is on probation or parole* and the perpetrator is an employee, contractor, or volunteer of the ~~facility~~ *supervising authority* and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search.

(2) *Subsection (1)(b)(v) does not apply if the individuals are married to each other and one of the individuals involved is on probation or parole and the other individual is a probation or parole officer of a supervising authority.*

~~(2)(3)~~ As used in subsection (1), the term “force” means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

(4) *As used in 45-5-502 and this section, the following definitions apply:*

(a) “Parole”:

(i) *in the case of an adult offender, has the meaning provided in 46-1-202; and*

(ii) *in the case of a juvenile offender, means supervision of a youth released from a state youth correctional facility, as defined in 41-5-103, to the supervision of the department of corrections.*

(b) *“Probation” means:*

(i) *in the case of an adult offender, release without imprisonment of a defendant found guilty of a crime and subject to the supervision of a supervising authority; and*

(ii) *in the case of a juvenile offender, supervision of the juvenile by a youth court pursuant to Title 41, chapter 5.*

(c) *“Supervising authority” includes a court, including a youth court, a county, or the Montana department of corrections.”*

Section 2. 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 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) (a) ~~Consent~~ *Subject to subsection (5)(b), consent is ineffective under this section if:*

(~~a~~)*(i) the victim is incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the facility supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search; or*

(~~b~~)*(ii) the victim is less than 14 years old and the offender is 3 or more years older than the victim.*

(b) *Subsection (5)(a)(i) does not apply if one of the parties is on probation or parole and the other party is a probation or parole officer of the supervising authority and the parties are married to each other.”*

Section 3. Section 45-5-503, MCA, is amended to read:

“45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person’s spouse, as provided in 45-5-501(1)(b)(iv).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term

of not less than 2 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

(3) (a) 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 intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

~~(d) If the victim was incarcerated in an adult or juvenile correctional, detention, or treatment facility at the time of the offense and the offender had supervisory or disciplinary authority over the victim, the offender shall be punished by imprisonment in the state prison for a term of not more than 5 years or fined an amount not to exceed \$50,000, or both.~~

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission."

Approved April 28, 2007

CHAPTER NO. 336

[SB 145]

AN ACT GENERALLY REVISING WILDFIRE PROTECTION LAWS; ESTABLISHING A STATE FIRE POLICY; PROVIDING DEFINITIONS; CONSOLIDATING AND CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; STANDARDIZING TERMINOLOGY; REQUIRING THE DEPARTMENT TO APPOINT FIREWARDENS AND TO PRESCRIBE DUTIES FOR

FIREWARDENS; REMOVING PROVISIONS REQUIRING THE COUNTY TO LIST FOREST LANDS WITH THE DEPARTMENT; CLARIFYING THAT A PERMIT IS NOT NEEDED TO IGNITE CERTAIN RECREATIONAL FIRES DURING WILDFIRE SEASON; REVISING PENALTIES FOR FAILURE TO COMPLY WITH BURNING PERMITS, FAILURE TO EXTINGUISH RECREATIONAL FIRES, AND THROWING LIGHTED MATERIAL; EXTENDING TO ALL WILDLANDS CERTAIN PROVISIONS THAT PREVIOUSLY APPLIED ONLY TO FOREST LANDS; IMPOSING UPON OWNERS OF ALL LANDS THE DUTY TO PROTECT THE LANDS FROM WILDFIRE; ESTABLISHING A FORMULA FOR DETERMINING ASSESSMENTS FOR FIRE PROTECTION; REVISING THE DATE BY WHICH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION SHALL CERTIFY TO THE DEPARTMENT OF REVENUE THE NAMES OF CERTAIN LANDOWNERS; AMENDING SECTIONS 45-6-203, 76-13-101, 76-13-102, 76-13-103, 76-13-104, 76-13-105, 76-13-110, 76-13-121, 76-13-122, 76-13-123, 76-13-124, 76-13-125, 76-13-126, 76-13-201, 76-13-202, 76-13-203, 76-13-204, 76-13-205, 76-13-206, 76-13-207, 76-13-208, 76-13-209, 76-13-210, 76-13-211, AND 77-5-103, MCA; REPEALING SECTIONS 76-11-101, 76-13-106, 76-13-109, 77-5-104, 77-5-105, AND 77-5-106, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. State fire policy. The legislature finds and declares that:

(1) the safety of the public and of firefighters is paramount in all wildfire suppression activities;

(2) it is a priority to minimize property and resource loss resulting from wildfire and to minimize expense to Montana taxpayers, which is generally accomplished through an aggressive and rapid initial attack effort;

(3) interagency cooperation and coordination among local, state, and federal agencies are intended and encouraged, including cooperation when restricting activity or closing areas to access becomes necessary;

(4) fire prevention, hazard reduction, and loss mitigation are fundamental components of this policy;

(5) all property in Montana has wildfire protection from a recognized fire protection entity;

(6) all private property owners and federal and state public land management agencies have a responsibility to manage resources, mitigate fire hazards, and otherwise prevent fires on their property;

(7) sound forest management activities to reduce fire risk, such as thinning, prescribed burning, and insect and disease treatments, improve the overall diversity and vigor of forested landscapes and improve the condition of related water, wildlife, recreation, and aesthetic resources; and

(8) development of fire protection guidelines for the wildland-urban interface is critical to improving public safety and for reducing risk and loss.

Section 2. Section 45-6-203, MCA, is amended to read:

“45-6-203. Criminal trespass to property. (1) Except as provided in 15-7-139, and 70-16-111, and [section 7], a person commits the offense of criminal trespass to property if the person knowingly:

(a) enters or remains unlawfully in an occupied structure; or

(b) enters or remains unlawfully in or upon the premises of another.

(2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.”

Section 3. Section 76-13-101, MCA, is amended to read:

“76-13-101. Purpose. (1) (a) It is the purpose of ~~this part and part 2 and this part~~ to provide for:

(i) the protection and conservation of ~~forest~~ *natural* resources, range, and water; ~~and the regulation of streamflow; and~~

(ii) the prevention of soil erosion.

(b) It is further the purpose of ~~this part and part 2 and this part~~ to more adequately promote and facilitate the cooperation, financial and otherwise, between the state and public and private agencies ~~which that~~ are associated in ~~such~~ *the* work.

(2) To achieve the conservation of ~~forest~~ *natural* and watershed resources, the legislature encourages the use of best management practices in timber sale planning, associated road construction and reconstruction, timber harvesting, site preparation, and related activities and establishes a process to ensure that information on best management practices is provided to owners and operators engaged in forest practices on private land.”

Section 4. Section 76-13-102, MCA, is amended to read:

“76-13-102. Definitions. Unless the context requires otherwise, in part 2 and this part, the following definitions apply:

(1) ~~“Board” means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.~~

(2) ~~“Conservation” means the protection and wise use of forest, forest range, forest water, and forest soil resources in keeping with the common welfare of the people of this state.~~

(3)(2) ~~“Department” means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.~~

(4)(3) ~~“Forest fire” means a fire burning uncontrolled on forest lands.~~

(5) ~~“Forest fire protection” means the work of prevention, detection, and suppression of forest fires and includes training required to perform those functions.~~

(6) ~~“Forest fire protection district” means a definite forest land area, the boundaries of which are fixed and in which forest fire protection is provided through the medium of an agency recognized by the department.~~

(7) ~~“Forest fire season” means the period of each year beginning May 1 and ending September 30, inclusive.~~

(8)(4) ~~“Forest land” means land that has enough timber, standing or down, slash, or brush to constitute in the judgment of the department a fire menace to life or property. Grassland and agricultural areas are included when those areas are intermingled with or contiguous to and no further than one-half mile from areas of forest land.~~

(9)(5) (a) ~~“Forest practices” means the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site~~

preparation for regeneration of a timber stand, reforestation, and the management of logging slash.

(b) The term does not include activities for the purpose of:

- (i) the operation of a nursery or Christmas tree farm;
- (ii) the harvest of Christmas trees;
- (iii) the harvest of firewood; or
- (iv) the cutting of trees for personal use by an owner or operator.

~~(10) "Lands" for conservation purposes means all forest lands within this state that are officially classified by the department as forest lands under 76-13-107.~~

~~(11)(6) "Operator" means a person responsible for conducting forest practices. An operator may be the owner, the owner's agent, or a person who, through contractual agreement with the landowner, is obligated to or entitled to conduct forest practices or to carry out a timber sale.~~

~~(12)(7) "Owner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber other than an easement, right-of-way, or mineral reservation.~~

~~(13)(8) "Person" means an individual, corporation, partnership, or association of any kind.~~

~~(14)(9) "Recognized agency" means an agency organized for the purpose of providing forest fire protection and recognized by the department as giving adequate fire protection to forest lands in accordance with rules adopted by the department.~~

~~(15)(10) "Timber sale" means a series of forest practices designed to access, harvest, and regenerate trees on a defined land area.~~

~~(11) "Wildfire" means an unplanned, unwanted fire burning uncontrolled on wildland and consuming vegetative fuels.~~

~~(12) "Wildfire season" means the period of each year beginning May 1 and ending September 30, inclusive.~~

~~(13) "Wildland" means an area in which development is essentially nonexistent, except for roads, railroads, powerlines, and similar facilities, and in which structures, if any, are widely scattered.~~

~~(14) "Wildland fire protection" means the work of prevention, detection, and suppression of wildland fires and includes training required to perform those functions.~~

~~(15) "Wildland fire protection district" means a definite land area, the boundaries of which are fixed and in which wildland fire protection is provided through the medium of an agency recognized by the department.~~

~~(16) "Wildland-urban interface" means the line, area, or zone where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels."~~

Section 5. Section 76-13-103, MCA, is amended to read:

"76-13-103. Applicability. ~~This part and part 2 Part 2 and this part apply to all forest state and private lands within this state that are officially classified by the department as forest lands according to the definition of forest land in 76-13-102 susceptible to wildfire, as determined by the department."~~

Section 6. Section 76-13-104, MCA, is amended to read:

“76-13-104. Functions of department — rulemaking. (1) *The department has the duty to ensure the protection of land under state and private ownership and to suppress wildfires on land under state and private ownership. No fees may be collected for this purpose except fees provided for in 76-13-201.*

(2) (a) *The department shall adopt rules to protect the natural resources of the state, especially the natural resources owned by the state, from destruction by fire and for that purpose, in declared emergencies, may employ personnel and incur other expenses when necessary.*

(b) *The department may adopt and enforce reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of part 2 and this part.*

(3) *The duty imposed on the department under this section is not exclusive to the department and does not absolve private property owners or local governmental fire agencies organized under Title 7, chapter 33, from any fire protection or suppression responsibilities.*

(4) *The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and forest fire protection.*

(2)(5) *The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.*

(6) *The department shall establish and maintain wildland fire control training programs.*

~~(3) The department shall require an owner or operator to provide a notification prior to conducting forest practices as provided in 76-13-131, shall adapt as necessary any procedure used for notification with respect to an agreement under 76-13-408 to ensure that the operator provides information on the location of the forest practices in relation to watershed features, and shall conduct onsite consultations as provided for in 76-13-132.~~

(7) *The department has the authority to appoint state or federal employees as firewardens in the number and localities that it considers necessary for meeting department firefighting responsibilities and shall adopt rules prescribing the qualifications and duties of firewardens that are in addition to those provided in [section 7]. Local county governments shall retain sole authority for designation and appointment of county fire chiefs or firewardens.”*

Section 7. Duties of firewardens — liability. (1) In addition to the duties prescribed by rule pursuant to 76-13-104(7), a firewarden appointed by the department shall promptly report all fires to the department, take immediate and active steps toward their extinguishment, report any violation of the provisions of Title 76, chapter 13, parts 1 and 2, and assist in apprehending and convicting offenders.

(2) A firewarden is not liable for civil action for trespass committed in the discharge of the firewarden’s duties, and the provisions of 45-6-203 do not apply to a firewarden acting within the course and scope of the firewarden’s duties.

(3) A firewarden who has information that shows, with reasonable certainty, that a person has violated any provision of Title 76, chapter 13, parts 1 and 2, shall immediately take action against the offender by making complaint before the appropriate authority or by providing information to the appropriate

county attorney and shall obtain all possible evidence pertaining to the violation.

Section 8. Section 76-13-105, MCA, is amended to read:

“76-13-105. Protection of nonforest lands and improvements from fire. (1) Nonforest lands and improvements may be protected by the department when requested by the landowner at rates determined by the department in those areas where a recognized agency is available.

(2) Land classified as forest land under 76-13-107 that is within a wildland fire protection district, as provided in 76-13-204, or that is otherwise under contract for fire protection by a recognized agency must be protected as provided in 76-13-201 and 76-13-207.

(3) Private and public land, whether classified as forest land or otherwise, that is not within a wildland fire protection district or under the protection of a recognized agency or a municipality must be protected by a county as provided in 7-33-2202. The county governing body shall either provide direct protection, as provided in 7-33-2202(3), or it shall enter into an agreement for protection with a recognized agency.”

Section 9. Section 76-13-110, MCA, is amended to read:

“76-13-110. Owner’s right to board department hearing. (1) An owner of forest land is entitled to a hearing before the ~~board~~ department, after a request ~~therefor~~ for a hearing, on any subject pertaining to the activities of the ~~board~~, the department; or any recognized agency as agent of the department affecting the owner’s property. A request for a hearing before the ~~board~~ department may not have the effect of suspending the operations of the ~~board~~, the department; or any agent of the department undertaken pursuant to this chapter, but upon the hearing, the ~~board~~ department may terminate those operations if found unreasonable.

(2) A hearing pertaining to costs charged against the forest land of an owner for protection ~~thereof~~, as provided in 76-13-201, must be requested on or before August 15 each year.”

Section 10. Section 76-13-121, MCA, is amended to read:

“76-13-121. Permit for burning required. (1) During the ~~forest fire~~ wildfire season or an expansion ~~thereof~~ of the wildfire season, a person may not ignite or set a forest fire, including a slash-burning fire, land-clearing fire, debris-burning fire, or, except as provided in subsection (2), an open fire ~~within forest lands~~ without an official written permit to ignite or set the fire from the recognized protection agency for that protection area. ~~A permit is not required in order to build, set, or ignite a campfire within and upon a designated improved camping ground or upon a plot of land from which all vegetable and inflammable matter and debris have been removed to a point where it may not become ignited by the campfire or by sparks therefrom~~

(2) (a) If no restrictions are in place, a permit is not needed for recreational fires measuring less than 48 inches in diameter that are surrounded by a nonflammable area or structure and for which a suitable source of extinguishing the fire is available.

(b) A recreational fire may not be ignited if special restrictions prohibiting recreational fires have been established by an authority having jurisdiction.”

Section 11. Section 76-13-122, MCA, is amended to read:

“76-13-122. Failure to comply with permit. A person to whom a written permit is issued to set or ignite a fire ~~within forest lands during the forest protection season~~ shall comply strictly with the permit. A person who fails to comply with the permit, leaves the fire unattended, leaves the fire before it is totally extinguished, or negligently allows the fire to spread from or beyond the burning area defined by the permit is ~~guilty of a misdemeanor subject to the penalty provided in 50-63-102 and is subject to the provisions of 50-63-103.~~ The department shall prescribe the form and substance of ~~such~~ *the permit.*”

Section 12. Section 76-13-123, MCA, is amended to read:

“76-13-123. Failure to extinguish ~~campfire~~ recreational fire. ~~Any A person who shall fail fails to extinguish any campfire a recreational fire that the person has set or ignited by him within any forest lands before leaving the same, who shall fail to extinguish any campfire used by him or left in his charge before leaving the same, or in which the person has been left in charge or who shall negligently allow such allows the fire to spread from the plot described in 76-13-121 shall be guilty of a misdemeanor is subject to the penalty provided in 50-63-102 and is subject to the provisions of 50-63-103.”~~

Section 13. Section 76-13-124, MCA, is amended to read:

“76-13-124. Throwing lighted materials. A person who throws or places any lighted cigarette, cigar, ashes, ~~or other material~~ or flaming or glowing substance that may start a fire ~~in or near any forest material~~ is guilty of a ~~misdemeanor is subject to the penalty provided in 50-63-102 and is subject to the provisions of 50-63-103.”~~

Section 14. Section 76-13-125, MCA, is amended to read:

“76-13-125. Spark arresters required. ~~No~~ A person may *not* use, drive, or operate ~~within any forest lands~~ *wildland* any internal combustion engine that is not equipped with a modern, efficient, and adequate spark arrester ~~and with modern, efficient devices to prevent the escape of sparks, coals, cinders, and other burning material from the exhaust of any such the engine.”~~

Section 15. Section 76-13-126, MCA, is amended to read:

“76-13-126. Restrictions on ~~sawdust piles~~ mill waste. (1) ~~(1) Before each forest fire season, all~~ *Before each wildfire season, all* persons, firms, or corporations creating or responsible for mill waste ~~within the forest areas within the forest areas~~ shall treat, dispose of, remove, or reduce the hazards created so that the accumulation of ~~sawmilling the waste~~ does not constitute a fire hazard.

~~(2) A sawmill located within or contiguous to forest lands may not accumulate in one pile sawdust in excess of an amount resulting from the sawing of 500,000 feet log scale of sawlogs. However, a larger sawdust pile may be accumulated when there is no reasonable danger of fire therefrom and a permit for the additional accumulation is granted by the department. If burning is the disposal method elected, each sawdust pile so accumulated shall be prepared for burning by cribbing the base of each pile with slabs and burned in accordance with rules adopted by the department.~~

(2) A sawmill located within or contiguous to forest lands may not accumulate in one pile sawdust in excess of an amount resulting from the sawing of 500,000 feet log scale of sawlogs. However, a larger sawdust pile may be accumulated when there is no reasonable danger of fire from the sawdust pile and a permit for the additional accumulation is granted by the department. If burning is the disposal method elected, each sawdust pile must be prepared for

burning by cribbing the base of each pile with slabs and burned in accordance with rules adopted by the department.”

Section 16. Duty of landowner to protect against fire. (1) An owner of land shall protect against the starting or existence of fire and shall suppress the spread of fire on that land. This protection and suppression must be in conformity with reasonable rules and standards for adequate fire protection adopted by the department.

(2) (a) The provisions of 76-13-201 apply to an owner of land that is classified as forest land under 76-13-107 and that is within a wildland fire protection district.

(b) If an owner of land does not provide for protection against the starting or existence of fire and for fire suppression and the land does not meet the criteria in subsection (2)(a), the owner may request that the department provide protection as provided in 76-13-105.

Section 17. Section 76-13-201, MCA, is amended to read:

“76-13-201. Duty of owner to protect against Costs for protection from fire. (1) ~~An owner of land classified as forest land by the department shall protect against the starting or existence and suppress the spread of fire on that land. This protection and suppression must be in conformity with reasonable rules and standards for adequate fire protection adopted by the department.~~

~~(2) If the (1) An owner of land classified as forest land that is within a wildland fire protection district or that is otherwise under contract for fire protection by a recognized agency does not provide for the protection and suppression, the is subject to the fees for fire protection provided in this section.~~

(2) ~~The department may shall provide fire protection to the land described in subsection (1) at a cost to the landowner of not more than \$30 \$45 for each landowner in the protection district and of not more than an additional 20 25 cents per acre per year for each acre in excess of 20 acres owned by each landowner in each protection district, as necessary to yield the amount of money provided for in 76-13-207. The owner of the land shall pay the charge approved by the department in accordance with part 1 and this part to the department of revenue. Payments to the department of revenue are due on or before November 30 of each year Assessment, payment, and collection of the fire protection costs must be in accordance with 76-13-207.~~

(3) ~~Other charges may not be assessed to a participating landowner except in cases of proven proved negligence on the part of the landowner or the landowner’s agent or in the event of a violation of 50-63-103.”~~

Section 18. Section 76-13-202, MCA, is amended to read:

“76-13-202. Means by which department may provide protection. The department may provide for ~~forest fire wildfire~~ protection of any forest lands *wildlands* through the department or by contract or any other feasible means, in cooperation with any federal, state, or other recognized agency.”

Section 19. Section 76-13-203, MCA, is amended to read:

“76-13-203. Extension of the forest fire wildfire season. In the event of excessive or great fire danger, the period defined in ~~76-13-102(7) 76-13-102(12)~~ may be expanded when in the judgment of the department dangerous fire conditions exist. When expanded, the department shall give public notice.”

Section 20. Section 76-13-204, MCA, is amended to read:

“76-13-204. Creation, annexation of land into, and dissolution of forest wildland fire protection districts. (1) In accordance with the provisions of subsections (2) and (3), the department may create, annex land to, or dissolve forest wildland fire protection districts.

(2) Before a district is created, land is annexed into a district, or a district is dissolved, the department shall hold a hearing in any county in which land affected by the proposed change is located.

(a) The department shall give notice at least 20 days in advance of the hearing to all property owners to be affected by the proposed change. Service of the notice ~~may~~ *must* be made by certified mail to each affected property owner ~~or~~ *and* by publication of the notice in a newspaper published or generally circulated in the county in which the hearing is to be held.

(b) The department shall consider the arguments made for and against the proposed change in making a determination under this section.

(3) (a) A forest wildland fire protection district may not be created or dissolved unless approved in writing by a vote of not less than 51% of the owners representing at least 51% of the acreage to be involved in the affected forest wildland fire protection district.

(b) Land may not be annexed into a district unless approved by 51% of the owners representing at least 51% of the acreage to be annexed.

(4) Land annexed into a district may not be removed from that district unless that district is dissolved.”

Section 21. Section 76-13-205, MCA, is amended to read:

“76-13-205. Determination of boundaries of district. In establishing boundaries of organized forest wildland fire protection districts ~~covering forest lands~~, the department may for the purpose of administrative convenience designate recognizable landmarks as boundaries.”

Section 22. Section 76-13-206, MCA, is amended to read:

“76-13-206. What constitutes compliance with duty to protect against fire for landowners within district. An owner of forest lands ~~land~~ within an organized forest wildland fire protection district while a member of or while participating in a recognized agency for forest wildland fire protection or within areas protected by a county ~~shall~~ *must* be considered to have fully complied with the requirements of ~~76-13-201~~ [section 16].”

Section 23. Section 76-13-207, MCA, is amended to read:

“76-13-207. Determination and collection of costs of fire protection. (1) The department shall prepare an annual operation assessment plan in which fire protection costs are determined. The department shall request the legislature to appropriate the state’s portion of the cost. After the appropriation is made by the legislature, the department shall cause an assessment to be made on the owners of ~~classified forest land~~, as specified in ~~76-13-105~~ and 76-13-201, sufficient to bring the total amount received from the landowners to no greater than one-third of the amount specified in the appropriation.

(2) On or before the ~~second Tuesday in August~~ *first Tuesday in September* of each year, the department shall certify in writing to the department of revenue the names of these owners of ~~forest lands~~ *lands* in each county, together with a description of their lands and a statement of the amount found to be due and

owing by each of the owners to the department for forest *wildland* fire protection.

(3) Upon receiving the certificate from the department showing the amount due, the department of revenue shall extend the amounts upon the county tax rolls covering the lands, and the sums become obligations of the owner, to be paid and collected in the same manner and at the same time and subject to the same penalties as general state and county taxes upon the same property are collected.”

Section 24. Section 76-13-208, MCA, is amended to read:

“76-13-208. Nature of assessments for forest *wildland* fire protection. All payments required of owners of forest lands *landowners* by ~~this part and part 1~~ *and this part* are assessments for benefits actually received by those owners in the protection of their lands and are not a tax upon the property of ~~such~~ *the* owners.”

Section 25. Section 76-13-209, MCA, is amended to read:

“76-13-209. Disposition of assessments. All sums *Money* collected by the county treasurer pursuant to 76-13-207 shall ~~must~~ be promptly deposited ~~remitted to the state for deposit~~ in the state special revenue fund.”

Section 26. Section 76-13-210, MCA, is amended to read:

“76-13-210. Payment under protest. An owner who is required to pay to the county treasurer any sum for forest *wildland* fire protection as required by ~~this part or part 1~~ *or this part* and who contends that ~~he~~ *the owner* is not legally obligated to pay the sum or ~~some a part thereof of the sum~~ shall pay it to the county treasurer under written protest, stating the reasons for the protest. The payment under protest and all proceedings subsequent ~~thereto~~ shall be in conformity to the payment must conform with the law of this state providing for the payment of taxes under protest and action to recover the ~~same~~ *payment*. In the hearing and determination of any action to recover the payment under protest, all questions of the legality and reasonableness of the proceedings of ~~the board and~~ the department may be reviewed and decided.”

Section 27. Section 76-13-211, MCA, is amended to read:

“76-13-211. Amount due for protection treated as lien. (1) Whenever the department provides forest *wildland* fire protection during a forest fire season for any forest land *wildland* or timber not protected by the owner ~~thereof of the wildland or timber~~ as required by ~~this part or part 1~~ *or this part*, the amount due for the forest protection is a lien upon the ~~land~~ *wildland* or timber which shall continue ~~that continues~~ until such time as the amount due is paid.

(2) The lien has the same force, effect, and priority as general tax liens under the laws of the state and is subject and inferior only to tax liens on the lands. The county attorney of the county in which the land is situated shall on request of the department foreclose the lien in the name of the state and in the manner provided by law, or the county attorney upon the request of the department shall institute an action against the forest landowner in the name of the state in any district or justice court having jurisdiction to recover the debt. The state in the action is not required to pay any fees or costs to the clerk of the court or justice of the peace.

(3) The remedies provided by this section are cumulative and do not affect the other provisions of ~~this part or part 1~~ *or this part* for the payment and collection of amounts due to the department.”

Section 28. Section 77-5-103, MCA, is amended to read:

“77-5-103. Role of department. (1) The department shall, under the direction and control of the board, do all the field work in the selection, location, examination, appraisalment, and reappraisalment of state timberlands.

(2) ~~It~~ *The department* shall do all acts required of it by the board, and under the direction of the board, it has general charge of the timberlands of the state.

(3) ~~It~~ *The department* shall, under the supervision of the board.;

(a) execute all matters pertaining to forestry within the jurisdiction of the state;

(b) ~~have charge of all firewardens of the state and direct and aid them in their duties;~~ direct the protection, improvement, and condition of state forests;

(c) take ~~such~~ *any* action ~~as is~~ authorized by law to prevent and extinguish forest, brush, and grass *wildland* fires; and

(d) enforce the laws pertaining to forest and ~~brush~~ *over nonforest* lands and prosecute for any violation of those laws.

(4) ~~The department shall establish and maintain forest fire control training programs for state firefighters and other persons requiring training.”~~

Section 29. Formula to set landowner assessments for fire protection. (1) The department shall, pursuant to 76-13-207, set the annual fire assessment fee due from landowners pursuant to Title 76, chapter 13, parts 1 and 2. The total of all statewide landowner assessments may be no greater than one-third of the amount appropriated by the legislature to fund the protection costs.

(2) The individual assessments must be established using the following criteria:

(a) Each person or corporation who is responsible for fire protection pursuant to 76-13-108 and 76-13-201 and for whom the department provides fire protection must be assessed a per capita landowner fee. The total per capita landowner assessments statewide from persons or corporations who own 20 acres or less of land for which the department provides protection must be as close as administratively possible to 60% of the total private landowner assessments.

(b) A person or corporation who owns more than 20 acres of land for which the department provides protection shall, in addition to the fee assessed pursuant to subsection (2)(a), pay a per-acre fee for each whole acre that the person owns in excess of 20 acres. The total of all assessments statewide from persons or corporations that own more than 20 acres must be as close as administratively possible to 40% of the total private landowner assessments.

(3) (a) Except as provided in subsection (3)(b), the per capita and per-acre fees must remain in effect for subsequent years.

(b) The department shall reset the per capita and per-acre fees whenever it is necessary to obtain up to one-third of the amount appropriated by the legislature.

(c) Whenever the department resets the fees pursuant to subsection (3)(b), it shall do so in accordance with 76-13-201(2).

Section 30. Repealer. Sections 76-11-101, 76-13-106, 76-13-109, 77-5-104, 77-5-105, and 77-5-106, MCA, are repealed.

Section 31. Codification instruction. (1) [Sections 1 and 7] are intended to be codified as an integral part of Title 76, chapter 13, part 1, and the provisions of Title 76, chapter 13, part 1, apply to [sections 1 and 7].

(2) [Sections 16 and 29] are intended to be codified as an integral part of Title 76, chapter 13, part 2, and the provisions of Title 76, chapter 13, part 2, apply to [sections 16 and 29].

Section 32. Directions to code commissioner. (1) If legislation is enacted that contains references to and definitions of “wildfire season”, “wildland fire”, “wildland fire protection”, and “wildland fire protection district”, then the code commissioner is instructed to change the terms “forest fire season”, “forest fire”, “forest fire protection”, and “forest fire protection district” wherever they occur.

(2) Section 76-11-102 is intended to be renumbered and codified as an integral part of Title 76, chapter 13, part 1.

(3) Sections 76-13-131 through 76-13-135 are intended to be renumbered and codified as an integral part of Title 76, chapter 13, part 4.

Section 33. Coordination instruction. If Senate Bill No. 147 [LC 423] and [this act] are both passed and approved and if they contain a section that amends 76-13-121, then the sections amending 76-13-121 are void and 76-13-121 must be amended as follows:

“76-13-121. Permit for burning required. (1) During the forest fire wildfire season or an expansion thereof of the wildfire season, a person may not ignite or set a forest fire, including a slash-burning fire, land-clearing fire, debris-burning fire, or, *except as provided in subsection (2)*, an open fire within forest lands without an official written permit to ignite or set the fire from the recognized protection agency for that protection area. ~~A permit is not required in order to build, set, or ignite a campfire within and upon a designated improved camping ground or upon a plot of land from which all vegetable and inflammable matter and debris have been removed to a point where it may not become ignited by the campfire or by sparks therefrom. A permit may not be issued where a special burning restriction in a high fire hazard area has been imposed by a county governing body under [section 3 of LC 423] or by the department under [section 1 of LC 423].~~

(2) (a) *If no restrictions are in place, a permit is not needed for recreational fires measuring less than 48 inches in diameter that are surrounded by a nonflammable area or structure and for which a suitable source of extinguishing the fire is available.*

(b) *A recreational fire may not be ignited if special restrictions prohibiting recreational fires have been established by an authority having jurisdiction.”*

Section 34. Coordination instruction. If Senate Bill No. 51 and [this act] are passed and approved and [this act] repeals 76-13-109, then the section in [this act] amending 76-13-104 is void and 76-13-104 must be amended as follows:

“76-13-104. Functions of department — rulemaking. (1) *The department has the duty to ensure the protection of land under state and private ownership and to suppress wildfires on land under state and private ownership. No fees may be collected for this purpose except fees provided for in 76-13-201.*

(2) (a) *The department shall adopt rules to protect the natural resources of the state, especially the natural resources owned by the state, from destruction by*

fire and for that purpose, in declared emergencies, may employ personnel and incur other expenses when necessary.

(b) The department may adopt and enforce reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of part 2 and this part.

(3) The duty imposed on the department under this section is not exclusive to the department and does not absolve private property owners or local governmental fire agencies organized under Title 7, chapter 33, from any fire protection or suppression responsibilities.

(4) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and forest fire protection.

(2)(5) The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

(6) The department shall establish and maintain wildland fire control training programs.

~~*(3) The department shall require an owner or operator to provide a notification prior to conducting forest practices as provided in 76-13-131, shall adapt as necessary any procedure used for notification with respect to an agreement under 76-13-408 to ensure that the operator provides information on the location of the forest practices in relation to watershed features, and shall conduct onsite consultations as provided for in 76-13-132.*~~

(7) The department shall appoint firewardens in the number and localities that it considers necessary, subject to confirmation by the local county government, and shall adopt rules prescribing the qualifications and duties of firewardens that are in addition to those provided in [section 7 of Senate Bill No. 145].

(8) By October 1, 2008, the department shall adopt rules addressing development within the wildland-urban interface, including but not limited to:

(a) best practices for development within the wildland-urban interface; and

(b) criteria for providing grant and loan assistance to local government entities to encourage adoption of best practices for development within the wildland-urban interface.”

Section 35. Effective date. [This act] is effective June 1, 2007.

Approved April 28, 2007

CHAPTER NO. 337

[SB 175]

AN ACT EXPRESSLY PROVIDING THAT AN AGENCY MAY NOT ENFORCE, IMPLEMENT, OR OTHERWISE TREAT AN ADMINISTRATIVE RULE AS EFFECTIVE UNTIL THE EFFECTIVE DATE OF THE RULE; AMENDING SECTION 2-4-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, section 2-4-306(4), MCA, now provides that a rule is not effective until after publication in the Montana Administrative Register or until a different effective date as stated by the agency in the rule; and

WHEREAS, during the 2005-2006 interim, the State Administration and Veterans' Affairs Interim Committee dealt with a state agency that treated a not-yet-effective administrative rule as if that rule was effective as law.

WHEREAS, the State Administration and Veterans' Affairs Interim Committee believes that an agency may not under existing law implement a rule before the rule is effective and that the amendment of section 2-4-306, MCA, contained in this legislation does not alter the existing law.

THEREFORE, it is the intent of the State Administration and Veterans' Affairs Interim Committee to provide a short and clear statement in law that an agency may not implement a rule before the rule is effective as law.

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

Section 1. Section 2-4-306, MCA, is amended to read:

"2-4-306. Filing, format, and adoption and effective dates — dissemination of emergency rules. (1) Each agency shall file with the secretary of state a copy of each rule adopted by it or a reference to the rule as contained in the proposal notice. A rule is adopted on the date that the adoption notice is filed with the secretary of state and is effective on the date referred to in subsection (4), except that if the secretary of state requests corrections to the adoption notice, the rule is adopted on the date that the revised notice is filed with the secretary of state.

(2) Pursuant to 2-15-401, the secretary of state may prescribe rules to effectively administer this chapter, including rules regarding the format, style, and arrangement for notices and rules that are filed pursuant to this chapter, and may refuse to accept the filing of any notice or rule that is not in compliance with this chapter. The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, that must be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing copies.

(3) If the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be published with the rule.

(4) Each rule is effective after publication in the register, as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date is the effective date;

(b) subject to applicable constitutional or statutory provisions:

(i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and

(ii) an emergency rule is effective at a stated date following publication in the register or immediately upon filing with the secretary of state if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons for the finding must be filed with the rule. The agency shall, in addition to the required publication in the register, take appropriate and extraordinary

measures to make emergency rules known to each person who may be affected by them.

(c) if, following written administrative rule review committee notification to an agency under 2-4-305(9), the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the rule is adopted, the rule or portion of the rule objected to is not effective until the day after final adjournment of the regular session of the legislature that begins after the notice proposing the rule was published by the secretary of state, unless, following the committee's objection under 2-4-406(1):

(i) the committee withdraws its objection under 2-4-406 before the rule is adopted; or

(ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the committee members, as communicated in writing to the committee presiding officer and staff, make it comply with the committee's objection and concerns.

(5) An agency may not enforce, implement, or otherwise treat as effective a rule proposed or adopted by the agency until the effective date of the rule as provided in this section. Nothing in this subsection prohibits an agency from enforcing an established policy or practice of the agency that existed prior to the proposal or adoption of the rule as long as the policy or practice is within the scope of the agency's lawful authority."

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

Approved April 27, 2007

CHAPTER NO. 338

[SB 181]

AN ACT CHANGING THE DEADLINE BY WHICH A WRITE-IN CANDIDATE IN A MAIL BALLOT ELECTION MUST FILE A DECLARATION OF INTENT; AND AMENDING SECTION 13-10-211, MCA.

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

Section 1. Section 13-10-211, MCA, is amended to read:

"13-10-211. Declaration of intent for write-in candidates. (1) Except as provided in subsection (7), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. 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 *in a mail ballot election* or for a trustee position ~~on~~ *in a school board election* 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) 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.

(6) 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.

(7) The requirements in subsection (1) do not apply if:

- (a) an election is held;
- (b) a person's name is written in on the ballot;
- (c) the person is qualified for and seeks election to the office for which the person's name was written in; and
- (d) no other candidate has filed a declaration or petition for nomination or a declaration of intent."

Approved April 28, 2007

CHAPTER NO. 339

[SB 204]

AN ACT PREVENTING AN INSURER FROM REQUIRING MOTOR VEHICLE REPAIR ESTIMATES OR REPAIRS FROM CERTAIN BUSINESSES BY CLAIMANTS; ALLOWING ACCESS FOR COMPETITIVE ESTIMATES; AND AMENDING SECTION 33-18-224, MCA.

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

Section 1. Section 33-18-224, MCA, is amended to read:

“33-18-224. Designation of specific automobile body repair businesses prohibited. (1) (a) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(a)(i) require that a ~~person~~~~insured~~ *claimant* under the policy use a particular automobile body repair business or location *for an estimate or a repair*; or

(b)(ii) engage in any act or practice that intimidates, coerces, or threatens an ~~insured person~~ *a claimant* or that provides an incentive or inducement for an ~~insured person~~ *a claimant* to use a particular automobile body repair business or location.

(b) *An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may have access to the motor vehicle for purposes of preparing a competitive estimate.*

(2) (a) Except as provided in subsection (2)(b), if an insurance company has direct repair programs with automobile body repair businesses or locations, the insurance company may not limit the number of automobile body repair businesses or locations with whom it maintains direct repair programs.

(b) An insurance company may limit the number of automobile body repair businesses or locations participating in the insurance company's direct repair program to those automobile body repair businesses or locations that comply with the provisions of subsection (2)(c). An insurance company is not required to establish a direct repair program in a particular market area in which the insurance company's number of policyholders does not support establishing a direct repair program with any automobile body repair business or location.

(c) Upon request, the insurance company shall provide, without prejudice or bias, the ~~insured person~~ *claimant* with a list that includes all automobile body repair businesses or locations that are reasonably close or convenient to the ~~insured person~~ *claimant* and willing to provide services and that meet the insurance company's criteria regarding whether the automobile body repair business or location:

- (i) possesses the equipment necessary to undertake repairs;
- (ii) undertakes training of management and technical personnel with respect to repair information and the claims process;
- (iii) agrees to perform quality repairs at the prevailing competitive market price and that meet reasonable industry repair standards;
- (iv) agrees to warrant the quality of work, including refinishing, in writing to the ~~insured person~~ *claimant*, for a period of not less than 1 year from the date of repair;
- (v) agrees to inspection of its repairs and services by the insurance company and agrees that the insurance company may terminate the direct repair program with the automobile body repair business or location if the repairs and services are below the standards of quality required by the insurance company; and

(vi) if requested, agrees to execute an agreement with the insurance company that may contain additional criteria that are not designed to unfairly limit the number of automobile body repair businesses or locations with whom the insurance company maintains direct repair programs. The additional criteria may include criteria determined to be necessary by the insurance company and designed to ensure that the automobile body repair business or location has the necessary estimating systems and programs and equipment to communicate electronically with the insurance company and that the automobile body repair business or location has taken steps to ensure the privacy of the insurance company and the ~~insured person~~ *claimant*.

(d) If the ~~insured person~~ *claimant* requests the list provided for in subsection (2)(c), the insurance company shall inform the ~~insured person~~ *claimant* that the ~~insured person~~ *claimant* may use an automobile body repair business or location at the sole discretion of the ~~insured person~~ *claimant*.

(3) For the purposes of this section, an incentive or inducement does not include:

(a) providing an ~~insured person~~ *a claimant* with the list provided for in subsection (2)(c); or

(b) referring to a warranty issued by an automobile body repair business or location.

(4) The ~~insured~~ *claimant* may use an automobile body repair business or location at the ~~insured's~~ *claimant's* sole discretion, and the insurance company shall pay for the reasonable and necessary cost of the automobile body repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile body repair services than the lowest prevailing market price, as defined in 33-18-222.

(5) If the ~~insured person~~ *claimant* uses an automobile body repair business or location that is not on a list provided for in subsection (2)(c), the insurance company may not be held liable for any repair work performed by the automobile body repair business or location chosen by the ~~insured person~~ *claimant*.

(6) It is unlawful for an automobile body repair business or location to charge or agree to charge an ~~insured customer~~ *a claimant* more than an uninsured customer for any automobile body repair service.

(7) An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section.

(8) For purposes of this section,:

(a) "automobile body repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products;

(b) "*claimant*" means the person seeking repair of a motor vehicle whether that person is the insured person or a third party making a claim against the insurer."

Approved April 27, 2007

CHAPTER NO. 340

[SB 214]

AN ACT REVISING LAWS RELATING TO INDEPENDENT CONTRACTORS; CLARIFYING THAT CERTAIN INDEPENDENT CONTRACTORS ARE NOT EXEMPT FOR UNEMPLOYMENT INSURANCE PURPOSES; EXPANDING ELIGIBILITY FOR WORKERS' COMPENSATION PURPOSES; AMENDING SECTIONS 39-51-204 AND 39-71-417, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 39-51-204, MCA, is amended to read:

“39-51-204. Exclusions from definition of employment. (1) The term “employment” does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) “freelance correspondent” means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) “newspaper carrier” means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist or barber who is licensed under Title 37, chapter 31, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a salon or shop, as defined in 37-31-101, and the contract must show that the cosmetologist or barber:

- (A) is free from all control and direction of the owner in the contract;
- (B) receives payment for service from individual clientele; and
- (C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the salon or shop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership, members of a member-managed limited liability company that has filed with the secretary of state, or partners in a limited liability partnership that has filed with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed as a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in 5 U.S.C. 8501(1)(I) and section 3306(c)(6) of the Federal Unemployment Tax Act;

(s) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(t) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(u) service performed by an individual who is enrolled at a nonprofit or public educational institution 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, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(w) service performed by an alien as identified in 8 U.S.C. 1101(a)(15)(F), (a)(15)(H)(ii)(a), (a)(15)(J), (a)(15)(M), or (a)(15)(Q);

(x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873;

(y) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(z) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an amateur athletic event; or

(aa) services performed by an election judge appointed pursuant to 13-4-101 if the remuneration received for those services is less than \$1,000 in the calendar year.

(2) (a) ~~An~~ *Except as provided in subsection (2)(b), an individual found to be an independent contractor by the department under the terms of 39-71-417 is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.*

(b) *An officer or a manager who is exempt under 39-71-401(2)(r)(iii) or (2)(r)(iv) and who obtains an independent contractor exemption pursuant to 39-71-417(1)(a)(ii) is not considered an independent contractor for the purposes of this chapter.*

(3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act.”

Section 2. Section 39-71-417, MCA, is amended to read:

“39-71-417. Independent contractor certification. (1) (a) *(i) Except as provided in subsection (1)(a)(ii), a person who regularly and customarily performs services at a location other than the person’s own fixed business location shall apply to the department for an independent contractor exemption certificate unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.*

(ii) An officer or manager who is exempt under 39-71-401(2)(r)(iii) or (2)(r)(iv) may apply, but is not required to apply, to the department for an independent contractor exemption certificate.

(b) A person who meets the requirements of this section and receives an independent contractor exemption certificate is not required to obtain a personal workers' compensation insurance policy.

(c) For the purposes of this section, "person" means:

(i) a sole proprietor;;

(ii) a working member of a partnership;;

(iii) a working member of a limited liability partnership; or

(iv) or a working member of a member-managed limited liability company.

(2) The department shall adopt rules relating to an original application for or renewal of an independent contractor exemption certificate. The department shall adopt by rule the amount of the fee for an application or certificate renewal. The application or renewal must be accompanied by the fee.

(3) The department shall deposit the application or renewal fee in an account in the state special revenue fund to pay the costs of administering the program.

(4) (a) To obtain an independent contractor exemption certificate, the applicant shall swear to and acknowledge the following:

(i) that the applicant has been and will continue to be free from control or direction over the performance of the person's own services, both under contract and in fact; and

(ii) that the applicant is engaged in an independently established trade, occupation, profession, or business and will provide sufficient documentation of that fact to the department.

(b) For the purposes of subsection (4)(a)(i), an endorsement required for licensure, as provided in 37-47-303, does not imply or constitute control.

(5) An applicant for an independent contractor exemption certificate shall submit an application under oath on a form prescribed by the department and containing the following:

(a) the applicant's name and address;

(b) the applicant's social security number;

(c) each occupation for which the applicant is seeking independent contractor certification; and

(d) other documentation as provided by department rule to assist in determining if the applicant has an independently established business.

(6) The department shall issue an independent contractor exemption certificate to an applicant if the department determines that an applicant meets the requirements of this section.

(7) (a) When the department approves an application for an independent contractor exemption certificate and the person is working under the independent contractor exemption certificate, the person's status is conclusively presumed to be that of an independent contractor.

(b) A person working under an approved independent contractor exemption certificate has waived all rights and benefits under the Workers' Compensation Act and is precluded from obtaining benefits unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(c) For the purposes of the Workers' Compensation Act, a person is working under an independent contractor exemption certificate if:

(i) the person is performing work in the trade, business, occupation, or profession listed on the person's independent contractor exemption certificate; and

(ii) the hiring agent and the person holding the independent contractor exemption certificate do not have a written or an oral agreement that the independent contractor exemption certificate holder's status with respect to that hiring agent is that of an employee.

(8) Once issued, an independent contractor exemption certificate remains in effect for 2 years unless:

(a) suspended or revoked pursuant to 39-71-418; or

(b) canceled by the independent contractor.

(9) If the department denies an application for an independent contractor exemption certificate, the applicant may contest the denial by petitioning the workers' compensation court within 30 days of the mailing of the denial."

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved April 28, 2007

CHAPTER NO. 341

[SB 219]

AN ACT CLARIFYING THAT A STATE EMPLOYEE WHO TERMINATES EMPLOYMENT MAY NOT RECEIVE SEVERANCE PAY, A BONUS, OR ANY OTHER TYPE OF MONETARY PAYMENT EXCEPT AS AUTHORIZED BY LAW; AMENDING SECTION 2-18-621, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-18-621, MCA, is amended to read:

"2-18-621. Unlawful termination — *unlawful payments.* (1) It shall be unlawful for an employer to terminate or separate an employee from his employment in an attempt to circumvent the provisions of 2-18-611, 2-18-612, and 2-18-614. ~~Should~~ If a question arise arises under this section subsection, it shall must be submitted to arbitration as provided in Title 27, chapter 5, as if an agreement described in 27-5-114 is in effect, unless there is a collective bargaining agreement to the contrary applicable.

(2) (a) *An employee who terminates employment is only entitled to receive:*

(i) *payments for accumulated wages, vacation leave as provided in 2-18-617, sick leave as provided in 2-18-618, and compensatory time earned as provided in the rules or policies of the employer; and*

(ii) *if the termination is the result of a reduction in force, severance pay and a retraining allowance as provided for in 2-18-622.*

(b) *An employee who terminates employment may not receive severance pay, a bonus, or any other type of monetary payment not described in subsection (2)(a)(i) or (2)(a)(ii).*

(3) *Subsection (2) does not apply to:*

(a) *retirement benefits;*

(b) *a payment, settlement, award, or judgment that involves a potential or actual cause of action, legal dispute, claim, grievance, contested case, or lawsuit; or*

(c) *any other payment authorized by law.”*

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

Approved April 27, 2007

CHAPTER NO. 342

[SB 251]

AN ACT ALLOWING THE STATE TO TRANSFER PUBLIC ROADWAYS TO LOCAL GOVERNMENTS IN EXCHANGE FOR THE LOCAL GOVERNMENT TAKING OVER FULL MAINTENANCE AUTHORITY; PROVIDING FOR THE PUBLIC ROADWAY TO BE KEPT IN OPERATION FOR PUBLIC PURPOSES; AND AMENDING SECTIONS 7-14-2101 AND 60-4-201, MCA.

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

Section 1. Section 7-14-2101, MCA, is amended to read:

“7-14-2101. General powers of county relating to roads and bridges — definitions. (1) The board of county commissioners, under the limitations and restrictions that are prescribed by law, may:

(a) (i) lay out, maintain, control, and manage county roads and bridges within the county;

(ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, and management of the county roads and bridges within the county as provided by law;

(b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county roads and bridges in adjacent counties, wholly or in part as agreed upon between the boards of the counties concerned;

(ii) subject to 15-10-420, levy taxes for the laying out, maintenance, control, management, and improvement of county roads and bridges in adjacent counties or shared jointly with other counties, as agreed upon between the boards of the counties concerned and as provided by law;

(c) (i) enter into agreements for adjusted annual contributions over not more than 6 years toward the cost of joint highway or bridge construction projects entered into in cooperation with other counties, the state, or the United States;

(ii) subject to 15-10-420, place a joint project in the budget and levy taxes for a joint project as provided by law.

(2) Unless the context requires otherwise, for the purposes of this chapter, the following definitions apply:

(a) ~~“bridge”~~ *“Bridge”* includes rights-of-way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills;

(b) ~~“county”~~ *“County road”* means:

(i) a road that is petitioned by freeholders, approved by resolution, and opened by a board of county commissioners in accordance with this title;

(ii) a road that is dedicated for public use in the county and approved by resolution by a board of county commissioners; or

(iii) a road that has been acquired by eminent domain pursuant to Title 70, chapter 30, and accepted by resolution as a county road by a board of county commissioners; or

(iv) a road that has been gained by the county in an exchange with the state as provided in 60-4-201.

(3) (a) Following a public hearing, a board of county commissioners may accept by resolution a road that has not previously been considered a county road but that has been laid out, constructed, and maintained with state department of transportation or county funds.

(b) A survey is not required of an existing county road that is accepted by resolution by a board of county commissioners.

(c) A road that is abandoned by the state may be designated as a county road upon the acceptance and approval by resolution of a board of county commissioners.”

Section 2. Section 60-4-201, MCA, is amended to read:

“60-4-201. Exchange of interest in real property. (1) The department may determine that an interest in real property, however acquired by it, is no longer necessary to the laying out, altering, construction, improvement, or maintenance of a highway. Except as provided in 60-4-213 through 60-4-218, the department may then exchange the interest, either as entire or partial consideration, for any other interest in real property needed for highway purposes. The department may establish the manner and terms and conditions for the exchange.

(2) Except as provided in 60-4-213 through 60-4-218, prior to making the exchange, the department shall notify all landowners whose property is adjacent to the land proposed for exchange. If any of the landowners are interested in buying the land proposed for exchange, the landowners shall notify the department of their interest by registered letter within 30 days of the receipt of the notice of exchange from the department. Upon receipt of a notice of interest, the department shall offer the land proposed for exchange for sale as provided in 60-4-202 and 60-4-203.

(3) The department may enter into an arrangement for exchange solely with a municipality or county for an interest in real property that is a public right-of-way used for transportation purposes. The department may transfer the interest to the municipality or county in exchange for the municipality or county assuming full interest and maintenance authority upon the following conditions:

(a) the real property must be maintained as a public right-of-way for transportation purposes; and

(b) no portion of the interest may be sold to or exchanged with private entities.”

Approved April 28, 2007

CHAPTER NO. 343

[SB 266]

AN ACT CLARIFYING THAT INDIVIDUAL SCHOOL DISTRICT TRUSTEE MEMBERS ACTING IN THEIR OFFICIAL CAPACITY ARE IMMUNE FROM SUIT FOR DAMAGES; AMENDING SECTION 20-3-332, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-3-332, MCA, is amended to read:

“20-3-332. Personal immunity and liability of trustees. (1) When acting in their official capacity at a regular or special meeting of the board or a committee of the board, the trustees of each district are individually immune from ~~exemplary and punitive suit for damages, as provided in 2-9-305.~~

(2) The trustees of each district are responsible for the proper administration and use of all money of the district in accordance with the provisions of law and this title. Failure or refusal to do so constitutes grounds for removal from office. ~~The liability of trustees for violations of this section must be determined in accordance with the provisions of 2-9-305.”~~

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

Approved April 28, 2007

CHAPTER NO. 344

[SB 269]

AN ACT REVISING STANDARDS FOR RECORDED DOCUMENTS; AMENDING SECTION 7-4-2636, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-4-2636, MCA, is amended to read:

“7-4-2636. Standards for recorded documents — exemptions. (1) Unless accompanied by the appropriate fee required in 7-4-2637, a document submitted for recording that conveys an interest in real property must:

(a) be legibly printed or typed in black ink in at least 10-point typeface, ~~not including the signature~~, on white paper of not less than 20-pound weight, each page of which must be separated and have dimensions of either 8 1/2 x 11 inches or 8 1/2 x 14 inches;

(b) provide the names of the parties to the conveyance on the first or second page of any document with more than one page;

(c) provide a description of the property;

(d) *have all signatures, initials, dates, handwriting, or notary stamps in blue or black ink;*

~~(d)(e)~~ *except as provided in subsection (1)(e) (1)(f) and except for page numbers or other designations, have margins that are clear of all markings in the following dimensions:*

(i) at least 3 inches at the top of the first page and at least 1 inch at the top of the second and any subsequent pages; ~~and~~

(ii) at least 1 inch on the ~~sides~~ and bottom of each page;

(iii) *at least 1/2 inch on the sides of each page*; and

~~(e)~~(f) include the name and mailing address of the person to whom the document is to be returned in the margin in the upper left-hand corner of the first page *within the 3-inch top margin and between the 1/2-inch side margins* of each document submitted and may include legibly printed or typed transactional information.

(2) Unless accompanied by the fee required in 7-4-2637, all other documents submitted for recording must meet the requirements of subsections (1)(a), ~~(1)(d)~~ (1)(e), and ~~(1)(e)~~ (1)(f).

(3) (a) Except as provided in subsection (3)(b), only documents submitted for recording and filing that conform to the provisions of subsection (1) or (2) are considered standard documents for the purposes of 7-4-2637.

(b) Documents that are acknowledged as having been executed prior to ~~July 1, 2005~~, *[the effective date of this act]* must be accepted for recording and considered standard documents, regardless of whether they conform to the provisions of subsection (1) or (2).

(4) (a) *An acknowledgment by a notary is exempt from the color, typeface, and font requirements of this section.*

(b) *An officially certified court or other government document, whether from an in-state or out-of-state office, is exempt from the provisions of this section."*

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

Approved April 28, 2007

CHAPTER NO. 345

[SB 287]

AN ACT ADOPTING THE PROVISIONS OF THE REVISED UNIFORM ANATOMICAL GIFT ACT TO CLARIFY THE PROCEDURES FOR MAKING AN ANATOMICAL GIFT AND AMENDING OR REVOKING A DOCUMENT OF GIFT; ALLOWING CERTAIN MINORS TO MAKE ANATOMICAL GIFTS; CLARIFYING THE PURPOSE OF CERTAIN ANATOMICAL GIFTS; ESTABLISHING PROCEDURES FOR ANATOMICAL GIFTS WHEN A DEATH IS UNDER INVESTIGATION; AMENDING SECTIONS 46-4-103, 50-9-105, 50-10-103, 72-17-101, 72-17-102, 72-17-108, 72-17-201, 72-17-202, 72-17-207, 72-17-208, 72-17-213, 72-17-214, AND 72-17-301, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Section 46-4-103, MCA, is amended to read:

"46-4-103. Autopsy — when conducted, scope. (1) If in the opinion of the coroner an autopsy is advisable, ~~he~~ *the coroner* shall order one performed on any dead human body for which the death requires an inquiry and shall retain a medical examiner or associate medical examiner to perform it. Performance of autopsies is within the discretion of the coroner except that the county attorney or attorney general may require one. Consent of the family or next of kin of the deceased is not required for an autopsy that is ordered by the coroner, county attorney, or attorney general. In ordering an autopsy the coroner, county

attorney, or attorney general shall order the body to be exhumed if it has been interred.

(2) The right to conduct an autopsy includes the right to retain specimens the medical examiner performing the autopsy considers necessary.

(3) The state of Montana shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the state medical examiner or attorney general. The county shall pay any expenses incurred whenever an autopsy, investigation, or inquiry is initiated at the request of the county attorney or county coroner.

(4) If a county does not provide a morgue or other facility for postmortem examination, the county coroner may order the use of a funeral home or an appropriate hospital facility for the examination.

(5) *Autopsies performed under this section on a decedent whose death is under investigation and who has made an anatomical gift or on whose behalf an anatomical gift has been made must be performed in accordance with [sections 14 and 15].*

Section 2. Section 50-9-105, MCA, is amended to read:

“50-9-105. When declaration operative. (1) A declaration becomes operative when:

(a) it is communicated to the attending physician or attending advanced practice registered nurse; and

(b) the declarant is determined by the attending physician or attending advanced practice registered nurse to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment.

(2) ~~When~~ *Except as provided in [section 13], when* the declaration becomes operative, the attending physician or attending advanced practice registered nurse and other health care providers shall act in accordance with its provisions and with the instructions of a designee under 50-9-103(1) or comply with the transfer requirements of 50-9-203.”

Section 3. Section 50-10-103, MCA, is amended to read:

“50-10-103. Adherence to do not resuscitate protocol — transfer of patients. (1) ~~Emergency~~ *Except as provided in [section 13], emergency* medical services personnel, other than physicians or advanced practice registered nurses, shall comply with the do not resuscitate protocol when presented with either do not resuscitate identification, an oral do not resuscitate order issued directly by a physician or an advanced practice registered nurse, or a written do not resuscitate order entered on a form prescribed by the department.

(2) An attending physician, an attending advanced practice registered nurse, or a health care facility unwilling or unable to comply with the do not resuscitate protocol shall take all reasonable steps to transfer a person possessing DNR identification to another physician or advanced practice registered nurse or to a health care facility in which the do not resuscitate protocol will be followed.”

Section 4. Section 72-17-101, MCA, is amended to read:

“72-17-101. Short title. This chapter may be cited as the “*Revised Uniform Anatomical Gift Act*”.

Section 5. Section 72-17-102, MCA, is amended to read:

“72-17-102. Definitions. As used in this chapter, the following definitions apply:

(1) *“Adult” means an individual who is at least 18 years of age.*

(2) *“Agent” means an individual:*

(a) *authorized to make health care decisions on the principal’s behalf by a power of attorney for health care; or*

(b) *expressly authorized to make an anatomical gift on the principal’s behalf by any other record signed by the principal.*

(3) *“Anatomical gift” means a donation of all or part of a human body to take effect upon or after death for the purposes of transplantation, therapy, research, or education.*

(4) *“Decedent” means a deceased individual whose body or part is or may be the source of an anatomical gift and includes a stillborn infant or fetus.*

(5) *“Department” means the department of public health and human services provided for in 2-15-2201.*

(6) (a) *“Disinterested witness” means a witness other than:*

(i) *the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift; or*

(ii) *another adult who exhibited special care and concern for the individual.*

(b) *The term does not include a person to which an anatomical gift could pass under 72-17-202.*

(7) *“Document of gift” means any of the following methods used to make an anatomical gift: a card; a statement attached to or imprinted on a motor vehicle operator’s driver’s license, identification card, or donor registry; a will; or other writing; or a witnessed oral statement used to make an anatomical gift.*

(8) *“Donor” means an individual who makes a gift of all or part of the individual’s body whose body or part is the subject of an anatomical gift.*

(9) *“Donor registry” means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.*

(10) *“Driver’s license” means a license or permit issued by any state or federal authority to operate a vehicle, whether or not conditions are attached to the license or permit.*

(11) *“Enucleator” means an individual who is certified pursuant to 72-17-311 to remove or process eyes or parts of eyes.*

(12) *“Eye bank” means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.*

(13) (a) *“Guardian” means a person appointed by a court to make decisions regarding the support, care, education, health, and welfare of an individual.*

(b) *The term does not include a guardian ad litem.*

(14) *“Hospital” means a facility licensed, accredited, or approved under the laws of any state or a facility operated as a hospital by the United States government, a state, or a subdivision of a state.*

(15) *“Identification card” means an identification card issued by the department of justice.*

(16) "Know" means to have actual knowledge.

(17) "Minor" means an individual who is under 18 years of age.

(8)(18) "Ophthalmologist" means a licensed physician or surgeon who specializes in the treatment or correction of diseases of the eye.

(19) "Organ procurement organization" means a person designated by the secretary of the United States department of health and human services as an organ procurement organization.

(20) "Parent" means a parent whose parental rights have not been terminated.

(9)(21) (a) "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.

(b) The term does not include the whole body.

(10)(22) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, association, *limited liability company, association, public corporation, instrumentality*, or any other legal or commercial entity.

(11)(23) "Physician" or "surgeon" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.

(12)(24) "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts *an eye bank, organ procurement organization, or tissue bank*.

(25) (a) "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education.

(b) The term does not include an individual who has made a refusal of an anatomical gift.

(26) "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(27) "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

(28) "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.

(29) "Refusal" means a record created under 72-17-201 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

(30) "Sign" means, with the present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(13)(31) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, *the United States*

Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(14)(32) “Technician” means an individual who is certified by the state board of medical examiners to remove or process a part.

(33) “Tissue” means a portion of the human body other than an organ, an eye, or blood unless the blood is donated for the purpose of research or education.

(34) “Tissue bank” means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(35) “Transplant hospital” means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.”

Section 6. Section 72-17-108, MCA, is amended to read:

“72-17-108. Coordination of procurement and use. Each hospital in this state, ~~after consultation with other hospitals and procurement organizations,~~ shall establish agreements or affiliations *with procurement organizations* for coordination of procurement and use of ~~human bodies and parts anatomical gifts.~~”

Section 7. Section 72-17-201, MCA, is amended to read:

“72-17-201. Making, amending, revoking, and refusing to make anatomical gifts by individual. (1) ~~An individual who is at least 18 years of age may:~~ *anatomical gift of a donor’s body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in this section by:*

(a) ~~make an anatomical gift for any of the purposes stated in 72-17-202; or the donor, if the donor is an adult or if the donor is a minor and is:~~

(i) *emancipated; or*

(ii) *authorized under state law to apply for a driver’s license because the donor is at least 15 years of age;*

(b) ~~limit an anatomical gift to one or more of those purposes. an agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;~~

(c) *a parent of the donor, if the donor is an unemancipated minor; or*

(d) *the donor’s guardian.*

(2) ~~An A donor may make an anatomical gift: may be made only by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and must state that it has been signed.~~

(a) *by authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor’s driver’s license or identification card;*

(b) *by a statement contained in a will;*

(c) *during a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or*

(d) as provided in subsection (3).

(3) A donor or other person authorized to make an anatomical gift under subsection (1) may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign the record, the record may be signed by another individual at the direction of the donor or the other person and must:

(a) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or other person; and

(b) state that it has been signed and witnessed as provided in subsection (3)(a).

~~(3)(4)~~ If a document of gift is attached to or imprinted on a donor's motor vehicle operator's license, the document of gift must comply with subsection (2). Revocation, suspension, expiration, or cancellation of the a driver's license or identification card issued to a donor does not invalidate the anatomical gift.

~~(4)(5)~~ A document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

~~(5)(6)~~ An anatomical gift by will takes effect upon the donor's death of the testator, whether or not the will is probated. If, after the testator's donor's death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected. A An anatomical gift made in accordance with this section is sufficient legal authority for procurement without additional authority from the donor or the donor's family or estate.

~~(6)(7)~~ ~~(a)~~ Except as provided in subsection (17) and subject to subsection (14), a donor or other person authorized to make an anatomical gift under subsection (1) may amend or revoke an anatomical gift not made by will only by:

~~(i)~~ a signed statement;

~~(ii)~~ an oral statement made in the presence of two individuals;

(a) a record signed by:

(i) the donor or the other person; or

(ii) subject to subsection (8), another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign;

~~(iii)~~(b) any form of communication during a terminal illness or injury addressed to a physician or surgeon at least two adults, one of whom is a disinterested witness; or

~~(iv)~~(c) the delivery of a signed statement to a specified donee to whom a document of gift had been delivered;;

(d) a later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency; or

(e) destroying or canceling the document of gift or portion of the document of gift used to make the anatomical gift with the intent to revoke the anatomical gift.

(8) A record signed pursuant to subsection (7)(a)(ii) must:

(a) *be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and*

(b) *state that it has been signed and witnessed as provided in subsection (8)(a).*

~~(b)~~(9) A donor shall notify the federally designated organ procurement organization of the destruction, cancellation, or mutilation of the document for the purpose of removing the person's name from the organ and tissue donation registry created in 72-17-105 and 72-17-106.

~~(7)~~(10) The donor of an anatomical gift made by will may amend or revoke the *anatomical* gift in the manner provided for amendment or revocation of wills or as provided in subsection ~~(6)~~ (7).

~~(8) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death. The donor's family or health care provider may not refuse to honor the gift or thwart the procurement of the donation.~~

~~(9)~~(11) (a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(i) a writing signed in the same manner as a document of gift;

(ii) a statement attached to or imprinted on a donor's ~~motor vehicle operator's driver's license or identification card; or~~

(iii) *the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or*

~~(iii)~~(iv) any other writing used to identify the individual as refusing to make an anatomical gift.

(b) During a terminal illness or injury, the refusal may be an oral statement or other form of communication *addressed to at least two adults, at least one of whom is a disinterested witness.*

(12) *An individual who has made a refusal may amend or revoke a refusal;*

(a) *in the manner provided in subsection (11) for making a refusal;*

(b) *by subsequently making an anatomical gift pursuant to subsection (2) or (3) that is inconsistent with the refusal; or*

(c) *by destroying or canceling the record evidencing the refusal or the portion of the record used to make the refusal with the intent to revoke the refusal.*

(13) *Except as otherwise provided in subsection (17) and subject to subsection (15), in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under subsection (2) or (3) or an amendment to an anatomical gift under subsection (7). The donor's family or health care provider may not refuse to honor the anatomical gift or thwart the procurement of the donation.*

(14) *Except as otherwise provided in subsection (18), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or a part bars all other persons from making an anatomical gift of the individual's body or a part.*

~~(10)~~(15) In the absence of an express, contrary ~~indications~~ indication by the donor or other person authorized under this section to make an anatomical gift,

an anatomical gift of a part *for one or more of the purposes set forth in subsection (1)* is neither a refusal to give other parts nor a limitation on an anatomical gift under 72-17-214 or on a removal or release of other parts under 72-17-215.

~~(14)~~(16) In the absence of contrary indications by the donor, a donor's revocation or amendment of an anatomical gift *of the donor's body or part* is not a refusal to make another anatomical gift *and does not bar another person specified in this section or 72-17-214 from making an anatomical gift of the donor's body or part*. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection ~~(9)~~ (11).

(17) *If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.*

(18) *If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal."*

Section 8. Section 72-17-202, MCA, is amended to read:

"72-17-202. Persons who may become donees — purposes for which anatomical gifts may be made. (1) The following persons may become donees of anatomical gifts for the purposes stated *if named in the document of gift*:

(a) a hospital, surgeon, physician, or procurement organization; *accredited medical school, dental school, college, or university; or other appropriate person for medical or dental education; or research, advancement of medical or dental science, therapy, or transplantation;*

~~(b) an accredited medical or dental school, college, or university for education, research, advancement of medical or dental science; or~~

~~(c) a designated individual for therapy or transplantation needed by that individual.~~

~~(b) subject to subsection (2), an individual designated by the person making the anatomical gift if the individual is the recipient of the part; or~~

~~(c) an eye bank or tissue bank.~~

~~(2) An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by a hospital. If an anatomical gift to an individual under subsection (1)(b) cannot be transplanted into the individual, the part passes in accordance with subsection (7) in the absence of an express, contrary indication by the person making the anatomical gift.~~

(3) *If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (1) but identifies the purpose for which an anatomical gift may be used, the following rules apply:*

(a) *If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.*

(b) *If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.*

(c) *If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.*

(d) *If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate organ procurement organization.*

(4) *For the purpose of subsection (3), if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the anatomical gift must be used for transplantation or therapy, if suitable. If the anatomical gift cannot be used for transplantation or therapy, the gift may be used for research or education.*

(5) *If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection (1) and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (7).*

(6) *If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor", "organ donor", or "body donor" or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy and the gift passes in accordance with subsection (7).*

(7) *For purposes of subsections (2), (5), and (6), the following rules apply:*

(a) *If the part is an eye, the gift passes to the appropriate eye bank.*

(b) *If the part is tissue, the gift passes to the appropriate tissue bank.*

(c) *If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.*

(8) *An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (1)(b), passes to the organ procurement organization as custodian of the organ.*

(9) *If an anatomical gift does not pass pursuant to subsections (1) through (8) or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.*

(10) *If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under 72-17-214, the donee may not accept the anatomical gift. For the purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is considered to know of any amendment or revocation of the anatomical gift or any refusal to make an anatomical gift on the same document of gift.*

(11) *Except as otherwise provided in subsection (1)(b), nothing in this section affects the allocation of organs for transplantation or therapy."*

Section 9. Section 72-17-207, MCA, is amended to read:

"72-17-207. Examination — autopsy — liability. (1) An anatomical gift authorizes any reasonable examination necessary to ~~assure~~ ensure medical acceptability of the gift for the purposes intended. *Unless prohibited by law other than this chapter, an examination may include an examination of all medical and dental records of the donor or prospective donor.*

(2) ~~The~~ *Except as provided in [sections 14 and 15], the provisions of this chapter are subject to the laws of this state governing autopsies.*

(3) A hospital, physician, surgeon, coroner, enucleator, technician, nurse, or other person who acts in accordance with this chapter or with the applicable

anatomical gift act of another state or attempts in good faith to do so is not liable for that act in a civil action, or criminal proceeding, or administrative proceeding.

(4) *In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely upon representations of an individual listed in 72-17-214(1)(b), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), or (1)(h) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.*

(4)(5) *An individual who makes an anatomical gift pursuant to 72-17-201 or 72-17-214 and the individual's estate are not liable for any injury or damage that may result from the making or use of the anatomical gift."*

Section 10. Section 72-17-208, MCA, is amended to read:

"72-17-208. ~~Delivery of document~~ Document of gift — delivery — validity. (1) *Delivery of a document of gift during the donor's lifetime is not required for the validity of an anatomical gift.*

(2) *If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after death. The A document of gift or a refusal to make an anatomical gift, or a copy, may be deposited in any hospital, procurement organization, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of an interested person, upon or after the donor's death, the person in possession shall allow the interested person to examine or copy the document of gift or the refusal to make an anatomical gift.*

(3) *A document of gift is valid if executed in accordance with:*

(a) *this chapter;*

(b) *the laws of the state or country where it was executed; or*

(c) *the laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.*

(4) *If a document of gift is valid under this section, the laws of this state govern the interpretation of the document of gift.*

(5) *A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked."*

Section 11. Section 72-17-213, MCA, is amended to read:

"72-17-213. Routine inquiry and required request — search and notification. (1) ~~If, at~~ *At or near the time of death of a hospitalized patient, there is no medical record that the patient has made or refused to make an anatomical gift, the hospital administrator or a representative designated by the administrator shall discuss the option to make or refuse to make an anatomical gift and request the making of an anatomical gift pursuant to 72-17-214(1) notify the appropriate procurement organization and, if the reason for death falls under 46-4-122, the coroner with jurisdiction of the imminent or actual death of the patient and, in collaboration with the procurement organization, ensure that a trained designated requestor is readily available to discuss donation opportunities with a person authorized under 72-17-214 to make an anatomical gift. The person designated must be a representative of a procurement organization or a person who has had training provided by or*

~~approved by a procurement organization. The request must be made with reasonable discretion and sensitivity to the circumstances of the family. A request is not required if the gift is not suitable, based upon accepted medical standards, for a purpose specified in 72-17-202 or if there are medical or emotional conditions under which the request would contribute to severe emotional distress. An entry must be made in the medical record of the patient, stating the name and affiliation of the individual making the request and the name, response, and relationship to the patient of the person to whom the request was made. The department shall adopt rules to implement this subsection.~~

(2) When a hospital refers an individual at or near death to a procurement organization, the organization:

(a) shall make a reasonable search of the records of the department of justice and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift;

(b) must be allowed reasonable access to information in the records of the department of justice to ascertain whether an individual at or near death is a donor; and

(c) may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

~~(2) The following persons shall make a reasonable search for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:~~

~~(a) a law enforcement officer, fireman, paramedic, or other emergency rescuer finding an individual whom the searcher believes is dead or near death; and~~

~~(b) a hospital, upon the admission of an individual at or near the time of death, if there is not immediately available any other source of that information.~~

(3) A hospital, as soon as practical after the arrival of an individual reasonably believed dead or near death, shall make a reasonable search of the individual for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift if there is not immediately available any other source of that information.

~~(3)(4) If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by subsection (2)(a) (3) and the individual or body to whom it relates is taken to a hospital, the hospital must be notified of the contents and the document or other evidence must be sent to the hospital.~~

~~(4)(5) If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been made pursuant to 72-17-214(1) or a release and removal of a part has been permitted pursuant to 72-17-215 or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital; if not, it shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part.~~

(5)(6) A person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability but ~~is~~ *may be* subject to appropriate administrative sanctions.

(7) *Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.*

(8) *Upon referral by a hospital under subsection (2), a procurement organization shall make a reasonable search for any person listed in 72-17-214 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information."*

Section 12. Section 72-17-214, MCA, is amended to read:

"72-17-214. Making, revoking, and objecting to anatomical gifts by others. (1) ~~Any~~ *Subject to subsections (2) and (3), any member of the following classes of persons who is reasonably available, in the order of priority listed, may make an anatomical gift of all or a part of the decedent's body for an authorized a purpose authorized in 72-17-201(1), unless the decedent, at the time of death, had made an unrevoked refusal to make that anatomical gift as provided for in 72-17-201:*

(a) *an agent of the decedent at the time of death who could have made an anatomical gift under 72-17-201 immediately before the decedent's death;*

(a)(b) ~~the~~ *the spouse of the decedent;*

(a)(c) ~~an~~ *an adult son or daughter of the decedent;*

(a)(d) ~~either~~ *either parent of the decedent;*

(a)(e) ~~an~~ *an adult brother or sister of the decedent;*

(a)(f) ~~adult~~ *adult grandchildren of the decedent;*

(a)(g) ~~a~~ *a grandparent of the decedent; and*

(a)(h) ~~a~~ *a guardian of the person of the decedent at the time of death; and*

(a)(i) ~~any~~ *any other person having the authority to dispose of the decedent's body.*

(2) *If there is more than one member of a class listed in subsection (1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), or (1)(i) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift can pass under 72-17-202 knows of an objection by another member of the class. If an objection is known, the anatomical gift may be made only by a majority of the members of the class who are reasonably available.*

(2)(3) ~~An~~ *An anatomical gift may not be made by a person listed in subsection (1) if:*

(a) ~~a~~ *a person in a prior class is reasonably available at the time of death to make or to object to the making of an anatomical gift; or*

(b) ~~the~~ *the person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or*

(c) ~~the~~ *the person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.*

~~(3)~~(4) An anatomical gift by a person authorized under subsection (1) must be made by:

(a) a document of gift signed by the person; or

(b) the person's telegraphic, recorded telephonic, or other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.

(5) *Subject to subsection (6), an anatomical gift by a person authorized under subsection (1) may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift may be:*

(a) *amended only if a majority of the reasonably available members agree to the amending of the gift; or*

(b) *revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.*

~~(4)~~(6) ~~An anatomical gift by a person authorized under subsection (1) may be revoked by any member of the same or a prior class. A revocation made under subsection (5) is effective only if, before procedures have begun an incision has been made for the removal of a part from the body of the decedent or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, physician, surgeon, technician, or enucleator removing the part knows of the revocation.~~

~~(5)~~(7) A failure to make an anatomical gift under subsection (1) is not an objection to the making of an anatomical gift."

Section 13. Anatomical gifts — advance health care directive. (1) For the purposes of this section, the following definitions apply:

(a) "Advance health care directive" means a power of attorney for health care or a record signed by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor.

(b) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(c) "Health care decision" means any decision made regarding the health care of the prospective donor.

(2) If a prospective donor who is in a health care facility has a declaration or advance health care directive, measures necessary to ensure the medical suitability of an organ for transplantation or therapy may not be withheld or withdrawn from the prospective donor unless the declaration expressly provides to the contrary.

Section 14. Cooperation between coroner, medical examiner, county attorney, and procurement organization. (1) A county coroner, medical examiner, or associate medical examiner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

(2) A part may not be removed from the body of a decedent under the jurisdiction of a coroner or medical examiner for transplantation, therapy, research, or education unless the part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of a coroner or medical examiner may

not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude a coroner or medical examiner from performing the medicolegal investigation upon the body or parts of a decedent under the jurisdiction of the coroner or medical examiner.

Section 15. Facilitation of anatomical gift from decedent whose body is under jurisdiction of coroner, medical examiner, or county attorney. (1) Upon request of a procurement organization, a county coroner, medical examiner, or associate medical examiner shall release to the procurement organization the name, contact information, and available medical history of a decedent whose body is under the jurisdiction of the coroner or medical examiner. If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, the coroner or medical examiner shall release postmortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the postmortem examination results or other information received from the coroner or medical examiner only if relevant to transplantation or therapy.

(2) For the purpose of expediting an anatomical gift, the coroner or medical examiner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, x-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the coroner's or medical examiner's jurisdiction and that the coroner or medical examiner determines may be relevant to the investigation.

(3) A person that has any information requested by a coroner or medical examiner pursuant to subsection (2) shall provide that information as expeditiously as possible to allow the coroner or medical examiner to conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of transplantation, therapy, research, or education.

(4) If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of a coroner or medical examiner and a postmortem examination is not required or if the coroner or medical examiner determines that a postmortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the coroner or medical examiner and procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation, therapy, research, or education.

(5) If an anatomical gift of a part from the decedent under the jurisdiction of a coroner, medical examiner, or county attorney has been or might be made but the coroner, medical examiner, or county attorney initially believes that the recovery of the part could interfere with the postmortem investigation into the decedent's cause or manner of death, the collection of evidence, or the description, documentation, or interpretation of injuries on the body, the coroner, medical examiner, or county attorney may consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. After consultation, the coroner, medical examiner, or county attorney may allow the recovery.

(6) If the coroner, medical examiner, county attorney, or designee denies recovery, the person denying recovery shall:

(a) explain in a record the specific reasons for not allowing recovery of the part;

(b) include the specific reasons in the records of the coroner or medical examiner; and

(c) provide a record with the specific reasons to the procurement organization.

(7) If a coroner, medical examiner, county attorney, or designee allows recovery of a part under subsection (4) or (5), the procurement organization, upon request, shall cause the physician or technician who removes the part to provide the requestor with a record describing the condition of the part, a biopsy, a photograph, and any other information and observations that would assist in the postmortem examination.

Section 16. Section 72-17-301, MCA, is amended to read:

“72-17-301. Rights and duties at death. (1) *Rights Subject to 72-17-202 and [section 15], the rights of a donee created by an anatomical gift are superior to rights of others under 72-17-214(1), except with respect to autopsies. A donee may accept or reject an anatomical gift. If the donee accepts an anatomical gift of the entire body, the donee, subject to the terms of the gift and this chapter, may allow embalming, burial, or cremation and the use of the body in funeral services. If the anatomical gift is of a part of the body, the donee, upon the death of the donor and before embalming, burial, or cremation shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the person under obligation to dispose of the body.*

(2) *The time of death must be determined by a physician or surgeon who attends the donor at death or, if none, the physician or surgeon, or coroner who certifies the death. Neither the physician or surgeon who attends the donor at death nor the physician or surgeon, or coroner who determines the time of death may participate in the procedures for removing or transplanting a part unless the document of gift designates a particular physician or surgeon pursuant to 72-17-201(4)(5).*

(3) *Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under 72-17-202 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.*

(4) *Unless prohibited by law other than this chapter, an examination under 72-17-213(2)(c) or subsection (3) of this section may include an examination of all medical and dental records of the donor or prospective donor.*

(5) *Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.*

(6) *Upon referral by a hospital under 72-17-213(2), a procurement organization shall make a reasonable search for any person listed in 72-17-214 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.*

(7) *If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes after determination of death by a physician or surgeon.”*

Section 17. False acts concerning document of gift — penalty. Any person that knowingly falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal in order to obtain a financial gain commits a felony and upon conviction is subject to a fine not exceeding \$50,000 or imprisonment not exceeding 5 years, or both.

Section 18. Relation to Electronic Signatures in Global and National Commerce Act. [This act] modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(a) of that act, 15 U.S.C. 7001, or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Section 19. Codification instruction. [Sections 13 through 15 and 17] are intended to be codified as an integral part of Title 72, chapter 17, and the provisions of Title 72, chapter 17, apply to [sections 13 through 15 and 17].

Section 20. Applicability. [This act] applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift made before October 1, 2007.

Approved April 28, 2007

CHAPTER NO. 346

[SB 289]

AN ACT ALLOWING PUPILS OF PUBLIC AND NONPUBLIC SCHOOLS TO CARRY AND SELF-ADMINISTER PRESCRIBED MEDICATION FOR ASTHMA, SEVERE ALLERGIES, OR ANAPHYLAXIS; AMENDING SECTION 20-5-420, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 20-5-420, MCA, is amended to read:

“20-5-420. Self-administration or possession of ~~asthma~~ asthma, severe allergy, or anaphylaxis medication. (1) As used in this section, the following definitions apply:

(a) “Anaphylaxis” means a systemic allergic reaction that can be fatal in a short time period and is also known as anaphylactic shock.

(b) “Asthma” means a chronic disorder or condition of the lungs that requires lifetime, ongoing, medical intervention.

(c) “Medication” means a medicine, including inhaled bronchodilators, inhaled corticosteroids, and autoinjectable epinephrine, prescribed by a licensed physician as defined in 37-3-102, a physician assistant who has been authorized to prescribe ~~asthma~~ medications as provided in 37-20-404, or an advanced practice registered nurse with prescriptive authority as provided in 37-8-202(5).

(d) “Self-administration” means a pupil’s discretionary use of the ~~asthma~~ medication prescribed for the pupil.

(e) “Severe allergies” means a life-threatening hypersensitivity to a specific substance such as food, pollen, or dust.

(2) A school, whether public or nonpublic, shall permit the *possession or self-administration* of medication, *as prescribed*, by a pupil with asthma, *severe allergies, or anaphylaxis* if the parents or guardians of the pupil provide to the school:

(a) written authorization, acknowledging and agreeing to the liability provisions in subsection (4), for the *possession or self-administration* of medication, *as prescribed*;

(b) a written statement from the pupil's physician, physician assistant, or advanced practice registered nurse containing the following information:

(i) the name and purpose of the medication;

(ii) the prescribed dosage; and

(iii) the time or times at which or the special circumstances under which the medication is to be administered, *as prescribed*;

(c) documentation that the pupil has demonstrated to the health care practitioner and the school nurse, if available, the skill level necessary to ~~administer the~~ *self-administer the asthma, severe allergy, or anaphylaxis* medication as prescribed; and

(d) documentation that the pupil's physician, physician assistant, or advanced practice registered nurse has formulated a written treatment plan for managing asthma, *severe allergies, or anaphylaxis* episodes of the pupil and for medication use, *as prescribed*, by the pupil during school hours.

(3) The information provided by the parents or guardians must be kept on file in the office of the school nurse or, in the absence of a school nurse, the school's administrator.

(4) The school district or nonpublic school and its employees and agents are not liable as a result of any injury arising from the self-administration of medication by the pupil unless an act or omission is the result of gross negligence, willful and wanton conduct, or an intentional tort. The parents or guardians of the pupil must be given a written notice and sign a statement acknowledging that the school district or nonpublic school may not incur liability as a result of any injury arising from the self-administration of medication by the pupil and that the parents or guardians shall indemnify and hold harmless the school district or nonpublic school and its employees and agents against any claims, except a claim based on an act or omission that is the result of gross negligence, willful and wanton conduct, or an intentional tort.

(5) The permission for self-administration of *asthma, severe allergy, or anaphylaxis* medication is effective for the school year for which it is granted and must be renewed each subsequent school year or, if the medication *expires or the dosage, frequency of administration, or other conditions change*, upon fulfillment of the requirements of this section.

(6) If the requirements of this section are fulfilled, a pupil with asthma, *severe allergies, or anaphylaxis* may possess and use the pupil's medication, *as prescribed*:

(a) while in school;

(b) while at a school-sponsored activity;

(c) while under the supervision of school personnel;

(d) before or after normal school activities, such as while in before-school or after-school care on school-operated property; or

(e) while in transit to or from school or school-sponsored activities.

(7) If provided by the parent or guardian and in accordance with documents provided by the pupil's physician, physician assistant, or advanced practice registered nurse, *asthma, severe allergy, or anaphylaxis medication may be kept by the pupil and backup medication must be kept at a pupil's school in a predetermined location or locations to which the pupil has access in the event of an asthma, severe allergy, or anaphylaxis emergency.*

(8) *Immediately after using epinephrine during school hours, a student shall report to the school nurse or other adult at the school who shall provide followup care, including making a 9-1-1 emergency call.*

(8)(9) Youth correctional facilities are exempt from this section and shall adopt policies related to access and use of asthma, *severe allergy, or anaphylaxis medications.*"

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved April 28, 2007

CHAPTER NO. 347

[SB 295]

AN ACT STATUTORILY PROVIDING FOR THE MONTANA NATIONAL GUARD YOUTH CHALLENGE PROGRAM; SPECIFYING A DEFINITION, LEGISLATIVE INTENT, AND STAFFING; AMENDING SECTION 10-1-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, federal law, 32 U.S.C. 509, authorizes the Secretary of Defense to use the National Guard to conduct a civilian youth opportunities program to be known as the "National Guard Youth Challenge Program"; and

WHEREAS, federal law provides that the Secretary of Defense shall carry out the program by entering into agreement with the Governor of a state or the commanding general of the state National Guard; and

WHEREAS, there is a Master Youth Programs Cooperative Agreement number W9124V-05-2-4000 between the State of Montana and the National Guard Bureau, which provides for the Montana National Guard Youth Challenge Program; and

WHEREAS, the Montana National Guard Youth Challenge Program became operational on September 1, 1999, with federal and state funding; and

WHEREAS, the funding is appropriated through the state general appropriations act; and

WHEREAS, statutory language referencing the program would help articulate the operational guidelines for the program.

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

Section 1. Section 10-1-101, MCA, is amended to read:

"10-1-101. Definitions. Unless the context requires otherwise, in this title, the following definitions apply:

(1) "Department" means *the* department of military affairs.

(2) "Militia" means all the military forces of this state, whether organized or active or inactive.

(3) “National guard” means the army national guard and the air national guard.

(4) “Officer” means a commissioned or warrant officer.

(5) “Youth challenge program” means the Montana national guard youth challenge program established pursuant to [section 2].”

Section 2. Montana national guard youth challenge program authorized. A youth challenge program provided for pursuant to 32 U.S.C. 509 may be established in the department.

Section 3. Legislative intent. It is the intent of the legislature that:

(1) the youth challenge program assist youth between 16 and 18 years of age to achieve a quality education and develop the skills and abilities necessary to become productive citizens;

(2) the youth challenge program focus on the physical, emotional, and educational needs of youth within a voluntary, highly structured environment;

(3) eligible participants be drug-free, not be on parole or probation for other than juvenile-status offenses, not have been indicted for or charged with an offense other than a juvenile-status offense, and not have been convicted of a felony or capital offense;

(4) recruiting for the youth challenge program treat all eligible youth equitably and seek representation from different genders, ethnic groups, and geographic locations;

(5) the youth challenge program conduct structured training consisting of a residential phase and a postresidential phase with curriculum that focuses on academic excellence, including the successful completion of the tests for general educational development, and on physical fitness, job skills, service to the community, health and hygiene, responsible citizenship, leadership, how to follow directions, and life-coping skills; and

(6) the youth challenge program be conducted in cooperation with other community programs for at-risk youth.

Section 4. Administration and staff. Subject to 32 U.S.C. 509 and its implementing regulations and applicable agreements, the youth challenge program may be staffed by an administrator and the professional, technical, secretarial, and clerical employees necessary for the performance of the youth challenge program’s functions.

Section 5. Codification instruction. [Sections 2 through 4] are intended to be codified as an integral part of Title 10, chapter 1, and the provisions of Title 10, chapter 1, apply to [sections 2 through 4].

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 27, 2007

CHAPTER NO. 348

[SB 296]

AN ACT REVISING THE QUOTA SYSTEM FOR ISSUING RESTAURANT BEER AND WINE LICENSES; REVISING THE NUMBER OF QUOTA AREAS; INCREASING THE NUMBER OF RESTAURANT BEER AND WINE

LICENSES THAT MAY BE ISSUED IN A QUOTA AREA; AMENDING SECTION 16-4-420, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 16-4-420, MCA, is amended to read:

“16-4-420. Restaurant beer and wine license. (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and conditions:

(a) in the case of an individual applicant:

(i) the applicant’s past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(ii) the applicant is not under 19 years of age;

(b) in the case of a corporate applicant:

(i) in the case of a corporation listed on a national stock exchange, the corporate officers and the board of directors must meet the requirements of subsection (1)(a);

(ii) in the case of a corporation not listed on a national stock exchange, each owner of 10% or more of the outstanding stock must meet the requirements for an individual listed in subsection (1)(a); and

(iii) the corporation is authorized to do business in Montana;

(c) in the case of any other business entity, including but not limited to partnerships, including limited liability partnerships, limited partnerships, and limited liability companies, but not including any form of a trust:

(i) if the applicant consists of more than one individual, all individuals must meet the requirements of subsection (1)(a); and

(ii) if the applicant consists of more than one corporation, all corporations listed on a national stock exchange must meet the requirements of subsection (1)(b)(i) and corporations not listed on a national stock exchange must meet the requirements of subsection (1)(b)(ii);

(d) the applicant operates a restaurant at the location where the restaurant beer and wine license will be used or satisfies the department that:

(i) the applicant intends to open a restaurant that will meet the requirements of subsection (6) and intends to operate the restaurant so that at least 65% of the restaurant’s gross income during its first year of operation is expected to be the result of the sale of food;

(ii) the restaurant beer and wine license will be used in conjunction with that restaurant, that the restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be stated on the food bill; and

(iii) the restaurant will serve beer and wine from a service bar, as service bar is defined by the department by rule;

(e) the applicant understands and acknowledges in writing on the application that this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine license will be used, the activity must be

discontinued or the machines must be removed before the restaurant beer and wine license takes effect; and

(f) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current seating capacity if the restaurant is operating.

(2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic beverage may not be considered for a restaurant beer and wine license at the same location.

(b) (i) ~~A restaurant~~ *An on-premises retail licensee that who sells its the licensee's existing retail license may not apply for a license under this section for a period of 1 year from the date that license is transferred to a new purchaser.*

(ii) *A person, including an individual, with an ownership interest in an existing on-premises retail license that is being transferred to a new purchaser may not attain an ownership interest in a license applied for under this section for a period of 1 year from the date that the existing on-premises retail license is transferred to a new purchaser.*

(3) A completed application for a license under this section and the appropriate application fee, as provided in subsection (11), must be submitted to the department. The department shall investigate the items relating to the application as described in subsections (3)(a) through (3)(d). Based on the results of the investigation and the exercise of its sound discretion, the department shall determine whether:

(a) the applicant is qualified to receive a license;

(b) the applicant's premises are suitable for the carrying on of the business;

(c) the requirements of this code and the rules promulgated by the department are complied with; and

(d) the seating capacity stated on the application is correct.

(4) An application for a beer and wine license submitted under this section is subject to the provisions of 16-4-203, 16-4-207, and 16-4-405.

(5) If a premises proposed for licensing under this section is a new or remodeled structure, then the department may issue a conditional license prior to completion of the premises based on reasonable evidence, including a statement from the applicant's architect or contractor confirming that the seating capacity stated on the application is correct, that the premises will be suitable for the carrying on of business as a bona fide restaurant, as defined in subsection (6).

(6) For purposes of this section, "restaurant" means a public eating place where individually priced meals are prepared and served for on-premises consumption. At least 65% of the restaurant's annual gross income from the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file with the department a statement, in a form approved by the department, attesting that at least 65% of the gross income of the restaurant during the prior year resulted from the sale of food. The restaurant must have a dining room, a kitchen, and the number and kinds of employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use as a full-service restaurant. A full-service restaurant is a restaurant that provides an evening dinner meal.

(7) (a) (i) Subject to the conditions of subsection (7)(a)(ii), a restaurant beer and wine license may be transferred, upon approval by the department, from the original applicant to a new owner of the restaurant if there is no change of location, and the original owner may transfer location after the license is issued by the department to a new location, upon approval by the department.

(ii) A new owner may not transfer the license to a new location for a period of 1 year following the transfer of the license to the new owner.

(b) A license issued under this section may be jointly owned, and the license may pass to the surviving joint tenant upon the death of the other tenant. However, the license may not be transferred to any other person or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property upon the death of the owner in this state or in another state.

(c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of the department, transfer a restaurant beer and wine license to a new owner.

(8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

(i) *except as provided in subsection (8)(c), for a restaurant located in a quota area with a population of 5,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;*

~~(i)(ii)~~ (ii) for a restaurant located in a quota area with a population of ~~20,000~~ 5,001 to 20,000 persons ~~or fewer~~, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than ~~80%~~ 160% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

~~(ii)(iii)~~ (iii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than ~~50%~~ 100% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

~~(iii)(iv)~~ (iv) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than ~~40%~~ 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and

~~(iv)(v)~~ (v) for a restaurant located in a quota area that is also a resort community, as the resort community is designated by the department of commerce under 7-6-1501(5), if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal to or less than ~~100%~~ 200% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.

(b) In determining the number of restaurant beer and wine licenses that may be issued under this subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through ~~(8)(a)(iii)~~ (8)(a)(v), the department shall round to the nearer whole number.

(c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota area under ~~subsections~~ subsection (8)(a)(i)

through (8)(a)(iii), there must be a one-time adjustment of ~~one~~ *four* additional license licenses for that quota area.

(d) If there are more applicants than licenses available in a quota area, then the license must be awarded by lottery as provided in subsection (9).

(9) (a) When a restaurant beer and wine license becomes available by the initial issuance of licenses under this section or as the result of an increase in the population in the quota area, the nonrenewal of a restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department shall advertise the availability of the license in the quota area for which it is available. If there are more applicants than number of licenses available, the license must be awarded to an applicant by a lottery.

(b) Any applicant who operates a restaurant that meets the qualifications of subsection (6) for at least 12 months prior to the filing of an application must be given a preference, and any unsuccessful lottery applicants from previous selections must also be given a preference. An applicant with both preferences must be awarded a license before any applicant with only one preference.

(c) The department shall numerically rank all applicants in the lottery. Only the successful applicants will be required to submit a completed application and a one-time required fee. An applicant's ranking may not be sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the intended license advertised by the department or to the number of licenses determined under subsection (8) when there are more applicants than licenses available. The applicant's qualifications for any other restaurant beer and wine license awarded by lottery must be determined at the time of the lottery.

(10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises consumption.

(11) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20% of the initial licensing fee. If the department does not make a decision either granting or denying the license within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies an application, the application fee, plus any interest, less a processing fee established by rule, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

(a) \$5,000 for restaurants with a stated seating capacity of 60 persons or less;

(b) \$10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

(c) \$20,000 for restaurants with a stated seating capacity of 101 persons or more.

(12) The annual fee for a restaurant beer and wine license is \$400.

(13) If a restaurant licensed under this part increases the stated seating capacity of the licensed restaurant or if the department determines that a licensee has increased the stated seating capacity of the licensed restaurant,

then the licensee shall pay to the department the difference between the fees paid at the time of filing the original application and issuance of a license and the applicable fees for the additional seating.

(14) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the total licenses issued.

(15) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license.”

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 July 1, 2007.

Approved April 28, 2007

CHAPTER NO. 349

[SB 302]

AN ACT REMOVING SPECIAL SPEED RESTRICTIONS FOR CERTAIN PORTIONS OF U.S. HIGHWAY 93; AND AMENDING SECTION 61-8-303, MCA.

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

Section 1. Section 61-8-303, MCA, is amended to read:

“61-8-303. Speed restrictions. (1) Except as provided in 61-8-309, 61-8-310, and 61-8-312, ~~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 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)(3) Subject to the maximum speed limits set forth in ~~subsections subsection (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)(4) Except when a special hazard exists that requires lower speed for compliance with subsection (4) (3), the limits specified in 61-8-312 and in this section or established as authorized in 61-8-309 through 61-8-311 and 61-8-313 are the maximum lawful speeds allowed.

(6)(5) "Daytime" means from one-half hour before sunrise to one-half hour after sunset. "Nighttime" means at any other hour.

(7)(6) The speed limits set forth in this section may be altered by the transportation commission or a local authority as authorized in 61-8-309, 61-8-310, 61-8-313, and 61-8-314."

Approved April 28, 2007

CHAPTER NO. 350

[SB 308]

AN ACT ALLOWING CERTAIN PROPERTY OWNERS TO VOTE IN A ROAD LEVY ELECTION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Qualifications to vote on question of additional mill levy.

(1) An individual is entitled to vote at an election conducted pursuant to 15-10-425 to exceed the levy authority provided for in 7-14-2501(1) if the individual possesses all of the qualifications required of electors under the general election laws of the state and is:

- (a) a resident of the area subject to the proposed tax; or
- (b) the owner of taxable property located in the area subject to the proposed tax.

(2) An individual who is the owner of the property described in subsection (1)(b) need not possess the qualifications required of an elector in subsection (1)(a) if the elector is qualified to vote in any county of the state and files proof of registration with the election administrator at least 20 days prior to the election in which the individual intends to vote.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 14, part 25, and the provisions of Title 7, chapter 14, part 25, apply to [section 1].

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

Approved April 27, 2007

CHAPTER NO. 351

[SB 312]

AN ACT PROHIBITING ECONOMIC CREDENTIALING IN EXCHANGE FOR HOSPITAL OR MEDICAL STAFF PRIVILEGES; PROVIDING DEFINITIONS; AMENDING SECTIONS 50-5-105 AND 50-5-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Economic credentialing of physicians prohibited — definitions. (1) A hospital may not engage in economic credentialing by:

(a) except as may be required for medicare certification or for accreditation by the joint commission on accreditation of healthcare organizations, requiring a physician requesting medical staff membership or medical staff privileges to agree to make referrals to that hospital or to any facility related to the hospital;

(b) refusing to grant staff membership or medical staff privileges or conditioning or otherwise limiting a physician's medical staff participation because the physician or a partner, associate, or employee of the physician:

(i) provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility; or

(ii) participates or does not participate in any particular health plan; or

(c) refusing to grant participatory status in a hospital or hospital system health plan to a physician or a partner, associate, or employee of the physician because the physician or partner, associate, or employee of the physician provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility.

(2) Notwithstanding the prohibitions in subsection (1), a hospital may refuse to appoint a physician to the governing body of the hospital or to the position of president of the medical staff or presiding officer of a medical staff committee if the physician or a partner, or employee of the physician provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility.

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

(a) "Economic credentialing" means the denial of a physician's application for staff membership or clinical privileges to practice medicine in a hospital on criteria other than the individual's training, current competence, experience, ability, personal character, and judgment. This term does not mean use by the hospital of:

(i) exclusive contracts with physicians;

(ii) medical staff on-call requirements;

(iii) adherence to a formulary approved by the medical staff; or

(iv) other medical staff policy adopted to manage health care costs or improve quality.

(b) "Health care facility" has the meaning provided in 50-5-101 and includes diagnostic facilities.

(c) "Health plan" means a plan offered by any person, employer, trust, government agency, association, corporation, or other entity to provide, sponsor, arrange for, indemnify another for, or pay for health care services to eligible members, insureds, enrollees, employees, participants, beneficiaries, or dependents, including but not limited to a health plan provided by an insurance company, health service organization, health maintenance organization, preferred provider organization, self-insured health plan, captive insurer,

multiple employee welfare arrangement, workers' compensation plan, medicare, or medicaid.

(d) "Physician" has the meaning provided in 37-3-102.

(4) For the purposes of this section, the provisions of 50-5-207 do not apply.

Section 2. Section 50-5-105, MCA, is amended to read:

"50-5-105. Discrimination prohibited. (1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.

(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.

(b) For the purposes of this subsection (2), the following definitions apply:

(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.

(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.

(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient must continue and remain unaffected.

(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 6.

~~(5) This section does not preclude a hospital from limiting membership or privileges based on education, training, or other relevant criteria."~~

Section 3. Section 50-5-207, MCA, is amended to read:

"50-5-207. Denial, suspension, or revocation of health care facility license — provisional license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without the patient's or resident's consent.

(h) Any provision of parts 1 through 3, *except [section 1]*, is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.

(4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 50, chapter 5, and the provisions of Title 50, chapter 5, apply to [section 1].

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

Section 6. Termination. [This act] terminates June 30, 2009.

Approved April 28, 2007

CHAPTER NO. 352

[SB 317]

AN ACT REVISING LAWS RELATED TO CONSERVATION EASEMENTS; REQUIRING THAT A CONSERVATION EASEMENT MAY NOT BE EXTINGUISHED BY TAKING FEE TITLE TO THE LAND TO WHICH THE CONSERVATION EASEMENT IS ATTACHED; CLARIFYING THAT A CONSERVATION EASEMENT RUNS WITH THE LAND; CLARIFYING THE REPORTING PROCESS OF CONSERVATION EASEMENT INFORMATION TO THE DEPARTMENT OF REVENUE; REQUIRING COORDINATION BETWEEN THE DEPARTMENT OF REVENUE AND DEPARTMENT OF ADMINISTRATION ON THE COLLECTION AND TRANSFER OF CONSERVATION EASEMENT INFORMATION; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO MAKE CONSERVATION EASEMENT INFORMATION ACCESSIBLE ON THE DEPARTMENT'S WEBSITE AND AVAILABLE TO THE NATURAL HERITAGE PROGRAM; AMENDING SECTIONS 70-17-111, 70-17-203, 76-6-207, AND 90-1-404, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Section 70-17-111, MCA, is amended to read:

"70-17-111. How servitude extinguished. (1) *Except as provided in subsection (2), a servitude is extinguished:*

(1)(a) by the vesting of the right to the servitude and the right to the servient tenement in the same person;

(2)(b) by the destruction of the servient tenement;

(3)(c) by the performance of any act upon either tenement by the owner of the servitude or with ~~his~~ *the owner's* assent ~~which that~~ is incompatible with its nature or exercise; or

(4)(d) when the servitude was acquired by enjoyment, by disuse thereof of *the servitude* by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

(2) *A conservation easement may not be extinguished by taking fee title to the land to which the conservation easement is attached."*

Section 2. Section 70-17-203, MCA, is amended to read:

"70-17-203. ~~What covenants~~ *Covenants that run with the land.* (1) Every covenant contained in a grant of an estate in real property, ~~which that~~ is made for the direct benefit of the property or some part of ~~it~~ *the property* then in existence, runs with the land.

(2) Subsection (1) includes:

(a) covenants of warranty, for quiet enjoyment, or for further assurance on the part of the grantor and covenants for the payment of rent or of taxes or assessments upon the land on the part of a grantee; *and*

(b) *conservation easements pursuant to 76-6-209.*

(3) A covenant for the addition of some new thing to real property or for the direct benefit of some part of the property not then in existence or annexed ~~thereto~~ *to the property*, when contained in a grant of an estate in ~~such~~ *the* property and made by the covenantor expressly for ~~his~~ *covenantor's* assigns or to the assigns of the covenantee, runs with the land so far as the assigns ~~thus~~ mentioned are concerned."

Section 3. Section 76-6-207, MCA, is amended to read:

"76-6-207. *Recording and description of easement.* (1) All conservation easements ~~shall~~ *must* be ~~duly~~ recorded in the county where the land lies so as to effect ~~their titles~~ *the land's title* in the manner of other conveyances of interest in land and ~~shall~~ *must* describe the land subject to ~~said~~ *the* conservation easement by adequate legal description or by reference to a recorded plat showing its boundaries.

(2) (a) The county clerk and recorder shall, upon recording, ~~cause~~ *place* a copy of the conservation easement ~~to be placed~~ in a separate file within the office of the county clerk and recorder.

(b) ~~and shall cause a copy of the conservation easement to be mailed to the department of revenue~~ *The county clerk and recorder shall provide a copy of the conservation easement to the department of revenue office in that county within 30 days of the receipt of the original conservation easement."*

Section 4. Section 90-1-404, MCA, is amended to read:

"90-1-404. *Land information — management — duties of department.* (1) The department shall:

(a) serve as the administrator of the account;

(b) work with all federal, state, local, private, and tribal entities to develop and maintain land information;

(c) annually develop a land information plan that describes the priority needs to collect, maintain, and disseminate land information. The land

information plan must have as a component a proposed budget designed to accomplish the goals and objectives of the plan.

(d) present the land information plan to the council for review and endorsement;

(e) establish, by administrative rule, an application process and a granting process that must be used to distribute funds in the account. The granting process must give preference to interagency or intergovernmental grant requests whenever multiple state agencies, local governments or agencies, or Indian tribal governments or tribal entities have partnered together to meet a requirement of the land information plan.

(f) review all grant applications from state agencies, local governments or agencies, and Indian tribal governments or tribal entities for the purpose of implementing the land information plan;

(g) monitor the use of grant funds distributed to a state agency, a local government or agency, or an Indian tribal government or tribal entity or to any combination of state, local, and Indian tribal governments or entities to ensure that the use of the funds complies with the purposes of this part;

(h) coordinate the development of technological standards for creating land information;

(i) serve as the primary point of contact for national, regional, state, and other GIS coordinating groups for the purpose of channeling issues and projects to the appropriate individual, organization, agency, or other entity;

(j) provide administrative and staff support to the council, including paying the expenses of the council;

(k) annually prepare a budget to carry out the department's responsibilities described in this section; ~~and~~

(l) report to the governor and the legislature, as provided for in 5-11-210, on the progress made in the ongoing collection, maintenance, standardization, and dissemination of land information; *and*

(m) *implement the conservation easement information requirements as provided for in [section 5].*

(2) To fulfill the responsibilities described in subsection (1), the department or any recipient of funds granted pursuant to this part may contract with a public or private entity."

Section 5. Additional reporting procedures — coordination of information collection, transfer, and accessibility. (1) A public body or qualified private organization holding a conservation easement before [the effective date of this section] shall mail or electronically transfer a copy of that conservation easement to the department of revenue within 6 months of [the effective date of this section].

(2) The department of revenue shall review conservation easement agreements collected pursuant to 76-6-207 and subsection (1) of this section and record the:

(a) legal description of the conservation easement as it relates to the established property boundaries identified in the conservation easement agreement;

(b) approximate acreage as identified in the conservation easement agreement;

- (c) date of the conservation easement agreement;
- (d) book and page or document number as provided for in 7-4-2617; and
- (e) the name of the conservation easement grantee.

(3) (a) The department of revenue shall transfer conservation easement information collected pursuant to 76-6-207 and subsections (1) and (2) of this section to the department of administration.

(b) The department of revenue shall coordinate with the department of administration to develop procedures regarding the collection and transfer of conservation easement information between the two agencies.

(c) The department of administration shall convert conservation easement information received from the department of revenue to a digital format for land information purposes authorized in Title 90, chapter 1, part 4, that can be accessed through the department of administration's website.

(d) The department of administration shall provide the conservation easement data to the Montana natural heritage program for incorporation into appropriate databases developed or maintained for the purposes of Title 90, chapter 15.

Section 6. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 76, chapter 6, part 2, and the provisions of Title 76, chapter 6, part 2, apply to [section 5].

Section 7. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 5] is effective October 1, 2007.

Approved April 27, 2007

CHAPTER NO. 353

[SB 318]

AN ACT AMENDING MONTANA'S RECREATIONAL USE STATUTE TO PROVIDE LIMITED LIABILITY TO PRIVATE LANDOWNERS WHO PROVIDE AIRSTRIPS FOR THE PUBLIC WITHOUT VALUABLE CONSIDERATION; AMENDING SECTIONS 70-16-301 AND 70-16-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 70-16-301, MCA, is amended to read:

“70-16-301. Recreational purposes defined. “Recreational purposes”, as used in this part, includes hunting, fishing, swimming, boating, waterskiing, camping, picnicking, pleasure driving, biking, winter sports, hiking, touring or viewing cultural and historical sites and monuments, spelunking, or other pleasure expeditions. *The term includes the private, noncommercial flying of aircraft in relation to private land.*”

Section 2. Section 70-16-302, MCA, is amended to read:

“70-16-302. (Temporary) Restriction on liability of landowner. (1) A person who uses property, including property owned or leased by a public entity, for recreational purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose if the

person does not give a valuable consideration to the landowner in exchange for the recreational use of the property. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct. For purposes of this section, valuable consideration does not include the state land recreational use license fee imposed under 77-1-802 or other funds provided under 77-1-815.

(2) As used in this part, *the following definitions apply:*

(a) (i) *“Airstrip” means improved or unimproved landing areas on private land used by pilots to land, park, take off, unload, load, and taxi aircraft.*

(ii) *The term does not include municipal airports governed under Title 67, chapter 10, part 1.*

(b) *“Flying of aircraft” means the operation of aircraft, including but not limited to landing, parking, taking off, unloading, loading, and taxiing of aircraft at an airstrip.*

(c) ~~“landowner”~~ *“Landowner” means a person or entity of any nature, whether private, governmental, or quasi-governmental, and includes the landowner’s agent, tenant, lessee, occupant, grantee of conservation easement, water users’ association, irrigation district, drainage district, and persons or entities in control of the property or with an agreement to use or occupy property.*

~~(3)(d) As used in this part, “property”~~ *“Property” means land, roads, airstrips, water, watercourses, and private ways. The term includes any improvements, buildings, structures, machinery, and equipment on property.*

~~(4)(3)~~ The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1), on the landowner’s property and when not also acting as a snowmobile area operator on the property, does not extend any assurance that the property is safe for any purpose, and the department, the landowner, or the landowner’s tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless the act or omission constitutes willful or wanton misconduct. (Void on occurrence of contingency—sec. 8, Ch. 596, L. 2003.)

70-16-302. (Effective on occurrence of contingency) Restriction on liability of landowner. (1) A person who uses property, including property owned or leased by a public entity, for recreational purposes, with or without permission, does so without any assurance from the landowner that the property is safe for any purpose if the person does not give a valuable consideration to the landowner in exchange for the recreational use of the property. The landowner owes the person no duty of care with respect to the condition of the property, except that the landowner is liable to the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct. For purposes of this section, valuable consideration does not include the state land recreational use license fee imposed under 77-1-802.

(2) As used in this part, *the following definitions apply:*

(a) (i) *“Airstrip” means either improved or unimproved landing areas on private land used by pilots to land, park, take off, unload, load, and taxi aircraft.*

(ii) *The term does not include municipal airports governed under Title 67, chapter 10, part 1.*

(b) *“Flying of aircraft” means the operation of aircraft, including but not limited to landing, parking, taking off, unloading, loading, and taxiing of aircraft at an airstrip.*

(c) ~~“landowner”~~ *“Landowner”* means a person or entity of any nature, whether private, governmental, or quasi-governmental, and includes the landowner’s agent, tenant, lessee, occupant, grantee of conservation easement, water users’ association, irrigation district, drainage district, and persons or entities in control of the property or with an agreement to use or occupy property.

~~(3)(d) As used in this part, “property”~~ *“Property”* means land, roads, airstrips, water, watercourses, and private ways. The term includes any improvements, buildings, structures, machinery, and equipment on property.

~~(4)(3)~~ The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1), on the landowner’s property and when not also acting as a snowmobile area operator on the property, does not extend any assurance that the property is safe for any purpose, and the department, the landowner, or the landowner’s tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless the act or omission constitutes willful or wanton misconduct.”

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

Approved April 27, 2007

CHAPTER NO. 354

[SB 335]

AN ACT PROVIDING A QUALITY EDUCATOR PAYMENT TO CERTIFIED TEACHERS EMPLOYED BY THE MONTANA YOUTH CHALLENGE PROGRAM; AMENDING SECTION 20-9-327, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 20-9-327, MCA, is amended to read:

“20-9-327. Quality educator payment. (1) (a) The state shall provide a quality educator payment to:

- (i) public school districts, as defined in 20-6-101 and 20-6-701;
- (ii) special education cooperatives, as described in 20-7-451;
- (iii) the Montana school for the deaf and blind, as described in 20-8-101; **and**
- (iv) state youth correctional facilities, as defined in 41-5-103; *and*
- (v) *the Montana youth challenge program.*

(b) A special education cooperative that has not met the requirements of 20-7-453 and 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction.

(2) (a) The quality educator payment for special education cooperatives must be distributed directly to those entities by the superintendent of public instruction.

(b) The quality educator payment for the Montana school for the deaf and blind must be distributed to the Montana school for the deaf and blind.

(c) The quality educator payment for Pine Hills and Riverside youth correctional facilities must be distributed to those facilities by the department of corrections.

(d) *The quality educator payment for the Montana youth challenge program must be distributed to that program by the department of military affairs.*

(3) The quality educator payment is \$2,000 times the number of full-time equivalent educators, as reported to the superintendent of public instruction for accreditation purposes in the previous school year, each of whom:

(a) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in subsection (1) in a position that requires an educator license in accordance with the administrative rules adopted by the board of public education; or

(b) (i) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-23-201, 37-24-301, or 37-25-302; and

(ii) is employed by an entity listed in subsection (1) to provide services to students.”

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved April 28, 2007

CHAPTER NO. 355

[SB 370]

AN ACT PROVIDING THAT AN APPROPRIATION RIGHT IS NOT ABANDONED IF AN APPROPRIATOR CEASES TO USE ALL OR PART OF AN APPROPRIATION RIGHT TO COMPLY WITH A CANDIDATE CONSERVATION AGREEMENT; AMENDING SECTION 85-2-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 85-2-404, MCA, is amended to read:

“85-2-404. (Temporary) Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of an appropriation right with the intention of wholly or partially abandoning the right or if the appropriator ceases using the appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right is, to that extent, considered abandoned and must immediately expire.

(2) If an appropriator ceases to use all or part of an appropriation right or ceases using the appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the appropriator has abandoned the right for the part not used.

(3) If an appropriator ceases to use all or part of an appropriation right *in compliance with a candidate conservation agreement initiated pursuant to 50 CFR 17.32* or because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) The lease of an existing right pursuant to 85-2-436 or a temporary change in appropriation right pursuant to 85-2-407 or 85-2-408 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in accordance with part 2 of this chapter. (Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)

85-2-404. (Effective July 1, 2009) Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of an appropriation right with the intention of wholly or partially abandoning the right or if the appropriator ceases using the appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right is, to that extent, considered abandoned and must immediately expire.

(2) If an appropriator ceases to use all or part of an appropriation right or ceases using the appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the appropriator has abandoned the right for the part not used.

(3) If an appropriator ceases to use all or part of an appropriation right *in compliance with a candidate conservation agreement initiated pursuant to 50 CFR 17.32* or because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) A temporary change in appropriation right pursuant to 85-2-407 or 85-2-408 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in accordance with part 2 of this chapter.”

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

Approved April 28, 2007

CHAPTER NO. 356

[SB 419]

AN ACT PROVIDING FOR INSURANCE COVERAGE UNDER A PARENT'S POLICY FOR UNMARRIED CHILDREN UNDER 25 YEARS OF AGE; DEFINING "DEPENDENT"; AMENDING SECTIONS 2-18-701, 2-18-704, 33-22-101, 33-22-140, 33-22-1803, 33-31-102, 33-31-111, AND 33-35-306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Continuation of dependent coverage. A health insurance issuer that issues or renews an individual or a group health insurance policy, certificate, or membership contract under which an individual's or employee's dependents are eligible for coverage may not terminate coverage on the basis of the age of an unmarried dependent, as defined in 33-22-140(5)(b), prior to the dependent reaching 25 years of age. Except as otherwise provided by law, the continuation of the coverage of the dependent, as defined in 33-22-140(5)(b), is at the option of the covered employee.

Section 2. Section 2-18-701, MCA, is amended to read:

"2-18-701. Definition. ~~It~~ *As used in this part, the following definitions apply:*

(1) *"Dependent" has the meaning provided in 33-22-140.*

(2) (a) *"Employee", as the term applies to a person employed in the executive, judicial, or legislative branches of state government:*

(i) *"employee" means:*

(a)(i) *a permanent full-time employee, as provided in 2-18-601;*

(b)(ii) *a permanent part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week;*

(c)(iii) *a seasonal full-time employee, as provided in 2-18-601, who is regularly scheduled to work 6 months or more a year or who works for a continuous period of more than 6 months a year although not regularly scheduled to do so;*

(d)(iv) *a seasonal part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week for 6 months or more a year or who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so;*

(e)(v) *elected officials;*

(f)(vi) *officers and permanent employees of the legislative branch;*

(g)(vii) *judges and permanent employees of the judicial branch;*

(h)(viii) *academic, professional, and administrative personnel having individual contracts under the authority of the board of regents of higher education or the state board of public education;*

(i)(ix) *a temporary full-time employee, as provided in 2-18-601:*

(i)(A) *who is regularly scheduled to work more than 6 months a year;*

(i)(B) *who works for a continuous period of more than 6 months a year although not regularly scheduled to do so; or*

(i)(C) *whose temporary status is defined through collective bargaining;*

(j)(x) a temporary part-time employee, as provided in 2-18-601:

(i)(A) who is regularly scheduled to work 20 hours or more a week for 6 months or more a year;

(ii)(B) who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so; or

(iii)(C) whose temporary status is defined through collective bargaining; and

(k)(xi) a part-time or full-time employee of the state compensation insurance fund. As used in this subsection, "part-time or full-time employee of the state compensation insurance fund" means an employee eligible for inclusion in the state employee group benefit plans under the rules of the department of administration.

(2)(b) "employee" *The term does not include a student intern, as defined in 2-18-101.*

Section 3. Section 2-18-704, MCA, is amended to read:

"2-18-704. Mandatory provisions. (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions of a defined benefit plan provided by law or, in the case of the defined contribution plan provided in Title 19, chapter 3, part 21, a member with at least 5 years of service and who is at least age 50 while in covered employment to remain a member of the group until the member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)(a) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and subsequently terminates membership may not rejoin the group plan unless the person again serves as a legislator.

(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues to be an inactive vested member of the judges' retirement system as provided by 19-5-301. The judge shall notify the department of administration in writing within 90 days of the end of the judge's judicial service of the judge's choice to continue membership in the group plan.

(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or

(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended.

(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.

(5) A person electing to remain a member of the group under subsection (1), (2), (3), or (4) shall pay the full premium for coverage and for that of the person's covered dependents.

(6) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same

professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation.

(7) An insurance contract or plan issued under this part must include coverage for treatment of inborn errors of metabolism, as provided for in 33-22-131.

(8) An insurance contract or plan issued under this part must include substantially equivalent or greater coverage for outpatient self-management training and education for the treatment of diabetes and certain diabetic equipment and supplies as provided in 33-22-129.

(9) (a) Except as provided in subsection (9)(b), upon renewal, an insurance contract or plan issued under this part under which coverage of a dependent terminates at a specified age must, as provided in [section 1], continue to provide coverage for any unmarried dependent, as defined in 33-22-140(5)(b), until the dependent reaches 25 years of age or marries, whichever occurs first. For insurance contracts or plans issued under this part, the premium charged for the additional coverage of a dependent, as defined in 33-22-140(5)(b), may be required to be paid by the insured and not by the employer.

(b) An insurance contract or plan issued under this part for the state employee group insurance program and the university system group insurance program is not subject to subsection (9)(a)."

Section 4. Section 33-22-101, MCA, is amended to read:

"33-22-101. Exceptions to scope. (1) Subject to subsection (2), 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:

(a) any policy of liability or workers' compensation insurance with or without supplementary expense coverage;

(b) any group or blanket policy;

(c) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance that:

(i) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

(ii) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity if the insured or annuitant becomes totally and permanently disabled as defined by the contract or supplemental contract;

(d) reinsurance.

(2) Sections 33-22-150, 33-22-151, [section 1], and 33-22-301 apply to group or blanket policies."

Section 5. Section 33-22-140, MCA, is amended to read:

"33-22-140. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" has the meaning given the term by 29 U.S.C. 1002(33).

(2) “Church plan” has the meaning given the term by 29 U.S.C. 1002(33).

(3) “COBRA continuation provision” means:

(a) section 4980B of the Internal Revenue Code, 26 U.S.C. 4980B, other than subsection (f)(1) of that section as that subsection relates to pediatric vaccines;

(b) Title I, subtitle B, part 6, excluding section 609, of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.; or

(c) Title XXII of the Public Health Service Act, 42 U.S.C. 300dd, et seq.

(4) (a) “Creditable coverage” means coverage of the individual under any of the following:

(i) a group health plan;

(ii) health insurance coverage;

(iii) 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;

(iv) Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, other than coverage consisting solely of a benefit under section 1928, 42 U.S.C. 1396s;

(v) Title 10, chapter 55, United States Code;

(vi) a medical care program of the Indian health service or of a tribal organization;

(vii) the Montana comprehensive health association provided for in 33-22-1503;

(viii) a health plan offered under Title 5, chapter 89, of the United States Code;

(ix) a public health plan;

(x) a health benefit plan under section 5(e) of the Peace Corps Act, 22 U.S.C. 2504(e);

(xi) a high-risk pool in any state.

(b) Creditable coverage does not include coverage consisting solely of coverage of excepted benefits.

(5) “*Dependent*” means:

(a) a spouse;

(b) an unmarried child under 25 years of age:

(i) who is not an employee eligible for coverage under a group health plan offered by the child’s employer for which the child’s premium contribution amount is no greater than the premium amount for coverage as a dependent under a parent’s individual or group health plan;

(ii) who is not a named subscriber, insured, enrollee, or covered individual under any other individual health insurance coverage, group health plan, government plan, church plan, or group health insurance;

(iii) who is not entitled to benefits under 42 U.S.C. 1395, et seq.; and

(iv) for whom the insured parent has requested coverage;

(c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506 and 33-30-1003; or

(d) *any other individual defined as a dependent in the health benefit plan covering the employee.*

(5)(6) “Elimination rider” means a provision attached to a policy that excludes coverage for a specific condition that would otherwise be covered under the policy.

(6)(7) “Enrollment date” means, with respect to an individual covered under a group health plan or health insurance coverage, the date of enrollment of the individual in the plan or coverage or, if earlier, the first day of the waiting period for enrollment.

(7)(8) “Excepted benefits” means:

- (a) coverage only for accident or disability income insurance, or both;
- (b) coverage issued as a supplement to liability insurance;
- (c) liability insurance, including general liability insurance and automobile liability insurance;
- (d) workers’ compensation or similar insurance;
- (e) automobile medical payment insurance;
- (f) credit-only insurance;
- (g) coverage for onsite medical clinics;
- (h) other similar insurance coverage under which benefits for medical care are secondary or incidental to other insurance benefits, as approved by the commissioner;
 - (i) if offered separately, any of the following:
 - (i) limited-scope dental or vision benefits;
 - (ii) benefits for long-term care, nursing home care, home health care, community-based care, or any combination of these types of care; or
 - (iii) other similar, limited benefits as approved by the commissioner;
 - (j) if offered as independent, noncoordinated benefits, any of the following:
 - (i) coverage only for a specified disease or illness; or
 - (ii) hospital indemnity or other fixed indemnity insurance;
 - (k) if offered as a separate insurance policy:
 - (i) medicare supplement coverage;
 - (ii) coverage supplemental to the coverage provided under Title 10, chapter 55, of the United States Code; and
 - (iii) similar supplemental coverage provided under a group health plan.

(8)(9) “Federally defined eligible individual” means an individual:

(a) for whom, as of the date on which the individual seeks coverage in the group market or individual market or under an association portability plan, as defined in 33-22-1501, the aggregate of the periods of creditable coverage is 18 months or more;

(b) whose most recent prior creditable coverage was under a group health plan, governmental plan, church plan, or health insurance coverage offered in connection with any of those plans;

(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) who does not have other health insurance coverage;
- (e) for whom the most recent coverage within the period of aggregate creditable coverage was not terminated for factors relating to nonpayment of premiums or fraud;
- (f) who, if offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, elected that coverage; and
- (g) who has exhausted continuation coverage under the COBRA continuation provision or program described in subsection ~~(8)(f)~~ (9)(f) if the individual elected the continuation coverage described in subsection ~~(8)(f)~~ (9)(f).

~~(9)(10)~~ “Group health insurance coverage” means health insurance coverage offered in connection with a group health plan or health insurance coverage offered to an eligible group as described in 33-22-501.

~~(10)(11)~~ “Group health plan” means an employee welfare benefit plan, as defined in 29 U.S.C. 1002(1), to the extent that the plan provides medical care and items and services paid for as medical care to employees or their dependents, directly or through insurance, reimbursement, or otherwise.

~~(11)(12)~~ “Health insurance coverage” means benefits consisting of medical care, including items and services paid for as medical care, that are provided directly, through insurance, reimbursement, or otherwise, under a policy, certificate, membership contract, or health care services agreement offered by a health insurance issuer.

~~(12)(13)~~ “Health insurance issuer” means an insurer, a health service corporation, or a health maintenance organization.

~~(13)(14)~~ “Individual health insurance coverage” means health insurance coverage offered to individuals in the individual market, but does not include short-term limited duration insurance.

~~(14)(15)~~ “Individual market” means the market for health insurance coverage offered to individuals other than in connection with group health insurance coverage.

~~(15)(16)~~ “Large employer” means, in connection with a group health plan, with respect to a calendar year and a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year.

~~(16)(17)~~ “Large group market” means the health insurance market under which individuals obtain health insurance coverage directly or through any arrangement on behalf of themselves and their dependents through a group health plan or group health insurance coverage issued to a large employer.

~~(17)(18)~~ “Late enrollee” means an eligible employee or dependent, other than a special enrollee under 33-22-523, who requests enrollment in a group health plan following the initial enrollment period during which the individual was entitled to enroll under the terms of the group health plan if the initial enrollment period was a period of at least 30 days. However, an eligible

employee or dependent is not considered a late enrollee if a court has ordered that coverage be provided for a spouse, minor, or dependent ~~child~~ under a covered employee's health benefit plan and a request for enrollment is made within 30 days after issuance of the court order.

~~(18)~~(19) "Medical care" means:

(a) the diagnosis, cure, mitigation, treatment, or prevention of disease or amounts paid for the purpose of affecting any structure or function of the body;

(b) transportation primarily for and essential to medical care referred to in subsection ~~(18)(a)~~ (19)(a); or

(c) insurance covering medical care referred to in subsections ~~(18)(a)~~ (19)(a) and ~~(18)(b)~~ (19)(b).

~~(19)~~(20) "Network plan" means health insurance coverage offered by a health insurance issuer under which the financing and delivery of medical care, including items and services paid for as medical care, are provided, in whole or in part, through a defined set of providers under contract with the issuer.

~~(20)~~(21) "Plan sponsor" has the meaning provided under section 3(16)(B) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(16)(B).

~~(21)~~(22) "Preexisting condition exclusion" means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on presence of a condition before the enrollment date coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before the enrollment date.

~~(22)~~(23) "Small group market" means the health insurance market under which individuals obtain health insurance coverage directly or through an arrangement, on behalf of themselves and their dependents, through a group health plan or group health insurance coverage maintained by a small employer as defined in 33-22-1803.

~~(23)~~(24) "Waiting period" means, with respect to a group health plan and an individual who is a potential participant or beneficiary in the group health plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the group health plan."

Section 6. Section 33-22-1803, MCA, is amended to read:

"33-22-1803. Definitions. As used in this part, the following definitions apply:

(1) "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of 33-22-1809, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified entity or person.

(3) "Assessable carrier" means all carriers of disability insurance, including excess of loss and stop loss disability insurance.

(4) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under

the rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(5) "Basic health benefit plan" means a health benefit plan, except a uniform health benefit plan, developed by a small employer carrier, that has a lower benefit value than the small employer carrier's standard benefit plan and that provides the benefits required by 33-22-1827.

(6) "Benefit value" means a numerical value based on the expected dollar value of benefits payable to an insured under a health benefit plan. The benefit value must be calculated by the small employer carrier using an actuarially based method and must take into account all health care expenses covered by the health benefit plan and all cost-sharing features of the health benefit plan, including deductibles, coinsurance, copayments, and the insured individual's maximum out-of-pocket expenses. The benefit value must apply equally to indemnity-type health benefit plans and to managed care health benefit plans, including health maintenance organization-type plans.

(7) "Bona fide association" means an association that:

(a) has been actively in existence for at least 5 years;

(b) was formed and has been maintained in good faith for purposes other than obtaining insurance;

(c) does not condition membership in the association on a health status-related factor relating to an individual, including an employee of an employer or a dependent of an employee;

(d) makes health insurance coverage offered through the association available to a member regardless of a health status-related factor relating to the member or an individual eligible for coverage through a member; and

(e) does not make health insurance coverage offered through the association available other than in connection with a member of the association.

(8) "Carrier" means any person who provides a health benefit plan in this state subject to state insurance regulation. The term includes but is not limited to an insurance company, a fraternal benefit society, a health service corporation, and a health maintenance organization. For purposes of this part, companies that are affiliated companies or that are eligible to file a consolidated tax return must be treated as one carrier, except that the following may be considered as separate carriers:

(a) an insurance company or health service corporation that is an affiliate of a health maintenance organization located in this state;

(b) a health maintenance organization located in this state that is an affiliate of an insurance company or health service corporation; or

(c) a health maintenance organization that operates only one health maintenance organization in an established geographic service area of this state.

(9) "Case characteristics" means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer, provided that gender, claims experience, health status, and duration of coverage are not case characteristics for purposes of this part.

(10) "Class of business" means all or a separate grouping of small employers established pursuant to 33-22-1808.

(11) "Dependent" means:

(a) a spouse ~~or~~;

(b) an unmarried child ~~under 19 years of age;~~

~~(b) an unmarried child, under 23 years of age, who is a full-time student and who is financially dependent on the insured; under 25 years of age:~~

~~(i) who is not an employee eligible for coverage under a group health plan offered by the child's employer for which the child's premium contribution amount is no greater than the premium amount for coverage as a dependent under a parent's individual or group health plan;~~

~~(ii) who is not a named subscriber, insured, enrollee, or covered individual under any other individual health insurance coverage, group health plan, government plan, church plan, or group health insurance;~~

~~(iii) who is not entitled to benefits under 42 U.S.C. 1395, et seq.; and~~

~~(iv) for whom the parent has requested coverage;~~

(c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506 and 33-30-1003; or

(d) any other individual defined as a dependent in the health benefit plan covering the employee.

(12) (a) "Eligible employee" means an employee who works on a full-time basis with a normal workweek of 30 hours or more, except that at the sole discretion of the employer, the term may include an employee who works on a full-time basis with a normal workweek of between 20 and 40 hours as long as this eligibility criteria is applied uniformly among all of the employer's employees. The term includes a sole proprietor, a partner of a partnership, and an independent contractor if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. The term also includes those persons eligible for coverage under 2-18-704.

(b) The term does not include an employee who works on a part-time, temporary, or substitute basis.

(13) "Established geographic service area" means a geographic area, as approved by the commissioner and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.

(14) (a) "Health benefit plan" means any hospital or medical policy or certificate providing for physical and mental health care issued by an insurance company, a fraternal benefit society, or a health service corporation or issued under a health maintenance organization subscriber contract.

~~(b) Health benefit plan~~ *The term* does not include coverage of excepted benefits, as defined in 33-22-140, if coverage is provided under a separate policy, certificate, or contract of insurance.

(15) "Index rate" means, for each class of business for a rating period for small employers with similar case characteristics, the average of the applicable base premium rate and the corresponding highest premium rate.

(16) "New business premium rate" means, for each class of business for a rating period, the lowest premium rate charged or offered or that could have been charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(17) "Premium" means all money paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

(18) "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

(19) "Restricted network provision" means a provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier pursuant to Title 33, chapter 22, part 17, or Title 33, chapter 31, to provide health care services to covered individuals.

(20) "Small employer" means a person, firm, corporation, partnership, or bona fide association that is actively engaged in business and that, with respect to a calendar year and a plan year, employed at least two but not more than 50 eligible employees during the preceding calendar year and employed at least two employees on the first day of the plan year. In the case of an employer that was not in existence throughout the preceding calendar year, the determination of whether the employer is a small or large employer must be based on the average number of employees reasonably expected to be employed by the employer in the current calendar year. In determining the number of eligible employees, companies are considered one employer if they:

- (a) are affiliated companies;
- (b) are eligible to file a combined tax return for purposes of state taxation; or
- (c) are members of a bona fide association.

(21) "Small employer carrier" means a carrier that offers health benefit plans that cover eligible employees of one or more small employers in this state.

(22) "Standard health benefit plan" means a health benefit plan that is developed by a small employer carrier and that contains the provisions required pursuant to 33-22-1828."

Section 7. Section 33-31-102, MCA, is amended to read:

"33-31-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Affiliation period" means a period that, under the terms of the health insurance coverage offered by a health maintenance organization, must expire before the health insurance coverage becomes effective.

(2) "Basic health care services" means:

- (a) consultative, diagnostic, therapeutic, and referral services by a provider;
- (b) inpatient hospital and provider care;
- (c) outpatient medical services;
- (d) medical treatment and referral services;

(e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);

- (f) care and treatment of mental illness, alcoholism, and drug addiction;
 - (g) diagnostic laboratory and diagnostic and therapeutic radiologic services;
 - (h) preventive health services, including:
 - (i) immunizations;
 - (ii) well-child care from birth;
 - (iii) periodic health evaluations for adults;
 - (iv) voluntary family planning services;
 - (v) infertility services; and
 - (vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction;
 - (i) minimum mammography examination, as defined in 33-22-132;
 - (j) outpatient self-management training and education for the treatment of diabetes along with certain diabetic equipment and supplies as provided in 33-22-129; and
 - (k) treatment and medical foods for inborn errors of metabolism. "Medical foods" and "treatment" have the meanings provided for in 33-22-131.
- (3) "Commissioner" means the commissioner of insurance of the state of Montana.

(4) *"Dependent" has the meaning provided in 33-22-140.*

(4)(5) "Enrollee" means a person:

- (a) who enrolls in or contracts with a health maintenance organization;
 - (b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or
 - (c) on whose behalf the health maintenance organization contracts to receive health care services.
- (5)(6) "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.

(6)(7) "Health care services" means:

- (a) the services included in furnishing medical or dental care to a person;
- (b) the services included in hospitalizing a person;
- (c) the services incident to furnishing medical or dental care or hospitalization; or
- (d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

(7)(8) "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

(8)(9) "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers. This subsection does not limit methods of provider payments made by health maintenance organizations.

(9)(10) "Insurance producer" means an individual, partnership, or corporation appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

(10)(11) "Person" means:

- (a) an individual;
- (b) a group of individuals;
- (c) an insurer, as defined in 33-1-201;
- (d) a health service corporation, as defined in 33-30-101;
- (e) a corporation, partnership, facility, association, or trust; or
- (f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

(11)(12) "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

(12)(13) "Point-of-service option" means a delivery system that permits an enrollee of a health maintenance organization to receive health care services from a provider who is, under the terms of the enrollee's contract for health care services with the health maintenance organization, not on the provider panel of the health maintenance organization.

(13)(14) "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, or advanced practice registered nurse, as specifically listed in 37-8-202, who treats any illness or injury within the scope and limitations of the provider's practice or any other person who is licensed or otherwise authorized in this state to furnish health care services.

(14)(15) "Provider panel" means those providers with whom a health maintenance organization contracts to provide health care services to the health maintenance organization's enrollees.

(15)(16) "Purchaser" means the individual, employer, or other entity, but not the individual certificate holder in the case of group insurance, that enters into a health care services agreement.

(16)(17) "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization becomes insolvent."

Section 8. Section 33-31-111, MCA, is amended to read:

"33-31-111. (Temporary) 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 33-22-262; or

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

(7) Except as provided in 33-22-262, *the provisions of* Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, [section 1], 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. (Terminates June 30, 2009—sec. 14, Ch. 325, L. 2003.)

33-31-111. (Effective July 1, 2009) 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) Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, [section 1], 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 9. Section 33-35-306, MCA, is amended to read:

“33-35-306. Application of insurance code to arrangements. (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions:

(a) 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;

(f) 33-22-107, 33-22-131, 33-22-134, and 33-22-135, and [section 1]; and

(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 10. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 1].

Section 11. Effective date. [This act] is effective January 1, 2008.

Approved April 27, 2007

CHAPTER NO. 357

[SB 442]

AN ACT CREATING AN ABANDONED MINE RECLAMATION ACCOUNT; REQUIRING USE OF THE ACCOUNT FOR RECLAMATION OF ABANDONED MINE LANDS; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Abandoned mine reclamation account. (1) There is an abandoned mine reclamation account in the federal special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) money received by the state from the federal government pursuant to 30 U.S.C. 1232 through 1243; and

(b) interest earned on the account.

(3) (a) Money in the account is available to the department of environmental quality by appropriation and must be used to pay for reclamation or drainage abatement on eligible lands or waters. Eligible lands and waters are those:

(i) that were mined or processed for minerals or materials or were affected by that mining or processing;

(ii) that were abandoned or left in an inadequate reclamation status prior to:

(A) November 26, 1980, for federal lands administered by the United States bureau of land management;

(B) August 28, 1974, for federal lands administered by the United States forest service; and

(C) August 3, 1977, for state lands, private lands, and federal lands not subject to subsection (3)(a)(ii)(A) or (3)(a)(ii)(B); and

(iii) for which there is no continuing reclamation responsibility under state or federal law.

(b) Allowable reclamation or abatement activities under subsection (3)(a) include but are not limited to:

(i) reclamation of abandoned surface mine areas, abandoned mine processing areas, and abandoned mine refuse disposal areas;

(ii) sealing and filling abandoned mine entries and voids;

(iii) planting of land adversely affected by past mining practices to prevent erosion and sedimentation;

(iv) prevention, abatement, treatment, and control of water pollution created by abandoned mine drainage, including restoration of stream beds and construction and operation of water treatment plants;

(v) prevention, abatement, and control of burning coal refuse disposal areas and burning coal in situ;

(vi) prevention, abatement, and control of abandoned mine subsidence; and

(vii) payment of costs of administration of the abandoned mine land reclamation program administered by the department of environmental quality.

(4) Money in the account that is subject to restrictions on use pursuant to federal law, regulation, or grant condition may be used only for the purposes allowed by the federal provision.

(5) Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account until spent or appropriated by the legislature.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 82, chapter 4, and the provisions of Title 82, chapter 4, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved April 28, 2007

CHAPTER NO. 358

[SB 443]

AN ACT REVISING THE TIMES AT WHICH THE ELECTION ADMINISTRATOR MUST MAIL ADDRESS CONFIRMATION FORMS TO ELECTORS WHO HAVE REQUESTED ABSENTEE BALLOTS FOR FUTURE ELECTIONS; AMENDING SECTION 13-13-212, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. 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 using a standardized form provided by rule by the secretary of state or by making a written request, which must include the applicant’s birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant’s county of residence within the time period specified in 13-13-211.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the 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 (2) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) 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.

(4) (a) When applying for an absentee ballot under this section, an elector may also request to be mailed an absentee ballot, as soon as the ballot becomes available, for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application.

(b) The election administrator shall mail an address confirmation form at least 75 days before the election to each elector who has requested an absentee ballot for subsequent elections in January and July of each year to each elector who has requested an absentee ballot for subsequent elections. The address confirmation form mailed in January is for elections to be held between February 1 following the mailing through July of the same year and the address confirmation form mailed in July is for elections to be held between August 1 following the mailing through January of the succeeding year. The elector shall

sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for each subsequent election.

(c) An elector who has been removed from the register may subsequently request to be mailed an absentee ballot for each subsequent election.”

Section 2. Applicability. [This act] applies to address confirmation forms to be mailed after December 31, 2007.

Approved April 28, 2007

CHAPTER NO. 359

[SB 444]

AN ACT REVISING ADVANCED PRACTICE REGISTERED NURSE TREATMENT OF INJURED WORKERS; AND AMENDING SECTION 39-71-116, MCA.

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

Section 1. Section 39-71-116, MCA, is amended to read:

“39-71-116. Definitions. Unless the context otherwise requires, in this chapter, the following definitions apply:

(1) “Actual wage loss” means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) “Administer and pay” includes all actions by the state fund under the Workers’ Compensation Act necessary to:

(a) investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) “Aid or sustenance” means a public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

(4) “Beneficiary” means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under 18 years of age;

(c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of injury;

(e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (4)(a) through (4)(d), does not exist; and

(f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (4)(a) through (4)(e), does not exist.

(5) "Business partner" means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.

(6) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.

(7) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(8) (a) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors listed in major group 23 in the North American Industry Classification System Manual.

(b) The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

(9) (a) "Claims examiner" means an individual who, as a paid employee of the department, of a plan No. 1, 2, or 3 insurer, or of an administrator licensed under Title 33, chapter 17, examines claims under chapter 71 to:

- (i) determine liability;
- (ii) apply the requirements of this title;
- (iii) settle workers' compensation or occupational disease claims; or
- (iv) determine survivor benefits.

(b) The term does not include an adjuster as defined in 33-17-102.

(10) "Days" means calendar days, unless otherwise specified.

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

(12) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(13) (a) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work.

(b) The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(14) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

(15) "Invalid" means one who is physically or mentally incapacitated.

(16) "Limited liability company" has the meaning provided in 35-8-102.

(17) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

(18) “Medical stability”, “maximum healing”, or “maximum medical healing” means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

(19) “Objective medical findings” means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

(20) (a) “Occupational disease” means harm, damage, or death arising out of or contracted in the course and scope of employment caused by events occurring on more than a single day or work shift.

(b) The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.

(21) “Order” means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at by the department.

(22) “Palliative care” means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

(23) “Payroll”, “annual payroll”, or “annual payroll for the preceding year” means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer’s payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(24) “Permanent partial disability” means a physical condition in which a worker, after reaching maximum medical healing:

- (a) has a permanent impairment established by objective medical findings;
- (b) is able to return to work in some capacity but the permanent impairment impairs the worker’s ability to work; and
- (c) has an actual wage loss as a result of the injury.

(25) “Permanent total disability” means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

(26) “Primary medical services” means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

(27) “Public corporation” means the state or a county, municipal corporation, school district, city, city under a commission form of government or special charter, town, or village.

(28) “Reasonably safe place to work” means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(29) “Reasonably safe tools or appliances” are tools and appliances that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

(30) (a) “Secondary medical services” means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection (30), “disability” means a condition in which a worker’s ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker’s age, education, work history, and other factors that affect the worker’s ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

(31) “Sole proprietor” means the person who has the exclusive legal right or title to or ownership of a business enterprise.

(32) “State’s average weekly wage” means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department before July 1 and rounded to the nearest whole dollar number.

(33) “Temporary partial disability” means a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

(34) “Temporary service contractor” means a person, firm, association, partnership, limited liability company, or corporation conducting business that hires its own employees and assigns them to clients to fill a work assignment with a finite ending date to support or supplement the client’s workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(35) “Temporary total disability” means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

(36) “Temporary worker” means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(37) “Treating physician” means a person who is primarily responsible for the treatment of a worker’s compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant licensed by the state of Montana under Title 37, chapter 20, if there is not a treating physician, as provided for in subsection (37)(a), in the area where the physician assistant is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 3;

(e) a dentist licensed by the state of Montana under Title 37, chapter 4;

(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections (37)(a) through (37)(e) who is licensed or certified in another state; or

(g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8, ~~recognized by the board of nursing as a nurse practitioner or a clinical nurse specialist, and practicing in consultation with a physician licensed under Title 37, chapter 3, if there is not a treating physician, as provided for in subsection (37)(a), in the area in which the advanced practice registered nurse is located.~~

(38) "Work-based learning activities" means job training and work experience conducted on the premises of a business partner as a component of school-based learning activities authorized by an elementary, secondary, or postsecondary educational institution.

(39) "Year", unless otherwise specified, means calendar year."

Approved April 28, 2007

CHAPTER NO. 360

[SB 517]

AN ACT REVISING THE TIME THAT CERTAIN POLLING PLACES MUST BE OPEN; AND AMENDING SECTION 13-1-106, MCA.

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

Section 1. Section 13-1-106, MCA, is amended to read:

"13-1-106. Time of opening and closing of polls for all elections — exceptions. (1) Polls *Except as provided in subsections (2) and (3), polling places* must be open from 7 a.m. to 8 p.m., ~~except~~

(2) A polling ~~places~~ *place* having fewer than ~~200~~ *400* registered electors, ~~which~~ must be open from noon to 8 p.m. or until all registered electors in any precinct have voted, at which time the ~~polls shall~~ *polling place must* be closed immediately.

~~(2)(3)~~ *When* If an election held under 13-1-104(3) and a school election are conducted in the same polling place, the ~~polls shall~~ *polling place must* be opened and closed at the times set for the school election, as provided in 20-20-106."

Approved April 27, 2007

CHAPTER NO. 361

[SB 553]

AN ACT REVISING INCENTIVES FOR RECRUITING PHYSICIANS TO PRACTICE IN CERTAIN AREAS; EXPANDING THE REPAYMENT OF EDUCATIONAL DEBT TO INCLUDE PHYSICIANS PRACTICING IN

MEDICALLY UNDERSERVED AREAS OR FOR UNDERSERVED POPULATIONS; INCREASING THE AMOUNT OF EDUCATIONAL DEBT THAT MAY BE PAID BY THE BOARD OF REGENTS; INCREASING THE FEE THAT MAY BE ASSESSED TO CERTAIN STUDENTS PREPARING TO BE PHYSICIANS; PHASING OUT THE TAX CREDIT FOR A PHYSICIAN PRACTICING IN RURAL AREAS; PROVIDING FOR TRANSFERS FROM THE STATE GENERAL FUND TO THE STATE SPECIAL REVENUE ACCOUNT FOR PAYING EDUCATIONAL DEBT BASED ON THE PHASEOUT OF THE PHYSICIAN TAX CREDIT; AMENDING SECTIONS 15-30-189, 20-26-1501, 20-26-1502, AND 20-26-1503, MCA; REPEALING SECTIONS 15-30-188, 15-30-189, 15-30-190, AND 15-30-191, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

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

Section 1. Section 15-30-189, MCA, is amended to read:

“15-30-189. Tax credit for physician practicing in rural area. *A For tax years beginning after December 31, 2006, and before January 1, 2008, a licensed physician who commences practice in a rural area in Montana on a full-time basis is entitled to a credit against taxes imposed by 15-30-103 in an amount of \$5,000 a year for each of 4 successive years, beginning with the year in which the practice commences. To qualify for the credit provided in this section, the physician shall maintain his the practice for at least 9 months of the taxable tax year in which the credit is claimed.”*

Section 2. General fund transfer. (1) By November 1, 2008, the department of revenue shall determine the total amount of the tax credit claimed under 15-30-188 through 15-30-191 that was taken by physicians practicing in rural areas for tax years 2006 and 2007 and calculate the average of those amounts. The department of revenue shall report the average amount determined under this subsection to the state treasurer.

(2) (a) For the fiscal year beginning July 1, 2008, the state treasurer shall transfer 25% of the amount reported under subsection (1) from the general fund to the state special revenue account created in 20-26-1501. The transfer under this subsection (2)(a) may not occur until after the amount is reported by the department of revenue under subsection (1).

(b) For the fiscal year beginning July 1, 2009, the state treasurer shall transfer 50% of the amount reported under subsection (1) from the general fund to the state special revenue account created in 20-26-1501.

(c) For the fiscal year beginning July 1, 2010, the state treasurer shall transfer 75% of the amount reported under subsection (1) from the general fund to the state special revenue account created in 20-26-1501.

(d) For each fiscal year beginning after June 30, 2011, the state treasurer shall transfer 100% of the amount reported under subsection (1) from the general fund to the state special revenue account created in 20-26-1501.

Section 3. Section 20-26-1501, MCA, is amended to read:

“20-26-1501. Rural physician incentive Incentive for physicians practicing in rural areas or medically underserved areas or for underserved populations state special revenue account. There is a rural physician an incentive for physicians practicing in rural areas or medically underserved areas or for underserved populations state special revenue account in the state treasury. Money is payable into the account as provided in [section 2] and 20-26-1502. Income and earnings on the account must be redeposited in the

account. The account must be administered by the board of regents as provided in this part.”

Section 4. Section 20-26-1502, MCA, is amended to read:

“20-26-1502. Fee assessments — deposits. The board of regents may assess a fee to students preparing to be physicians in the fields of medicine or osteopathic medicine who are supported by the state pursuant to an interstate compact for a professional education program in those fields, as those fields are defined by the compact. The fee may not exceed an amount equal to 8% ~~16%~~ of the annual individual medicine support fee paid by the state pursuant to 20-25-804. The fee must be assessed by the board of regents and deposited in the ~~rural physician incentive~~ state special revenue account established in 20-26-1501.”

Section 5. Section 20-26-1503, MCA, is amended to read:

“20-26-1503. Use of ~~rural physician incentive~~ for physicians practicing in rural areas or medically underserved areas or for underserved populations state special revenue account. (1) The ~~rural physician incentive~~ state special revenue account *established in 20-26-1501* is statutorily appropriated, as provided in 17-7-502, to the board of regents to be used to pay:

(a) the educational debts of ~~rural~~ physicians who practice in *rural areas or medically underserved areas or for medically underserved populations* of the state that demonstrate a need for assistance in physician recruitment; and

(b) the expenses of administering the ~~rural physician incentive~~ program. The expenses of administering the program may not exceed 10% of the annual fees assessed pursuant to 20-26-1502.

(2) The board of regents shall establish procedures for determining ~~the rural areas and medically underserved areas or populations~~ of the state that qualify for assistance in physician recruitment. An eligible area *or eligible population* must demonstrate that a physician shortage exists or that the area *or population* has been unsuccessful in recruiting physicians ~~by in other mechanisms ways~~.

(3) A physician from an area *or serving a population* determined to be eligible under subsection (2) may apply to the board of regents for payment of an educational debt directly related to a professional school, as provided in subsection (4). Physicians who have paid the fee authorized in 20-26-1502 must be given a preference over other applicants. To receive the educational debt payments, the physician shall sign an annual contract with the board of regents. The contract must provide that the physician is liable for the payments if the physician ceases to practice in the eligible area *or serve the eligible population* during the contract period.

(4) The maximum amount of educational debt payment that a ~~rural~~ physician *practicing in a rural area or medically underserved area or for a medically underserved population* may receive is ~~\$45,000~~ *\$100,000* over a 5-year period or a proportionally reduced amount for a shorter period.

(5) The amount contractually committed in a year may not exceed the annual amount deposited in the ~~rural physician incentive~~ state special revenue account *established in 20-26-1501*.”

Section 6. Repealer. Sections 15-30-188, 15-30-189, 15-30-190, and 15-30-191, MCA, are repealed.

Section 7. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 17, chapter 1, and the provisions of Title 17, chapter 1, apply to [section 2].

Section 8. Effective dates. (1) Except as provided in subsections (2) through (4), [this act] is effective July 1, 2008.

(2) [Section 1 and this section] are effective on passage and approval.

(3) [Section 5] is effective July 1, 2009.

(4) [Section 6] is effective December 31, 2010.

Section 9. Applicability. (1) [Section 1] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2006.

(2) [Section 4] applies to fees charged after June 30, 2008.

(3) [Section 5] applies to applications made after June 30, 2009, for payment of educational debt.

Approved April 28, 2007

CHAPTER NO. 362

[HB 790]

AN ACT REVISING ASSESSMENTS USED FOR PAYMENT OF EXPENSES INCURRED FOR ADMINISTRATION OF THE UNEMPLOYMENT INSURANCE PROGRAM; PROVIDING THAT FUNDS IN THE EMPLOYMENT SECURITY ACCOUNT MAY BE USED FOR EXPENSES INCURRED IN ADMINISTRATION OF THE UNEMPLOYMENT INSURANCE PROGRAM; CHANGING CONTRIBUTION RATES TO THE UNEMPLOYMENT INSURANCE PROGRAM FOR GOVERNMENTAL ENTITIES AND ADJUSTING RATE SCHEDULES FOR EMPLOYERS UNDER THE UNEMPLOYMENT INSURANCE PROGRAM; AMENDING SECTIONS 39-51-404, 39-51-409, 39-51-1121, 39-51-1212, 39-51-1218, AND 39-51-3207, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Section 39-51-404, MCA, is amended to read:

“39-51-404. Administrative expenses. (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to sections 903 and 904 of the Social Security Act, (42 U.S.C. 1103 and 1104), as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the legislature if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law that:

(a) specifies the purposes for which the money is appropriated and the amounts appropriated; and

(b) limits the amount that may be used during any 12-month period beginning on July 1 and ending on the next June 30 to an amount not exceeding the amount by which the aggregate of the amounts credited to the account of this state pursuant to sections 903 and 904 of the Social Security Act, (42 U.S.C. 1103 and 1104), as amended, during the same 12-month period and the 34 preceding 12-month periods exceeds the aggregate of the amounts used pursuant to this

section and charged against the amounts credited to the account of this state during any of the 35 12-month periods.

(2) For the purposes of this section, amounts used during any 12-month period must be charged against equivalent amounts that were first credited and that are not already charged, except that an amount used for administration during any 12-month period may not be charged against any amount credited during a 12-month period earlier than the 34th preceding period. Money requisitioned for the payment of expenses of administration pursuant to this section must be deposited in the unemployment insurance administration account but, until expended, must remain a part of the unemployment insurance fund.

(3) The department shall maintain a separate record of the deposit, obligation, expenditure, and return of funds deposited. If any money deposited is for any reason not to be expended for the purpose for which it was appropriated or if it remains unexpended at the end of the period specified by the law appropriating the money, it must be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

~~(4) An assessment equal to 0.13% of all taxable wages provided for in 39-51-1108 and 0.05% of total wages paid by employers not covered by an experience rating must be levied against and paid by all employers. All assessments and investment income must be deposited in the employment security account provided for in 39-51-409. The following assessments must be levied against and paid by the indicated employers:~~

~~(a) beginning January 1, 2008:~~

~~(i) 0.13% of all taxable wages paid by employers assigned a Rate Class 1, Schedules I and II, and Rate Class 2, Schedule I, contribution rate as provided in 39-51-1218;~~

~~(ii) 0.18% of all taxable wages paid by employers assigned a contribution rate other than Rate Class 1, Schedules I and II, and Rate class 2, Schedule I, as provided in 39-51-1218;~~

~~(iii) 0.18% of all taxable wages paid by employers assigned an industrial rate as provided in 39-51-1217;~~

~~(iv) 0.08% of total wages paid by all employers as provided in 39-51-1124;~~

~~(b) beginning July 1, 2008, 0.09% of total wages paid by all employers as provided in 39-51-1212.~~

~~(5) All assessments and investment income must be deposited in the employment security account provided for in 39-51-409.~~

~~(6) The following assessments and investment income from those assessments are designated to be used for the administration of the unemployment insurance program:~~

~~(a) 0.05% of all taxable wages paid by all employers as provided in 39-51-1218;~~

~~(b) 0.05% of all taxable wages paid by employers assigned an industry rate as provided in 39-51-1217;~~

~~(c) 0.03% of total wages paid by all employers as provided in 39-51-1124; and~~

~~(d) beginning July 1, 2008, 0.04% of total wages paid by all employers as provided in 39-51-1212.~~

(7) *If unemployment insurance funding sources exceed the needs of the unemployment insurance program, all or a portion of the excess may be appropriated and used for the purposes outlined in 39-51-409.*

Section 2. Section 39-51-409, MCA, is amended to read:

“39-51-409. Employment security account. (1) There is an account created in the state special revenue fund called the employment security account.

(2) Money deposited in the employment security account may be appropriated to the department for payment of:

(a) unemployment insurance benefits;

(b) *expenses incurred in the administration of the unemployment insurance program;*

(b)(c) expenses incurred in collecting money deposited in the account;

(e)(d) expenses incurred for the employment offices established in 39-51-307, including expenses for providing services to the business community;

(d)(e) expenses incurred for the apprenticeship and training program;

(e)(f) expenses for displaced homemaker programs provided for under 39-7-305;

(f)(g) expenses for department research and analysis functions that provide employment, wage, and economic data; and

(g)(h) expenses for department functions pertaining to wage and hour laws, prevailing wages, and collective bargaining.

(3) The department may transfer funds from the employment security account to the unemployment insurance fund account provided for in 39-51-402 upon receiving approval from the budget director that the transfer will not decrease the money in the account below the level appropriated by the legislature to provide for the employment services programs identified in subsection (2).

(4) The department may transfer appropriation authority in employment services programs between the federal special revenue and the state special revenue fund types.”

Section 3. Section 39-51-1121, MCA, is amended to read:

“39-51-1121. Definitions. As used in *part 12 and this part and part 12*, the following definitions apply:

(1) “Computation date” means the reporting period ending September 30 preceding the calendar year for which a covered employer’s contribution rate is effective.

(2) “Cutoff date” means October 31 immediately following the computation date. The department may extend the cutoff date in meritorious cases.

(3) “Deficit employer” means an employer who is subject under this chapter and who has established a record of accumulated benefits charged to the employer’s account in excess of the employer’s accumulated contributions paid as of the cutoff date.

(4) "Eligible employer" means an employer who has been subject under this chapter for the 3 fiscal years immediately preceding the computation date and who has:

(a) established a record of accumulated contributions in excess of benefits charged to the employer's account; and

(b) paid wages in at least 1 of the 8 calendar quarters preceding the computation date.

(5) "Fiscal year" means the four consecutive calendar quarters ending on September 30.

(6) "Governmental entities" means the state or any political subdivision of the state or an instrumentality of the state or a political subdivision, including any employing unit funded directly by tax levies.

(7) "New employer" means an employer who:

(a) has not been subject to the provisions of this chapter for the 3 fiscal years immediately preceding the computation date; and

(b) has established a record of accumulated contributions in excess of benefits charged to the employer's account.

(8) "Taxable wage base" means the amount of wages subject to contributions and to assessments under 39-51-404(4) for each calendar year. Payment of contributions and of assessments under 39-51-404(4) may apply only to wages paid up to and including the amount specified in 39-51-1108."

Section 4. Section 39-51-1212, MCA, is amended to read:

"39-51-1212. Experience rating for governmental entities. (1) Governmental entities newly covered under this chapter after December 31, 1974, shall make payments for the period prior to July 1, 1977, equal to 0.4% of total wages paid employees for services in employment during the calendar quarter and for the period after July 1, 1977, shall make payments at the median rate.

(2) The rates of governmental entities who have accumulated experience rating credits shall *must* be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods which *that* are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31; and

(b) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median, with the rates so fixed using the median that the rates will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

(3) New governmental entities electing to pay contributions shall *must* be assigned the median rate for the year in which they become subject.

(4) ~~At no time may the~~ The minimum rate *may not* be less than ~~0.1%~~ 0.06% ~~or~~ and the maximum rate *may not* be greater than 1.5%. The rates are to be graduated at one-tenth intervals.

(5) ~~In the event~~ *If* benefit charges exceed contributions paid in the last 2 completed fiscal years, governmental entities' rates ~~will~~ *must* be adjusted by increasing all rates to the next higher schedule.

(6) The computed rate is effective July 1 of each year.

(7) Governmental entities must be charged for their share of the total benefits paid to a claimant if the governmental entity contributed wages during the claimant's base period. The benefit charged must be based on the percentage of wages paid by the governmental entity as compared to the total wages paid by all employers in the claimant's base period.

(8) A payment may not be required under this section with respect to benefits paid to an individual if the governmental employer continues to provide employment to the individual with no reduction in hours or wages."

Section 5. 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	(.0245) <i>(.0260)</i>	(.0225) <i>(.0245)</i>	(.0200) <i>(.0225)</i>	(.0170) <i>(.0200)</i>
Average Tax Rate	1.37 <i>1.12</i>	1.57 <i>1.32</i>	1.77 <i>1.52</i>	1.97 <i>1.72</i>
Rate Class	Contribution Rates for Eligible Employers			
1	0.00%	0.07% <i>0.00%</i>	0.27% <i>0.02%</i>	0.47% <i>0.22%</i>
2	0.07 <i>0.00</i>	0.27 <i>0.02</i>	0.47 <i>0.22</i>	0.67 <i>0.42</i>
3	0.27 <i>0.02</i>	0.47 <i>0.22</i>	0.67 <i>0.42</i>	0.87 <i>0.62</i>
4	0.47 <i>0.22</i>	0.67 <i>0.42</i>	0.87 <i>0.62</i>	1.07 <i>0.82</i>
5	0.67 <i>0.42</i>	0.87 <i>0.62</i>	1.07 <i>0.82</i>	1.27 <i>1.02</i>
6	0.87 <i>0.62</i>	1.07 <i>0.82</i>	1.27 <i>1.02</i>	1.47 <i>1.22</i>
7	1.07 <i>0.82</i>	1.27 <i>1.02</i>	1.47 <i>1.22</i>	1.67 <i>1.42</i>
8	1.27 <i>1.02</i>	1.47 <i>1.22</i>	1.67 <i>1.42</i>	1.87 <i>1.62</i>
9	1.47 <i>1.22</i>	1.67 <i>1.42</i>	1.87 <i>1.62</i>	2.07 <i>1.82</i>
10	1.67 <i>1.42</i>	1.87 <i>1.62</i>	2.07 <i>1.82</i>	2.27 <i>2.02</i>
Rate Class	Contribution Rates for Deficit Employers			
1	3.17% <i>2.92%</i>	3.37% <i>3.12%</i>	3.57% <i>3.32%</i>	3.77% <i>3.52%</i>
2	3.37 <i>3.12</i>	3.57 <i>3.32</i>	3.77 <i>3.52</i>	3.97 <i>3.72</i>
3	3.57 <i>3.32</i>	3.77 <i>3.52</i>	3.97 <i>3.72</i>	4.17 <i>3.92</i>
4	3.77 <i>3.52</i>	3.97 <i>3.72</i>	4.17 <i>3.92</i>	4.37 <i>4.12</i>
5	3.97 <i>3.72</i>	4.17 <i>3.92</i>	4.37 <i>4.12</i>	4.57 <i>4.32</i>
6	4.17 <i>3.92</i>	4.37 <i>4.12</i>	4.57 <i>4.32</i>	4.77 <i>4.52</i>
7	4.37 <i>4.12</i>	4.57 <i>4.32</i>	4.77 <i>4.52</i>	4.97 <i>4.72</i>
8	4.57 <i>4.32</i>	4.77 <i>4.52</i>	4.97 <i>4.72</i>	5.17 <i>4.92</i>
9	4.77 <i>4.52</i>	4.97 <i>4.72</i>	5.17 <i>4.92</i>	5.37 <i>5.12</i>
10	6.37 <i>6.12</i>	6.37 <i>6.12</i>	6.37 <i>6.12</i>	6.37 <i>6.12</i>

SCHEDULES OF CONTRIBUTION RATES - Part II

Sched. V	Sched. VI	Sched. VII	Sched. VIII	Sched. IX	Sched. X	Sched. XI
(.0135) <i>(.0170)</i>	(.0095) <i>(.0135)</i>	(.0075) <i>(.0095)</i>	(.0050) <i>(.0075)</i>	(---) <i>(.0050)</i>	(---) <i>(.0025)</i>	(---) <i>(---)</i>

2.17	2.37	2.57	2.77	2.97	3.17	
1.92	2.12	2.32	2.52	2.72	2.92	3.12
Contribution Rates for Eligible Employers						
0.67%	0.87%	1.07%	1.27%	1.47%	1.67%	
0.42%	0.62%	0.82%	1.02%	1.22%	1.42%	1.62%
0.87 0.62	1.07 0.82	1.27 1.02	1.47 1.22	1.67 1.42	1.87 1.62	1.82
1.07 0.82	1.27 1.02	1.47 1.22	1.67 1.42	1.87 1.62	2.07 1.82	2.02
1.27 1.02	1.47 1.22	1.67 1.42	1.87 1.62	2.07 1.82	2.27 2.02	2.22
1.47 1.22	1.67 1.42	1.87 1.62	2.07 1.82	2.27 2.02	2.47 2.22	2.42
1.67 1.42	1.87 1.62	2.07 1.82	2.27 2.02	2.47 2.22	2.67 2.42	2.62
1.87 1.62	2.07 1.82	2.27 2.02	2.47 2.22	2.67 2.42	2.87 2.62	2.82
2.07 1.82	2.27 2.02	2.47 2.22	2.67 2.42	2.87 2.62	3.07 2.82	3.02
2.27 2.02	2.47 2.22	2.67 2.42	2.87 2.62	3.07 2.82	3.27 3.02	3.22
2.47 2.22	2.67 2.42	2.87 2.62	3.07 2.82	3.27 3.02	3.47 3.22	3.42
Contribution Rates for Deficit Employers						
3.97%	4.17%	4.37%	4.57%	4.77%	4.97%	
3.72%	3.92%	4.12%	4.32%	4.52%	4.72%	4.92%
4.17 3.92	4.37 4.12	4.57 4.32	4.77 4.52	4.97 4.72	5.17 4.92	5.12
4.37 4.12	4.57 4.32	4.77 4.52	4.97 4.72	5.17 4.92	5.37 5.12	5.32
4.57 4.32	4.77 4.52	4.97 4.72	5.17 4.92	5.37 5.12	5.57 5.32	5.52
4.77 4.52	4.97 4.72	5.17 4.92	5.37 5.12	5.57 5.32	5.77 5.52	5.72
4.97 4.72	5.17 4.92	5.37 5.12	5.57 5.32	5.77 5.52	5.97 5.72	5.92
5.17 4.92	5.37 5.12	5.57 5.32	5.77 5.52	5.97 5.72	6.17 5.92	6.12
5.37 5.12	5.57 5.32	5.77 5.52	5.97 5.72	6.17 5.92	6.37 6.12	6.12
5.57 5.32	5.77 5.52	5.97 5.72	6.17 5.92	6.37 6.12	6.37 6.12	6.12
6.37 6.12	6.37 6.12	6.37 6.12	6.37 6.12	6.37 6.12	6.37 6.12	6.12”

Section 6. Section 39-51-3207, MCA, is amended to read:

“39-51-3207. Authority to determine uncollectibility of debts — transfer of debts for collection — liability for payment of fees and costs of collection. (1) After making all reasonable efforts to collect unpaid contributions, assessments under 39-51-404(4), and penalties and interest, or overpaid benefits under 39-51-3206 and interest, the department may determine a debt to be uncollectible. Upon determining that a debt is uncollectible, the department may transfer the debt to the department of revenue for collection as provided in 17-4-104.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the department of revenue may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the department of revenue. If less than the full amount of the debt is collected, the department of revenue shall retain only a proportionate share of the collection fees or costs.”

Section 7. Effective dates. (1) [Section 2 and this section] are effective October 1, 2007.

(2) [Sections 1, 3, 5, and 6] are effective January 1, 2008.

(3) [Section 4] is effective July 1, 2008.

Approved April 30, 2007

CHAPTER NO. 363

[HB 7]

AN ACT PROVIDING FOR RECLAMATION AND DEVELOPMENT GRANTS; 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; TRANSFERRING FUNDS; REVISING THE USE OF THE RECLAMATION AND DEVELOPMENT GRANTS ACCOUNT; AMENDING SECTION 90-2-1104, MCA, AND SECTION 2, CHAPTER 473, LAWS OF 2003; REPEALING SECTION 10, CHAPTER 308, LAWS OF 2005; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Appropriations for reclamation and development grants.

(1) There is appropriated to the department of natural resources and conservation from the reclamation and development grants special revenue account, established in 90-2-1104, up to \$800,000 to be used for planning grants to be awarded by the department over the course of the 2009 biennium.

(2) The amount of \$4,496,500 is appropriated to the department of natural resources and conservation from the reclamation and development grants special revenue account from funds allocated for the purpose of making grants from the interest income of the resource indemnity trust fund as set forth in Title 15, chapter 38.

(3) The funds appropriated in subsection (2) 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 5].

Section 2. Approved grants and 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 not otherwise 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 60th legislature for the 2009 biennium.

(2) The following are the grants program prioritized projects and activities:

Applicant/Project	Grant Amount
Montana Board of Oil and Gas Conservation	
(2007 Northern District Orphaned Well Plug and Abandonment and Site Restoration)	\$300,000
(2007 Southern District Orphaned Well Plug and Abandonment and Site Restoration)	\$300,000

Montana Department of Environmental Quality (Snowshoe Mine Reclamation Project)	\$300,000
Montana Department of Environmental Quality (Bald Butte Mine and Millsite Reclamation Project)	\$300,000
Montana Department of Natural Resources and Conservation (St. Mary Facilities Rehabilitation)	\$300,000
Powell County (Milwaukee Roundhouse Voluntary Cleanup)	\$286,000
Montana Department of Natural Resources and Conservation (Reliance Refinery)	\$300,000
Central Montana Water Authority (Utica Well 2)	\$300,000
Montana Board of Oil and Gas Conservation (Southern District Tank Battery Cleanup)	\$300,000
Meagher County Conservation District (Hydrologic Investigation of the Smith River Watershed)	\$300,000
Montana Department of Environmental Quality (Belt Acid Mine Drainage Mitigation)	\$282,000
Montana Department of Environmental Quality (Swift Gulch Placer Tailings and Wetland Establishment)	\$300,000
Broadwater Conservation District (White's Gulch Reclamation Fish Barrier Project)	\$24,500
Montana Department of Environmental Quality (Landusky Mine - Characterization of Surface Water/Ground Water Interactions in Swift Gulch and the Adjacent Landusky Pit Complex)	\$150,000
Big Horn Conservation District (Montana Regional Coal Bed Methane)	\$160,000
Gallatin Local Water Quality District (Assessment and Distribution of Pharmaceuticals)	\$294,000
Flathead Basin Commission (British Columbia-Montana Action Plan)	\$300,000
Montana Tech of the University of Montana (Butte Native Plant Propagation Nursery)	\$289,922

(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 2009 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 2009 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. Fund transfer. On July 1, 2007, there is transferred from the reclamation and development grants special revenue account established in 90-2-1104 \$4.3 million to the renewable resource grant and loan program state special revenue account created in 85-1-604.

Section 7. Section 90-2-1104, MCA, is amended to read:

“90-2-1104. Reclamation and development grants *special revenue* 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 *special revenue* 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 15-36-331.

(3) Appropriations may be made from the reclamation and development grants *special revenue* 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.

(4) ~~For the biennium beginning July 1, 2005, appropriations~~ *Appropriations* may be made from the reclamation and development grants special revenue account for administrative expenses, including salaries and expenses for personnel and equipment, office space, and other expenses necessarily incurred in natural resource-related programs. ~~(Subsection (4) terminates June 30, 2007—sec. 10, Ch. 308, L. 2005.)~~

Section 8. Section 2, Chapter 473, Laws of 2003, 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 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
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 9. Repealer. Section 10, Chapter 308, Laws of 2005, is repealed.

Section 10. Coordination instruction. If House Bill No. 116 is passed and approved, then the appropriations in [section 1 of this act] are appropriated from the natural resources projects state special revenue account established in [section 28] of House Bill No. 116 and the appropriation in [section 1 of this act] for the purpose of making grants is increased by \$289,922 and [section 6 of this act] is void.

Section 11. Effective dates. (1) [Section 9 and this section] are effective on passage and approval.

(2) [Sections 1 through 8 and 10] are effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 364

[HB 8]

AN ACT APPROVING RENEWABLE RESOURCE PROJECTS AND REGIONAL WATER PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 59TH LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING REGIONAL WATER PROJECTS AND PROVIDING AN APPROPRIATION FOR THE PROJECTS; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES FOR DEBT SERVICE; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Approval of renewable resource projects and authorization to provide loans. (1) The legislature finds that the renewable resource projects listed in this section meet the provisions of 17-5-702. The department of natural resources and conservation is authorized to make loans

to the political subdivisions of state government and local governments listed in subsections (2) through (5) in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) The interest rate for the projects in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan	Amount
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	
Ackley Lake Dam Rehabilitation	\$200,000
Smith Creek Canal Seepage Abatement and Rehabilitation Project	\$50,000

(3) The interest rate for the loans in this group is 3% for up to 20 years. These loans will be made to governmental entities to refinance outstanding debt on or rehabilitation of either their water or wastewater facilities.

Loan	Amount
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	
Refinance Existing Debt or Rehabilitation of Existing Water or Wastewater Facilities	\$3,000,000

(4) The interest rate for the project in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 30 years.

Loan	Amount
SUNSET IRRIGATION DISTRICT	
Gravity Flow Irrigation Pipelines	\$1,465,266

(5) The interest rate for the project in this group is 3% or the rate at which the state bonds are sold, whichever is lower, for up to 30 years.

Loan	Amount
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	
East Fork Siphon Replacement and Main Canal Lining Project	\$400,000

Section 2. Projects not completing requirements — projects reauthorized. (1) The legislature finds that the renewable resource projects in subsection (2) that were approved by the 59th legislature in Chapter 309, Laws of 2005, may not complete the requirements necessary to obtain the loan funds prior to June 30, 2007. The projects described in this section are reauthorized. The department of natural resources and conservation is authorized to make loans to the state government agency and local government entity listed in subsection (2) in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(2) The interest rate for the projects in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan	Amount
MILL CREEK IRRIGATION DISTRICT	
Mill Lake Dam Rehabilitation	\$572,000
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	
Martinsdale Dam Riprap Project	\$90,000

Section 3. Coal severance tax bonds authorized. (1) The legislature finds that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax bonds for financing specific approved renewable resource projects as part of the state renewable resource grant and loan program. Available funds from previous sales of coal severance tax bonds, plus any additional principal amount on bonds as may be necessary, pursuant to the conditions in 85-1-605, to fund emergency loans, as authorized and approved in accordance with 85-1-605(4), may also be used for the projects approved in [sections 1 through 8]. The board of examiners is authorized to issue coal severance tax bonds in an amount not to exceed \$26,279,448, of which \$5,777,266 is to be used to finance the projects approved in [sections 1 and 2], \$2,658,596 is to be used to finance additional loans in lieu of grants listed in House Bill No. 6, \$15.4 million is to be used to finance the state share of construction expenses of regional water projects, and up to \$2,443,586 is to be used to establish a reserve for the bonds. Proceeds of the bonds are appropriated to the department of natural resources and conservation for financing the projects identified in [sections 1 and 2] and may be used as authorized in 85-1-605(4). Proceeds of the bonds may also be used to pay the costs of issuance of the bonds. Loans made under 85-1-605(4) must bear interest at the rate borne by the state bonds unless the legislature in a subsequent session provides for a lower interest rate, in which case the rate must be reduced to the rate specified by the legislature.

(2) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds when due from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(3) Earnings on bond proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during this period. Earnings in excess of debt service, if any, must be allocated to the renewable resource grant and loan program state special revenue account.

(4) Loan repayments from loans financed with coal severance tax bonds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

Section 4. Conditions of loans. (1) Disbursement of funds under [sections 1 through 6 and 8] for loans is subject to the following conditions that must be met by project sponsors:

(a) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(b) documented commitment of other funds required for project completion;

(c) satisfactory completion of conditions described in the recommendations section of the project narrative in the renewable resource grant and loan program project evaluations and recommendations report for the biennium;

(d) execution of a loan agreement with the department; and

(e) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the loan as evidenced from the application to the department or from the proposal to the legislature.

(2) Each sponsor authorized for a loan from coal severance tax bond proceeds may be required to pay to the department a pro rata share of the bond issuance

costs and the administrative costs incurred by the department to complete the loan transaction.

Section 5. Private and discount purchase of loans. Loans to political subdivisions and local government entities and bonds, warrants, and notes issued in evidence of the loans may be made, purchased by, and sold to the department of natural resources and conservation at a discount and at a private negotiated sale, notwithstanding the provisions of any other law applicable to political subdivisions or local government entities.

Section 6. Appropriation established. For any entity of state government that receives a loan under [sections 1 through 6 and 8], an appropriation is established for the amount of the loan upon award of the loan by the department of natural resources and conservation.

Section 7. Regional water projects — conditions of loans — appropriation established. (1) The regional water projects to be funded with proceeds of the bonds authorized in [section 3] are projects for the construction, expansion, or improvement of regional water systems eligible to receive funding under 90-6-715 to the extent determined by the department of natural resources and conservation.

(2) Disbursement of proceeds of the bonds is authorized in [section 3] to pay construction expenses for an eligible regional water project subject to the following conditions, which must be met by the regional water authority or other governmental entity owning the regional water system:

(a) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(b) documented commitment of other funds required for project completion.

(3) An appropriation is established for the amount awarded to a regional water project funded pursuant to this section.

Section 8. Creation of state debt — appropriation of coal severance tax — bonding provisions. (1) Because [section 3] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 3].

(2) The legislature, through the enactment of [sections 1 through 8] by a vote of three-fourths of the members of each house of the legislature, as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond fund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by [section 3] to be issued pursuant to Title 17, chapter 5, part 7, and pursuant to the provisions of [sections 1 through 8] and the general resolution for this bond program that has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

(3) The legislature does not pledge any revenue, assets, or money from any regional water project funded by the coal severance tax bonds authorized in [section 3] or from any other source to pay debt service on the bonds, other than the coal severance tax bond fund. The legislature may at its discretion appropriate to the payment of principal and interest on the bonds authorized in [section 3] for regional water projects payable in a fiscal year any available funds in the treasure state endowment regional water system special revenue account established in 90-6-715. Subject to the limitations in 90-6-715, funds in the treasure state endowment regional water system special revenue account are

subject to appropriation for other purposes by the legislature and are not reserved to pay debt service on the bonds authorized in [section 3] for regional water projects.

Section 9. 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 10. Effective date. [This act] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 365

[HB 24]

AN ACT PROVIDING COMMON CARRIER STATUS TO PIPELINES MOVING CARBON DIOXIDE; AMENDING SECTIONS 69-13-101, 69-13-102, 69-13-201, 69-13-301, 69-13-302, AND 69-13-303, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

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

Section 1. Section 69-13-101, MCA, is amended to read:

“69-13-101. Common carrier pipeline. (1) ~~The following are hereby declared to be common carriers and subject to the provisions of this chapter: every~~ Pursuant to subsection (3), each person, firm, corporation, limited partnership, joint-stock association, or association ~~of any kind whatever is a~~ common carrier if it engages in:

(a) owning, operating, or managing any pipeline or any part of any pipeline within the state for the transportation of crude petroleum, coal, ~~or the products thereof of crude petroleum or coal, or carbon dioxide~~ to or for the public for hire or engaging in the business of transporting crude petroleum, coal, ~~or the products thereof of crude petroleum or coal, or carbon dioxide~~ by pipelines;

(b) owning, operating, or managing any pipeline or any part of any pipeline for the transportation of crude petroleum, coal, ~~or the products thereof of crude petroleum or coal, or carbon dioxide~~ to or for the public for hire, ~~which~~ when the pipeline is constructed or maintained upon, along, over, or under any public road or highway;

(c) owning, operating, or managing any pipeline or any part of any pipeline for transportation to or for the public for hire of crude petroleum, coal, ~~or the products thereof of crude petroleum or coal, or carbon dioxide, which~~ when the pipeline is or may be constructed, operated, or maintained across, upon, along, over, or under the right-of-way of any railroad, corporation, or other common carrier required by law to transport crude petroleum, coal, ~~or the products thereof of crude petroleum or coal, or carbon dioxide~~ as a common carrier;

(d) owning, operating, or managing or participating in ownership, operation, or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipeline or any part of any pipeline for the transportation from any oil field, coal mine or field, or place of production within the state to any distributing, refining, or marketing center or reshipping point ~~thereof~~, within this state, of crude

petroleum, coal, or the products thereof of crude petroleum or coal, or carbon dioxide, bought or from others; or

(e) made a common carrier by or under the terms of contract with or in pursuance of the law of the United States.

(2) The provisions of this chapter shall do not apply to:

(a) ~~these pipelines which that~~ are limited in their use to the wells, stations, plants, and refineries of the owner and ~~which that~~ are not a part of the pipeline transportation system of any common carrier, ~~as herein defined; nor shall such provisions apply to or~~

(b) any property of such a common carrier ~~which that~~ is not a part of or necessarily incident to its pipeline transportation system.

(3) *To be defined as a common carrier of carbon dioxide under this section, the carbon dioxide may be transported only for the purpose of permanent sequestration in a geologic formation.*"

Section 2. Section 69-13-102, MCA, is amended to read:

"69-13-102. Scope of chapter — enforcement. (1) It is declared that the operation of ~~these pipelines, to which this chapter applies, for the transportation of crude petroleum, coal, or the products thereof of crude petroleum or coal, or carbon dioxide, in connection with the purchase or purchase and sale of such crude petroleum, coal, or the products thereof of crude petroleum or coal, or carbon dioxide, is a business in mode of the conduct of which the public is interested and as such is subject to regulation by law. The business of purchasing or of purchasing and selling crude petroleum, coal, or the products thereof of crude petroleum or coal, or carbon dioxide, using in connection with such that business a pipeline of the class subject to this chapter to transport the crude petroleum, coal, or the products thereof of crude petroleum or coal, or carbon dioxide so bought or sold shall may not be conducted unless such the pipeline so used in connection with such that business is a common carrier within the purview of this law chapter and subject to the jurisdiction herein conferred upon the commission.~~

(2) ~~It shall be is~~ the duty of the attorney general to enforce this provision by injunction or other adequate remedy."

Section 3. Section 69-13-201, MCA, is amended to read:

"69-13-201. Establishment of rates and operating rules. (1) The commission ~~shall have the power to may~~ establish and enforce rates of charges and regulations for gathering, transporting, loading, and delivering crude petroleum, coal, or the products thereof of crude petroleum or coal, or carbon dioxide by such common carrier in this state and for the use of storage facilities necessarily incident to such the transportation and to prescribe and enforce rules for the government and control of such common carriers in respect to their pipelines and receiving, transferring, and loading facilities. ~~It shall be its duty to~~ *The commission shall exercise such the power upon petition by any person showing a substantial interest in the subject.*

(2) ~~No~~ *An* order establishing or prescribing rates and rules shall may not be made except after hearing and at least 10 days' and not more than 30 days' notice to the person, firm, corporation, partnership, joint-stock association, or association owning or controlling and operating the pipeline or pipelines affected.

(3) ~~In the event any~~ *If a rate shall be* is filed by any pipeline and complaint against the ~~same rate~~ or petition to reduce the ~~same shall be rate is~~ filed by any shipper and ~~such the~~ complaint ~~be is~~ sustained, in whole or in part, all shippers who ~~shall~~ have paid the rates ~~so~~ filed by the pipeline ~~shall~~ have the right to reparation or reimbursement of all excess in transportation charges ~~so~~ paid, over and above the proper rate as finally determined, on all shipments made after the date of the filing of ~~such the~~ complaint.”

Section 4. Section 69-13-301, MCA, is amended to read:

“69-13-301. Records and reports. (1) ~~Such common~~ *Common* carriers of crude petroleum, coal, ~~or the products thereof of crude petroleum or coal, or carbon dioxide~~ shall make and publish their tariffs under ~~such rules as that~~ may be prescribed by ~~said the~~ commission. The commission shall require ~~them the common carriers~~ to make reports and may investigate their books and records kept in connection with ~~such the~~ business.

(2) The commission shall require ~~of such~~ common carrier pipelines *to make* monthly reports, duly verified under oath, of the total quantities of crude petroleum, coal, ~~or the products thereof of crude petroleum or coal, or carbon dioxide~~ owned by ~~such the~~ pipelines, of that held by them in storage for others, and of their unfilled storage capacity. ~~No publicity shall~~ *Publicity may not be* given by the commission to the reports as to stock of crude petroleum, coal, ~~or the products thereof of crude petroleum or coal, or carbon dioxide~~ on hand of any particular pipeline, but the commission in its discretion may make public the aggregate amounts held by all the pipelines making ~~such the~~ reports and of their aggregate storage capacity.”

Section 5. Section 69-13-302, MCA, is amended to read:

“69-13-302. Connection and interchange facilities. (1) ~~Every~~ *Each* common carrier shall exchange crude petroleum tonnage, coal tonnage, ~~or petroleum or coal products tonnage, or carbon dioxide volume~~ with each ~~like~~ *similar* common carrier. The commission ~~shall have the power to~~ *may* require ~~such~~ connections and facilities for the interchange of ~~such the~~ tonnage *and volume* to be made at every locality reached by both pipelines whenever a necessity ~~therefor for the connections and facilities~~ exists, subject to ~~such~~ rates and regulations ~~as that~~ may be made by the commission. Any ~~such~~ common carrier under ~~like similar~~ rules ~~shall must~~ be required to install and maintain facilities for the receipt and delivery of crude petroleum, coal, ~~or the products thereof of crude petroleum or coal, or carbon dioxide~~ of patrons at all points on ~~such the~~ pipeline.

(2) ~~No~~ A carrier ~~shall may not~~ be required to receive or transport any crude petroleum, coal, ~~or the products thereof of crude petroleum or coal, or carbon dioxide~~ except ~~such~~ as may be marketable under rules ~~to be~~ prescribed by the commission, ~~which they are hereby empowered and required to prescribe.~~ The commission ~~is also empowered and required to~~ *shall* make rules for the ascertainment of the amount of water and other foreign matter in crude oil, coal, ~~or the products thereof of crude petroleum or coal, or carbon dioxide~~ tendered for transportation, for deduction ~~therefor for water and foreign matter,~~ and for the amount of deduction to be made for temperature, leakage, and evaporation.

(3) ~~The recital herein of~~ particular powers ~~on~~ *delegated to* the ~~part of said~~ commission ~~shall in this section may~~ not be construed to limit the general powers conferred by this chapter.”

Section 6. Section 69-13-303, MCA, is amended to read:

“69-13-303. Prohibition of discrimination in rates or service. (1) Except as provided in subsection (2), ~~no such~~ a common carrier in its operations ~~as such shall~~ may not discriminate between or against shippers in regard to facilities furnished, service rendered, or rates charged under *the* same or similar circumstances in the transportation of crude petroleum, coal, ~~or the products thereof of crude petroleum or coal, or carbon dioxide.~~; ~~nor shall there~~ *There may not* be any discrimination in the transportation of crude petroleum, coal, ~~or the products thereof of crude petroleum or coal, or carbon dioxide~~ produced or purchased by ~~itself the common carrier~~ directly or indirectly. In this connection the pipeline ~~shall~~ *must* be considered as a shipper of the crude petroleum, coal, ~~or the products thereof of crude petroleum or coal, or carbon dioxide~~ produced or purchased by ~~itself the pipeline~~ directly or indirectly and handled through its facilities. ~~No such~~ A carrier in ~~such the~~ operation ~~shall~~ *may not* directly or indirectly charge, demand, collect, or receive from any one a greater or lesser compensation for any service rendered than from another for a like and contemporaneous service. Subject to the provisions of this chapter and the rules ~~which that~~ may be prescribed by the commission, every ~~such~~ common carrier shall receive and transport crude petroleum, ~~or coal, the products of crude petroleum or coal, or carbon dioxide~~ delivered to it for transportation and shall ~~so~~ receive and transport the ~~same products~~ and perform its other duties with respect ~~thereto to the products~~ without discrimination.

(2) The provisions of subsection (1) ~~shall do~~ not limit the right of the commission to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine.; ~~nor shall any~~ A carrier ~~be is not~~ guilty of discrimination when obeying any order of the commission. When there ~~shall be is~~ offered for transportation more crude petroleum, coal, ~~or the products thereof of crude petroleum or coal, or carbon dioxide~~ than can be immediately transported, the ~~same shall~~ *products must* be equitably apportioned. The commission may make and enforce general or specific regulations in this regard. ~~No such~~ A common carrier ~~shall~~ *may not* at any time be required to receive for shipments exceeding 3,000 barrels of petroleum or the products ~~thereof of petroleum~~ in any one day from any person, firm, corporation, or association of persons.”

Section 7. Contingent voidness. If Senate Bill No. 218 is not passed and approved, [this act] is void.

Section 8. Contingent effective date. [This act] is effective when the department of environmental quality certifies to the code commissioner that the board of environmental review has adopted the rules required by Senate Bill No. 218.

Approved May 6, 2007

CHAPTER NO. 366

[HB 39]

AN ACT REVISING THE WATER RIGHT OWNERSHIP UPDATE PROCESS; PROVIDING THAT THE DIVISION, SEVERANCE, OR EXEMPTING OF A WATER RIGHT REQUIRES THE FILING OF A FORM; PROVIDING THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE DEPARTMENT OF REVENUE WILL COORDINATE TO UPDATE OTHER WATER RIGHT OWNERSHIP RECORDS BASED ON PROPERTY

TRANSFERS; PROVIDING THAT A TRANSFEREE OF A WATER RIGHT IS LIABLE FOR PAYMENT OF THE FEE AFTER RECEIVING NOTICE; PROVIDING THAT THE RECORDING OF A DEED OR OTHER INSTRUMENT MUST BE DELAYED IN CERTAIN INSTANCES; INCREASING THE PENALTY FOR NOT UPDATING WATER RIGHT OWNERSHIP RECORDS WITH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS 15-7-308, 85-2-421, 85-2-422, 85-2-424, 85-2-426, AND 85-2-431, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 15-7-308, MCA, is amended to read:

“15-7-308. Disclosure of information restricted — ~~water right ownership update form exception~~ exceptions. (1) Except as provided in subsection (2), the certificate required by this part and the information contained in the certificate is not a public record and must be held confidential by the county clerk and recorder and the department. This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The confidentiality provisions do not apply to compilations from the certificates or to summaries, analyses, and evaluations based upon the compilations.

(2) The confidentiality provisions of this section do not apply to the information ~~in the clerk and recorder’s abbreviated copy of the realty transfer certificate or to the information~~ contained in the water right ownership update form *or any other form* prepared and filed with the department of natural resources and conservation pursuant to 85-2-424 for purposes of maintaining a system of centralized water right records as mandated by Article IX, section 3(4), of the Montana constitution. A person may access water right transfer information through the department of natural resources and conservation pursuant to the department’s implementation of the requirements of 85-2-112(3).”

Section 2. Section 85-2-421, MCA, is amended to read:

“85-2-421. Purpose. The purpose of 85-2-421 through 85-2-424 and 85-2-426 is to facilitate the maintenance of a reliable record of water right ownership ~~by requiring that water right ownership update forms be filed with the department and that the department notify the water court of each water right ownership update form filed.~~”

Section 3. Section 85-2-422, MCA, is amended to read:

“85-2-422. Definition. As used in 85-2-421 through 85-2-424 and 85-2-426, “water right” means the right to use water as documented by a claim to an existing right, a permit, ~~or a certificate of water right,~~ *a state water reservation, or a compact.*”

Section 4. Section 85-2-424, MCA, is amended to read:

“85-2-424. Filing. (1) ~~The transferor of a water right shall file with the department a water right ownership update form within 60 days of recording a deed or other instrument evidencing a transfer of real property.~~

(2)(1) Except in the case of a transfer of real property served by a public service water supply, when ~~any a~~ person presents for recording a deed or other instrument evidencing a transfer of real property, the realty transfer certificate ~~shall~~ *must* contain a water rights disclosure ~~whereby in which~~ the transferor

shall acknowledge, at or before closing *or transfer of real property*, whether or not any water rights are associated with the property to be transferred and whether or not any water rights will transfer with the real property.

(2) ~~(a) If the realty transfer certificate discloses a transfer of water rights, a water right ownership update form must be completed and filed with the department. that the water rights will transfer with the property, the department's records must be updated to reflect the purchaser of the property as the new owner of the water right based on information received from the department of revenue. The appropriate fee must be paid at closing or upon completion of the transfer of real property as provided in 85-2-426.~~

(b) *The transferee of a water right, after receiving notice provided in subsection (2)(c), is responsible for compliance with this section.*

(c) *If the department receives notice from the department of revenue that a property transfer has occurred and the proper fee was not received by the department, the department shall send a notice to the transferee requesting payment of the fee. If the transferee does not pay the fee within 60 days, the department may assess a penalty against the transferee pursuant to 85-2-431.*

(3) *If the realty transfer certificate discloses the division of a water right among parcels, the person dividing the water right shall complete and file with the department a water right ownership update form, a map, and the required fee.*

(4) *If a person exempts a water right pursuant to 85-2-403, the person shall file with the department, on a form provided by the department, information describing the exempting of the water right and the appropriate fee.*

(5) *If a person severs a water right from appurtenant property without selling the property, the person shall file with the department, on a form provided by the department, information describing the severance and the appropriate fee.*

~~The recording of the deed or other instrument may not be delayed because of the transfer of the water rights.~~

(6) *If the realty transfer certificate submitted with a deed or other instrument indicates that a water right is being severed, divided, or exempted, the clerk and recorder may not record the deed or instrument unless there is submitted with the deed or instrument a certification under penalty of false swearing, on a form provided by the department and signed by the transferor and transferee, that either states:*

(a) *that the documents and fee necessary to comply with this section are held in escrow, in which case the certification must also be signed by the escrow agent; or*

(b) *if there is no escrow, that the transferor and transferee certify that they have prepared the required documents and will send the required documents and fee to the department within 5 business days of recording, in which case the certification must also require the transferee to acknowledge that failure to file the appropriate documents and fee with the department will result in the department assessing the penalty in 85-2-431 against the transferee.*

(7) *Any written agreement to transfer land that has appurtenant water rights on record with the department must contain the following disclosure or words of a similar nature:*

“WATER RIGHT OWNERSHIP UPDATE DISCLOSURE:

By Montana law, failure of the parties at closing or transfer of real property to pay the required fee to the Montana Department of Natural Resources and Conservation for updating water right ownership may result in the transferee of the property being subject to a penalty. Additionally, in the case of water rights being exempted, severed, or divided, the failure of the parties to comply with section 85-2-424, MCA, could result in a penalty against the transferee and rejection of the deed for recording.”

Section 5. Section 85-2-426, MCA, is amended to read:

“85-2-426. Fee. (1) ~~The department shall by rule prescribe a fee that will be no higher than necessary to cover the cost to the department of processing the water right ownership update form.~~ *The department shall by rule prescribe a fee that may not be higher than necessary to cover the cost to the department of updating its water right ownership records. A fee must be paid:*

(a) at closing when the realty transfer certificate discloses the transfer of a water right; or

(b) at the time of filing of the water right ownership update form or the form describing the severance or exempting of the water right.

(2) The fee must be deposited in the water right appropriation account provided for in 85-2-318.”

Section 6. Section 85-2-431, MCA, is amended to read:

“85-2-431. Penalty. (1) ~~The transferor of a water right is responsible for the filing of a water right ownership update form with the department in accordance with 85-2-424.~~

~~(2) The transferor of a water right who violates 85-2-424(1) (1) A person who fails to comply with the requirements of 85-2-424 is liable for a civil penalty of not more than \$50 \$75.~~

~~(3)(2) An action to recover the penalty must be brought by the department and filed in the district court for the first judicial district. At the discretion of the department, the judgment may be certified to the district court in the county where the real property is located.~~

~~(4)(3) Any penalty fee collected under this section must be deposited in the water right appropriation account provided for in 85-2-318.”~~

Section 7. Effective date. [This act] is effective July 1, 2008.

Approved May 3, 2007

CHAPTER NO. 367

[HB 40]

AN ACT AMENDING THE BIG SKY ON THE BIG SCREEN ACT; REMOVING THE \$1 MILLION LIMITATION ON THE AMOUNT OF CREDITS ALLOWED; STANDARDIZING THE APPLICATION FEE FOR TAX CREDITS; INCREASING PERCENTAGES FOR MONTANA LABOR AND FOR QUALIFIED MONTANA EXPENDITURES TO DETERMINE THE AMOUNT OF ALLOWABLE CREDITS; REQUIRING THAT ALL PURCHASES MADE BY A TAXPAYER IN CONNECTION WITH A STATE-CERTIFIED PRODUCTION MUST BE PAID IN FULL BEFORE THE

CREDIT FOR QUALIFYING EXPENDITURES MAY BE CLAIMED; AMENDING SECTIONS 15-31-906, 15-31-907, 15-31-908, AND 15-31-911, MCA; REPEALING SECTION 15-31-909, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

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

Section 1. Section 15-31-906, MCA, is amended to read:

“15-31-906. (Temporary) Application for tax credit — fee. (1) To receive the tax credits under 15-31-907 and 15-31-908 for a state-certified production, a production company shall apply to the department on a form prescribed by the department. The form must be accompanied by an application fee. The application must be made and the fee paid at the time the production company files its tax return.

(2) The application fee is ~~determined as follows:~~

~~(a) if the total compensation paid to Montana residents for the production is less than or equal to \$30,000, the application fee is \$500;~~

~~(b) if the total compensation paid to Montana residents for the production is more than \$30,000, the application fee is \$75 for each resident employed by the production company; or~~

~~(c) if the production company is applying only for the qualified expenditure tax credit, the application fee is \$500.~~

(3) The fee must be deposited in the state special revenue account. The fee is statutorily appropriated, as provided in 17-7-502, in equal amounts to the department of revenue and the department of commerce to administer the provisions of 15-31-906 through *15-31-908, 15-31-910, and 15-31-911.* (Terminates January 1, 2010—sec. 17, Ch. 593, L. 2005.)”

Section 2. Section 15-31-907, MCA, is amended to read:

“15-31-907. (Temporary) Employment production tax credit. (1) ~~Subject to 15-31-909, a~~ A production company that has submitted an application for a tax credit and paid the fee as required under 15-31-906 is allowed a tax credit against the taxes imposed by chapter 30 or 31 for the employment of residents of this state in connection with a state-certified production in the state. Except as provided in subsection (4)(b), the credit is equal to credit carryovers and the credit for the tax year.

(2) The aggregate of the credit allowed under this section for a production occurring in the production company’s tax year is equal to the sum of ~~12%~~ 14% of the first \$50,000 or less of actual compensation paid to each Montana resident employed in connection with the state-certified production during the tax year.

(3) The taxpayer is required to provide to the department, on a form prescribed by the department, a list of all cast and crew participating in the production and the amount of compensation paid to each Montana resident. The form returned by the taxpayer must include the certification number provided for in 15-31-904.

(4) If the credit exceeds the taxpayer’s tax liability, the taxpayer shall make a one-time election to claim the credit for each state-certified production allowed under this section as follows:

(a) the credit may be refunded; or

(b) the credit may be carried forward against the taxes imposed by chapter 30 or 31 for the 4 succeeding tax years. ~~However, the credit may not be carried forward to the extent that the credit in the tax year in which the credit is received exceeds the limitation under 15-31-909.~~

(5) A C. corporation, an individual, an S. corporation, or a partnership qualifies for the credit under this section. If the credit is claimed by an S. corporation or a partnership, the credit must be attributed to the shareholders, partners, or members in the same proportion used to report income or loss for state tax purposes.

(6) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has included the amount of the compensation upon which the amount of the credit was computed as a deduction under 15-30-121 or 15-31-114.

(7) If any application of this section is held invalid, this section applies to other situations or persons in a manner that is not included in the invalid application. (Terminates January 1, 2010—sec. 17, Ch. 593, L. 2005.)”

Section 3. Section 15-31-908, MCA, is amended to read:

“15-31-908. (Temporary) Tax credit for qualified expenditures. (1) ~~Subject to 15-31-909,~~ A production company that has submitted an application and paid the fee as required under 15-31-906 is allowed a tax credit against the taxes imposed by chapter 30 or 31 for qualified expenditures in this state made in connection with a state-certified production in the state. The credit allowed under this section is equal to 8% ~~8%~~ 9% of the total qualified expenditures incurred in connection with the state-certified production during the tax year.

(2) (a) The taxpayer is required to provide to the department, on a form prescribed by the department, the amount of qualified expenditures. The form returned by the taxpayer must include the certification number provided for in 15-31-904. The taxpayer shall also provide other information required by the department to verify the accuracy of the qualified expenditures.

(b) *The taxpayer shall certify in writing to the department, under penalty of false swearing as provided in 45-7-202, that the taxpayer has paid in full to each vendor in Montana for all goods and services purchased by the taxpayer in connection with the state-certified production during the tax year. A credit under this section may not be claimed unless the taxpayer has paid in full for all purchases of goods and services from Montana vendors.*

(3) The credit allowed under this section must be refunded if a taxpayer has tax liability less than the amount of the credit.

(4) A C. corporation, an individual, an S. corporation, or a partnership qualifies for the credit under this section. If the credit is claimed by an S. corporation or a partnership, the credit must be attributed to the shareholders, partners, or members in the same proportion used to report income or loss for state tax purposes.

(5) The credit allowed under this section may not be claimed by a taxpayer if the taxpayer has included the amount of the qualified expenditure upon which the amount of the credit was computed as a deduction under 15-30-121 or 15-31-114. (Terminates January 1, 2010—sec. 17, Ch. 593, L. 2005.)”

Section 4. Section 15-31-911, MCA, is amended to read:

“15-31-911. (Temporary) Rules. (1) The department of revenue shall adopt rules that are necessary to implement and administer 15-31-906 through ~~15-31-911~~ 15-31-908, 15-31-910, and this section. The department shall, in

consultation with the department of commerce, develop procedures for determining compensation paid to residents and qualified expenditures for the credits allowed under 15-31-907 and 15-31-908 and for taxpayer compliance with the provisions of 15-31-904.

(2) The department and the department of commerce shall jointly adopt rules related to the definitions in 15-31-903. (Terminates January 1, 2010—sec. 17, Ch. 593, L. 2005.)”

Section 5. Repealer. Section 15-31-909, MCA, is repealed.

Section 6. 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 7. Effective date. [This act] is effective on passage and approval.

Section 8. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2006.

Section 9. Termination — carryforward. [Sections 1 through 4] terminate January 1, 2010, but an unused credit under 15-31-907 may be carried forward for use on returns for tax years beginning before January 1, 2014, subject to use, limitations on the amount of the credit, carryforward, and recapture provisions of the credit effective on December 31, 2009.

Approved May 3, 2007

CHAPTER NO. 368

[HB 49]

AN ACT REQUIRING THE EDUCATION AND LOCAL GOVERNMENT INTERIM COMMITTEE TO APPOINT A SUBCOMMITTEE TO CONDUCT A STUDY OF LOCAL GOVERNMENT SPECIAL PURPOSE DISTRICTS; SPECIFYING THE MEMBERSHIP OF THE SUBCOMMITTEE; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, current laws governing special purpose districts are not uniform as to the creation, alteration, dissolution, right of protest, operation, funding, and structure of the districts; and

WHEREAS, this absence of uniformity creates confusion and results in numerous bills being introduced each legislative session to address disparities, differences, and specific situations; and

WHEREAS, a single set of statutes governing the creation, alteration, dissolution, right of protest, operation, funding, and structure of special purpose districts would simplify and streamline special purpose district processes.

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

Section 1. Interim study on local government special purpose districts. (1) The education and local government interim committee provided for in 5-5-224 shall conduct an interim study of local government special purpose districts. The study must include:

(a) a comprehensive review of current law governing local government special purpose districts, including an inventory of all of the districts and the various processes provided in law specific to those districts;

(b) a determination of which special purpose districts should be included in the study and which should be excluded;

(c) consideration of the needs of cities and counties with regard to special purpose districts;

(d) consideration of the appropriateness of consolidating the processes for numerous special purpose districts into one statute or set of statutes; and

(e) any other aspect of special purpose districts that the committee determines should be addressed to achieve more consistency, clarity, and uniformity in special purpose district statutes.

(2) (a) The education and local government interim committee shall establish a subcommittee to conduct the study and report to the full committee. The subcommittee members must be appointed by the presiding officer of the committee. In making appointments of nonlegislative members, the presiding officer shall consider recommendations from the Montana association of counties and the Montana league of cities and towns. The subcommittee must include:

(i) four members, two from each political party and two from each house, who are legislators appointed to the education and local government interim committee;

(ii) one county commissioner;

(iii) one county clerk and recorder;

(iv) one county treasurer;

(v) one city manager;

(vi) one city commissioner or town council member; and

(vii) one town clerk.

(b) All of the members of the subcommittee have voting privileges on issues taken up by the subcommittee, but the nonlegislative members do not have voting privileges on the education and local government interim committee. Any final recommendations and other work products that will be represented as being produced or endorsed by the education and local government interim committee must be finally approved by the education and local government interim committee.

(c) Nonlegislative members of the subcommittee must be compensated as provided in 5-5-211(7).

(3) In conducting the study, the subcommittee shall involve and regularly consult with trustees of special purpose districts.

(4) The subcommittee may travel to the extent it considers appropriate to achieve an enhanced level of public participation in the study.

(5) The education and local government interim committee shall complete the study by September 15, 2008, and report to the 61st legislature on its findings and recommendations, including any recommendations for legislation.

Section 2. Appropriation. There is appropriated from the general fund to the legislative services division \$20,000 for the biennium beginning July 1,

2007, for use by the education and local government interim committee for the purposes provided in [section 1].

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

Approved May 3, 2007

CHAPTER NO. 369

[HB 69]

AN ACT CREATING THE MONTANA RESIDENTIAL MORTGAGE LENDER LICENSING ACT; PROVIDING DEFINITIONS; ESTABLISHING LICENSING REQUIREMENTS; PROVIDING FOR LICENSE SUSPENSION, REVOCATION, AND REINSTATEMENT; PROVIDING RULEMAKING AUTHORITY FOR THE DEPARTMENT OF ADMINISTRATION; AUTHORIZING EXAMINATIONS AND INVESTIGATIONS BY THE DEPARTMENT; REGULATING ACTIVITIES OF MORTGAGE LENDERS; PROVIDING CIVIL AND CRIMINAL PENALTIES; PROVIDING FOR CRIMINAL PROCEEDINGS; AND AMENDING SECTION 31-1-111, MCA.

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

Section 1. Short title. [Sections 1 through 32] may be cited as the “Montana Residential Mortgage Lender Licensing Act”.

Section 2. License requirement — scope. (1) A person, except a person who is exempt pursuant to [section 8], may not engage in the business of making residential mortgage loans after October 1, 2008, without first obtaining a license from the department in accordance with the licensing procedures provided for in [sections 1 through 32] and rules promulgated by the department.

(2) A person required to be licensed under [sections 1 through 32] who is not licensed may not:

(a) transact business without a residential mortgage lender license under any name or title; or

(b) circulate or use any advertising, including by electronic media, or make any representation or give any information to any other person that indicates or implies that the person is authorized to conduct activities within the scope of [sections 1 through 32].

(3) Each person, unless exempt, conducting activities regulated by [sections 1 through 32] must be issued a residential mortgage lender license restricting operations to those activities that the person has applied to conduct.

(4) A residential mortgage lender license must be issued to the person applying. Employees or independent contractors of the licensee are not required to be separately licensed.

(5) A person who is exempt as provided for in [section 8] is not subject to the requirements of [sections 1 through 32].

Section 3. Definitions. As used in [sections 1 through 32], the following definitions apply:

(1) “Advertising” means a commercial message in any medium that promotes, either directly or indirectly, a mortgage lending transaction.

(2) "Annual audit" means an audit of the licensee's books, accounts, records, and systems of internal control performed by an independent certified public accountant in accordance with generally accepted accounting principles and auditing standards.

(3) "Borrower" means the person or persons seeking a residential mortgage loan.

(4) "Branch office" means a location, other than a licensee's principal place of business:

(a) the address of which appears on business cards, stationery, or advertising used by the licensee;

(b) at which the licensee's name or advertising suggests that mortgage loans are made; or

(c) that, due to the actions of an employee or independent contractor employed by the licensee, is held out to the public as a branch office of the licensee where mortgage loans are made.

(5) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a licensee, whether through the ownership of voting stock of the licensee, the ownership of voting stock of any entity that possesses that power, or otherwise. Control must be presumed to exist if any person, directly or indirectly, owns, controls, or holds the power to vote 10% or more of the voting stock of any licensee or of any entity that owns, controls, or holds the power to vote 10% or more of the voting stock of the licensee. A person may not be considered to control a licensee solely by reason of being an officer or director of the licensee.

(6) "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

(7) "Electronically transmitted" or "by electronic media" means any transmission via diskette, wire, or tape, including but not limited to the intranet, interactive or otherwise, the internet, any other computer network, electronic mail, or other similar method of transmission.

(8) "Employee" means an individual who is engaged in the service of a licensee for a salary or wages and who is subject to the licensee's direction and control.

(9) "Escrow funds, trust funds, or reserves" means money entrusted to a mortgage lender by a borrower for the purpose of payment of taxes, insurance, or other payments to be made in connection with the servicing of a mortgage loan.

(10) "Financial institution" means any state, national, or federal bank, savings bank, savings and loan association, credit union, or trust company.

(11) "Financial institution holding company" means a bank holding company, as defined under 12 U.S.C. 1841, a savings and loan holding company, as defined under 12 U.S.C. 1467a, or any other financial institution holding company as defined under federal law or regulation.

(12) "Independent contractor" means a person certified as an independent contractor pursuant to 39-71-417.

(13) "Interest rate lock-in agreement" means an agreement, transmitted in writing or by electronic media, in which the mortgage lender guarantees for a specified number of days or until a specified date the availability of a specified rate of interest, a specified formula by which the rate of interest will be

determined, or a specific number of discount points if the mortgage loan is approved and closed within the stated period of time.

(14) "Licensee" means a person who is authorized pursuant to [sections 1 through 32] to engage in the activities regulated by [sections 1 through 32].

(15) "Loan commitment" or "commitment" means a statement transmitted in writing or electronically transmitted by a mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular mortgage loan to a particular borrower.

(16) "Making a mortgage loan" means to advance funds, offer to advance funds, or make a commitment to advance funds to a loan applicant for a mortgage loan.

(17) "Mortgage lender" means a person who makes a mortgage loan or who represents that the person is capable of making a mortgage loan.

(18) "Mortgage lending" means making a mortgage loan or the capability of making a mortgage loan.

(19) "Mortgage loan" or "residential mortgage loan" means a loan primarily secured by either a mortgage, deed of trust, or trust indenture on residential real estate located in this state.

(20) "Person" means an individual, partnership, corporation, association, limited liability company, limited liability partnership, or other entity.

(21) "Principal place of business" means a licensee's primary business office as designated on the application for licensure or any amendment to the application.

(22) "Residential real property" or "residential real estate" means real property located in this state that is improved by a one- to four-family dwelling or a manufactured home, as defined by 24 CFR 3280, either of which is intended to be the borrower's primary residence.

(23) "Subsidiary" means an organization that is wholly owned or controlled by a financial institution.

(24) "Third-party fees" means fees received by a mortgage lender as part of the mortgage loan application process that are designated to be paid to a person other than the mortgage lender. These fees include but are not limited to credit reports, property appraisals, title searches, title insurance, and attorney, survey, or private mortgage insurance fees.

(25) "Ultimate equity owner" means an individual who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether the individual owns or controls the ownership interest, individually or in any combination, through one or more individuals or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.

Section 4. Licensee name. A person engaged in the business regulated by [sections 1 through 32] may not operate the business under names other than the names filed with the department and appearing on the license.

Section 5. License application — investigation — fees. (1) The department shall issue a license to an applicant upon:

(a) the applicant filing a complete application for a residential mortgage lender license;

(b) the applicant filing a listing of material judgments entered against and bankruptcy petitions by the applicant for the preceding 5 years and the disposition of those actions;

(c) the applicant paying nonrefundable investigation and application fees for licensure as a mortgage lender in the amount of \$750 and an application fee for any branch location of \$250; and

(d) the department completing an investigation to ensure the fitness of the applicant to transact business pursuant to [sections 1 through 32].

(2) (a) The department shall conduct an investigation that is sufficient to allow the department to make findings pertaining to the financial responsibility and criminal records of the applicant or, if the applicant is other than an individual, pertaining to the financial responsibility and criminal records of the principal officers, directors, managers, or members of the entity making the application. The findings may be verified by an examination of experience, character, general fitness, and criminal records. The department may not issue a license to an applicant unless the department concludes after completing the investigation that the business will be operated honestly, fairly, and efficiently within the purposes of [sections 1 through 32].

(b) (i) As a prerequisite to the issuance of a license, the department shall require the applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(ii) The applicant shall sign a release of information to the department and is responsible to the department of justice for the payment of all fees associated with the criminal background check.

(iii) Upon completion of the criminal background check, the department of justice shall forward all criminal justice information, as defined in 44-5-103, concerning the applicant that involves the conviction of a criminal offense in any jurisdiction to the department, as authorized in 44-5-303.

(iv) At the conclusion of any background check required by this section, the department must receive the criminal background check report but may not receive the fingerprint card of the applicant. Upon receipt of the criminal background check report, the department of justice shall promptly destroy the fingerprint card of the applicant.

(3) All fees collected under this section must be deposited in the department's state special revenue account to be used by the department in administering the provisions of [sections 1 through 32].

(4) Licenses issued pursuant to [sections 1 through 32] are nontransferable and nonassignable.

(5) A mortgage broker and its branches licensed under Title 32, chapter 9, is exempt from licensing fees under [sections 1 through 32]. A licensed mortgage broker that engages in mortgage lending shall comply with the provisions of [sections 1 through 32].

Section 6. License application. (1) The application for a residential mortgage lender license must be in a form prescribed by the department.

(2) (a) The application must contain the name and complete business address or addresses of the applicant. If the applicant is other than an individual, the application must contain the names and complete business and

residential addresses of each officer, director, manager, and ultimate equity owner of 10% or greater interest in the entity making the application.

(b) The application must include a detailed description of the proposed activities of the license that the department may require by rule.

(c) The application must also include the following:

(i) evidence that the applicant meets the minimum surety bond requirements provided for in [section 13] and has provided access to supporting credit information as required by rule;

(ii) an affirmation that the applicant and its employees, independent contractors, officers, directors, or principals are at least 18 years of age;

(iii) a biographical statement providing information as to the character, fitness, financial and business responsibility, background, experience, and criminal convictions of any person that:

(A) owns or controls, directly or indirectly, 10% or more of any class of stock of the entity making the application;

(B) controls with respect to an applicant, directly or indirectly, the election of 25% or more of the members of the board of directors or if a limited liability company, the election of its manager; or

(C) significantly influences or controls the management of the entity making the application.

(3) The department may require that each officer, director, and ultimate equity owner of 10% or greater interest in the entity making the application file a personal financial statement, a biographical report, and a complete set of fingerprints taken by an authorized law enforcement officer or other person authorized by the state.

(4) If the applicant is other than an individual, evidence must be submitted that the applicant is duly incorporated, registered, or otherwise formed as a general partnership, limited partnership, limited liability company, or other lawful entity under the laws of this state or another state.

(5) An applicant shall provide all other information required by rule.

(6) The applicant may obtain branch licenses upon compliance with this section and the applicable provisions of [sections 1 through 32].

Section 7. License renewal. (1) Residential mortgage lender licenses must be renewed annually and expire on September 30. Properly completed renewal application forms and nonrefundable renewal fees set by rule must be received by the department by July 31.

(2) It is the responsibility of each licensee to renew its license. Failure of the licensee to receive renewal forms, absent a request by the licensee for forms sent by certified mail, does not waive the licensee's renewal responsibility. Failure by a licensee to submit a properly completed renewal application form and nonrefundable renewal fees in a timely fashion, absent a written extension from the department, will result in the assessment of additional fees and the reversion of the license to an inactive status. A residential mortgage lender license that is not renewed by September 30 automatically expires.

(3) A licensee that ceases any activity regulated by [sections 1 through 32] and that desires to discontinue being licensed as a mortgage lender shall inform the department in writing and at the same time convey the license and all other symbols or indicia of licensure. The licensee shall include a plan for the

withdrawal from regulated business, including a timetable for the disposition of the business, and shall identify the location where the books, accounts, records, and documents will be kept until the end of the retention period provided for in [section 15].

(4) An application for the renewal of an existing residential mortgage lender license must contain the information specified pursuant to [sections 1 through 32] and by department rule. However, only the requested information that has changed from the most recent application must be submitted.

Section 8. Exemption from licensing. The following are not subject to the licensing provisions of [sections 1 through 32]:

(1) A person is exempt who is doing business under the laws of this state, another state, or the United States as a financial institution. Wholly owned operating subsidiaries of an exempt financial institution are also exempt.

(2) A person is exempt who is engaged solely in nonresidential or commercial real estate lending.

(3) A person is exempt who does not make more than five mortgage loans with the person's own funds for the person's own investment during any 12-month period and who does not represent to the public in any manner that the person is in the mortgage lending business.

(4) An individual is exempt who assists in the performance of the activities regulated by [sections 1 through 32] as an employee or independent contractor of a licensee or exempt person. A licensee is responsible for the actions of an independent contractor under the licensee's license and bond.

(5) An agency of a federal, state, or municipal government is exempt.

(6) An employee or employer pension plan is exempt if the plan makes mortgage loans only to the plan's participants.

(7) A person is exempt who is acting in a fiduciary capacity conferred by the authority of any court except for a person subject to an injunction to comply with a provision of [sections 1 through 32] or subject to an order of the department issued under [sections 1 through 32].

(8) A person is exempt who is licensed under Title 32, chapter 9, if the person is engaged solely in the business of mortgage brokering and does not advance funds, offer to advance funds, or commit to advancing funds.

(9) A person is exempt who is a retail seller, as defined in 31-1-102, if the person complies with the provisions of Title 31, chapter 1, part 2.

(10) A person is exempt who sells the person's own real property.

Section 9. Representations of applicant. Each application for a residential mortgage lender license must be accompanied by the following representations stating that the applicant, if granted a license:

(1) shall maintain a staff reasonably adequate to meet the requirements of [sections 1 through 32] and rules adopted by the department;

(2) shall keep and maintain for 5 years business records and any other information required by [section 15] or by rules of the department regarding any mortgage loan made subject to [sections 1 through 32];

(3) shall file with the department, when due, any required report;

(4) shall post the license at the physical location listed on the license application and shall display the license number or other evidence of licensing

on any advertising or internet websites or other electronic media used by the licensee;

(5) shall disburse funds in accordance with the licensee's loan agreements and shall make a good faith effort to effect closings in a timely manner;

(6) has not committed a crime against any law of this state, any other state, or the United States involving moral turpitude or fraudulent or dishonest dealing and that a final judgment has not been entered against the applicant in a civil action upon grounds of fraud, misrepresentation, or deceit that has not been previously reported to the department;

(7) shall account for or deliver to any person at the time that has been agreed upon or is required by law or, in the absence of a fixed time, upon demand of the person entitled to the accounting or delivery any personal property, such as money, funds, a deposit, check, or draft, a mortgage, or any other document or thing of value, that has come into the licensee's possession and that is not the licensee's property or that a licensee is not in law or equity entitled to retain under the circumstances;

(8) has not engaged in any conduct that would be cause for denial of a license;

(9) shall continuously maintain the surety bond required by [section 13];

(10) shall advise the department in writing, signed in the same form as the license application being amended, of any material changes to the address, officers, and names of controlling shareholders submitted on the most recent application for a residential mortgage lender license within 45 days of the change;

(11) shall comply with the provisions of [sections 1 through 32] and with any lawful order or rule issued or made under the provisions of [sections 1 through 32];

(12) shall submit to periodic examinations by the department as provided for in [sections 1 through 32]; and

(13) shall advise the department in writing of financially material judgments entered against or bankruptcy petitions filed by the licensee within 10 days of the occurrence.

Section 10. Refusal to issue or renew license. The department may refuse to issue or renew a residential mortgage lender license if:

(1) it is determined that the license applicant is not in material compliance with any provision of [sections 1 through 32];

(2) the department cannot make the findings specified in [section 5(2)]; or

(3) all material requirements for renewal or issuance of a license have not been met.

Section 11. Change in control. (1) Except with the prior approval of the department, it is unlawful for any action to be taken that results in a change of control of the business of a licensee. Prior to any change of control of the business of a licensee, the person wishing to acquire control shall apply in writing to the department and pay an application and investigation fee to the department. The application must contain any information the department prescribes by rule as being necessary or appropriate for the purpose of determining that a person meets the requirements of [sections 1 through 32].

(2) The department shall approve or disapprove the proposed change of control of a licensee in accordance with the provisions of [sections 1 through 32].

(3) The department shall grant a 90-day temporary residential mortgage lender license for the principal place of business and each branch office location that currently has a residential mortgage lender license within 10 days after the department's receipt of an application for the change of control. The department may issue subsequent 90-day temporary licenses at the department's discretion. The existing licensee shall surrender the existing license for each licensed location, including the principal place of business and each branch office location, within 10 business days of receipt of the temporary licenses. The temporary licensee is subject to all provisions of [sections 1 through 32] and all rules adopted under [sections 1 through 32].

Section 12. Annual audit. (1) (a) Within 180 days of the end of a licensee's fiscal year, the licensee shall have the licensee's books and accounts audited by an independent certified public accountant and have the audit report filed with the department. The department may accept the audit of a parent company of the licensee in lieu of an audit of the licensee if the department determines that the parent company's audit is sufficient for the department's purposes.

(b) The audit must be sufficiently comprehensive in scope to permit the expression of an opinion on the financial statements.

(c) The audit must be prepared in accordance with generally accepted accounting principles and must be performed in accordance with generally accepted auditing standards.

(d) The audit report must be certified by the certified public accountant conducting the audit.

(2) As used in this section, the term "expression of an opinion" includes either:

- (a) an unqualified opinion;
- (b) a qualified opinion;
- (c) a disclaimer of opinion; or
- (d) an adverse opinion.

(3) If a qualified or adverse opinion is expressed or if an opinion is disclaimed, the reasons must be fully explained. An opinion qualified in its scope is not acceptable.

(4) If a licensee fails to obtain an audit as required, the department may obtain an audit by an independent certified public accountant at the licensee's expense. The department may select an independent certified public accountant by advertising for bids or by other fair and impartial means as the department establishes by rule if allowed by law.

(5) Audits conducted in accordance with the Consolidated Audit Guide for Audits of HUD Programs may be accepted to fulfill the requirements of this section.

(6) The department may establish by rule additional requirements for annual audits.

Section 13. Surety bonds. (1) (a) Licensees shall continuously maintain a surety bond in accordance with this section.

(b) A surety bond must be used for the recovery of expenses, fines, and fees levied by the department for losses or damages incurred by borrowers or consumers as the result of a licensee's noncompliance with [sections 1 through 32].

(c) The surety bond must be payable when a licensee fails to comply with any provision of [sections 1 through 32], must be payable to the department, and must be issued by an insurance company authorized to do business in this state.

(d) A copy of the surety bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, must be filed with the department within 10 days of the execution of the bond.

(2) The department may adopt rules with respect to the requirements for surety bonds.

(3) The surety bond must contain a clause that the insurance company will notify the department at least 30 days prior to canceling the surety bond for any reason.

(4) If a licensee or the issuer of the surety bond cancels the bond, the licensee shall inform the department of the cancellation in writing by certified mail and provide a new surety bond to the department.

(5) If the department is notified that a surety bond has been canceled and the licensee has not supplied a new surety bond to the department by the date of the cancellation, the licensee's license is automatically suspended until a new surety bond acceptable to the department is received.

Section 14. Escrow funds — trust funds — reserves. (1) Escrow funds, trust funds, or reserves authorized for any purpose by the mortgage loan contract are subject to all applicable state and federal requirements, must be immediately placed and maintained in separate accounts in a federally insured financial institution having an office in this state, and may not be commingled with any licensee funds.

(2) An escrow fund or reserves account must be placed in a segregated account with a federally insured financial institution having an office in this state. The funds must be kept in the segregated account until disbursement. The escrow funds or reserves account may be used only for:

(a) payments authorized by the borrower, allowed by the mortgage loan contract, or required by federal or state law;

(b) refunds to the borrower;

(c) transfer to another federally insured financial institution having an office in this state;

(d) forwarding to the appropriate mortgage lender or mortgage servicer in case of a transfer of servicing;

(e) any other purpose authorized by the mortgage loan contract; or

(f) compliance with a department or court order.

(3) All accounting for escrow funds or reserves must be performed in compliance with the aggregate accounting rules established in regulation X, 24 CFR 3500.

(4) A trust fund account must be placed in a segregated account with a federally insured financial institution having an office in this state. The funds must be kept in the segregated account until disbursement. Trust funds may be removed from the trust fund account and used only for:

(a) payments authorized by the borrower to pay for third-party services required for origination of the mortgage loan;

(b) refunds to the borrower;

- (c) transfer to another financial institution or mortgage lender; or
- (d) compliance with a department or court order.

(5) The requirement of keeping the escrow funds, trust funds, or reserves in accounts in a financial institution having an office in this state may be waived by the department by rule.

Section 15. Recordkeeping requirements. (1) (a) Each licensee shall maintain at its principal place of business as designated on the license, all books, accounts, records, and documents necessary to determine the licensee's compliance with [sections 1 through 32].

(b) All books, accounts, records, and documents must be kept available for review and examination by the department for a period of 5 years from the date of the last entry.

(2) (a) The department may authorize the maintenance of books, accounts, records, and documents at a location other than a principal place of business if the licensee ensures that the books, accounts, records, and documents will be kept in a secure location under conditions that will not lead to the damage or destruction of the books, accounts, records, or documents.

(b) The department may require that books, accounts, records, and documents be produced and made available at a reasonable and convenient location in this state.

(3) If the department determines that it is more effective or cost-efficient to perform a review or examination of the books, accounts, records, and documents at a licensee's out-of-state location, the licensee shall pay the reasonable travel expenses and per diem for each department employee who participates in the review or examination.

(4) The department may prescribe by rule the minimum information to be shown in the books, accounts, records, and documents of licensees to enable the department to determine compliance with [sections 1 through 32].

(5) This section does not prohibit a licensee from the use of document imaging or other electronic means in maintaining books, accounts, records, and documents if the licensee can ensure adequate safeguards against alteration, damage, or destruction of the imaged or electronically stored books, accounts, records, or documents.

(6) Failure to comply with this section is grounds for administrative action by the department in accordance with [sections 1 through 32].

Section 16. Prohibited practices. It is unlawful for any person to:

(1) provide or offer to provide any service requiring a license unless the person has been issued the appropriate license or is exempt from licensure;

(2) disburse the mortgage loan proceeds to a closing agent in any form other than, as applicable:

- (a) direct deposit to a borrower's account;
- (b) wire;
- (c) bank or certified check;
- (d) attorney's check drawn on a trust account; or
- (e) other form as specifically authorized by applicable law;

(3) disburse the proceeds of a mortgage loan without sufficient collected funds on hand at the time of the disbursement in the account upon which the funds are drawn;

(4) fail to disburse funds in accordance with a loan commitment to make a mortgage loan that was accepted by the borrower;

(5) accept any fees at closing that were not disclosed as required by law;

(6) retain third-party fees at closing in excess of the actual cost of third-party services;

(7) require the borrower to be represented by a third-party service provider except under the terms permitted by applicable federal law;

(8) fail to take the actions required to effect a release of the lender's security interest in the property as described in 71-1-212;

(9) obtain any agreement or instrument in which blanks are left to be filled in after execution;

(10) obtain any exclusive dealing or exclusive agency agreement from any borrower;

(11) delay closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;

(12) engage in unfair, deceptive, or fraudulent mortgage loan practices;

(13) make payment of any kind, whether directly or indirectly, to any appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of any residential real property that is to be mortgaged;

(14) make any misrepresentations or false promises likely to influence or persuade or pursue a course of misrepresentation and false promises through officers, directors, partners, trustees, independent contractors, employees, agents, advertising, or otherwise;

(15) misrepresent, circumvent, or conceal, through any subterfuge or device, any of the material facts or terms of a mortgage loan;

(16) act as a mortgage lender in this state without a license issued by the department;

(17) advertise that a mortgage applicant will have unqualified access to credit without disclosing what material limitations on the availability of credit exist, such as the percentage of down payment required, that a higher rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan offered could apply;

(18) advertise a mortgage loan for which a prevailing rate is indicated in the advertisement unless the advertisement specifically states that the expressed rate could change or not be available at commitment or closing;

(19) advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on mortgage loans, unless the person is able to make advertised mortgage loans to a reasonable number of qualified applicants;

(20) falsely advertise or misuse names in violation of 18 U.S.C. 709; or

(21) make any untrue statement of a material fact in any document filed with the department or to omit any material fact that is required to be stated in any document.

Section 17. Violation of specified federal law. A violation of any provision of the federal Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601, et seq., the federal Truth in Lending Act, 15 U.S.C. 1601, et seq., or any regulations promulgated under those acts is also a violation of [sections 1 through 32].

Section 18. Appropriation of licensee's property — omissions — false statements — withholding documents. (1) A person who is an officer, director, partner, trustee, independent contractor, or employee of a licensee, a licensee's holding company, or a licensee's affiliates violates the provisions of [sections 1 through 32] if the person:

(a) knowingly receives or appropriates any of the licensee's property other than in payment of a just demand;

(b) with intent to defraud, causes or concurs in an omission being made in the licensee's books and accounts; or

(c) (i) knowingly makes or concurs in the making or publishing of any false entry of a material fact in the licensee's books or records or in any written report, exhibit, or statement of the licensee's affairs or pecuniary condition; or

(ii) having the custody of the licensee's books, willfully refuses or neglects to make any proper entry in the books as required by law or refuses to allow the books to be inspected by the department or the department's designees.

(2) An officer, director, partner, trustee, independent contractor, or employee of a licensee, its holding company, or its affiliates violates the provisions of [sections 1 through 32] upon:

(a) making a false entry of material fact in any book, record, or other document of the licensee's business or in connection with any condition, affair, or transaction of the licensee's business with the intent to deceive any authorized public officer, any officer, director, partner, trustee, independent contractor, or employee of the licensee, or any agent, investigator, or examiner employed or lawfully appointed to examine any condition, affair, or transaction of the licensee's business;

(b) failing to make an entry of a material fact in any book, account, record, or other document of the licensee's business pertaining to any condition, affair, or transactions of the licensee; or

(c) making unavailable any book, accounts, record, or document of the licensee that is required to be made, written, or kept and that is subject to disclosure to the public, the department, or any state or federal agency.

Section 19. Taking, withholding, or misapplication of funds or property — restitution. (1) It is a violation of [sections 1 through 32] for an officer, director, partner, trustee, independent contractor, or employee of a licensee to:

(a) take, withhold, or misapply the funds or property of a licensee or misapply the licensee's credit; or

(b) take, withhold, or misapply funds, trust obligations, or property deposited with a licensee.

(2) If a violation of this section also results in a criminal conviction under applicable criminal law, the court shall, in addition to any other punishment imposed, order the person convicted to make full restitution to the licensee.

Section 20. Improper disbursement of escrow, reserves, or escrow closing funds — misstatement or omission of material fact pertaining to mortgage loan — misappropriation of funds. (1) Any person subject to the provisions of [sections 1 through 32], including but not limited to a licensee, a director, partner, or shareholder controlling an ownership interest of 10% or more of a licensee, or an officer, trustee, agent, independent contractor, or employee of a licensee may not:

(a) knowingly or recklessly take, withhold, disburse, or cause the disbursement of escrow funds, trust funds, reserves, or escrow closing funds except as permitted by [sections 1 through 32] or knowingly or recklessly direct, participate in, or aid or abet in a material way any activity that constitutes theft or fraud in connection with any escrow funds, trust funds, reserves, or escrow closing funds transaction; or

(b) knowingly or recklessly make or cause to be made any misstatement or omission of a material fact pertaining to mortgage lending.

(2) If a violation of this section also results in a criminal conviction under applicable criminal law, the court shall, in addition to any other punishment imposed, order the person convicted to make full restitution to injured parties.

Section 21. Disclosure of mortgage costs. (1) Within 3 business days of taking a mortgage loan application and prior to receiving any consideration from the borrower, the mortgage lender shall disclose the terms of the loan to the borrower in compliance with the disclosure requirements of the federal Real Estate Settlement Procedures Act, 12 U.S.C. 2601, et seq., the federal Truth in Lending Act, 15 U.S.C. 1601, et seq., and any regulations promulgated under those acts.

(2) A mortgage lender shall disclose the terms of any prepayment penalty on the mortgage loan, including the amount of the prepayment penalty or the formula for calculating the prepayment penalty. If the initial mortgage loan offer does not include a prepayment penalty, but a prepayment penalty is later included in the mortgage loan offer, disclosure of the terms of the prepayment penalty must be made within 3 business days of the prepayment penalty being added to the mortgage loan offer.

(3) A licensed mortgage lender may not require a borrower to pay any fees or charges prior to the mortgage loan closing, except:

(a) charges to be incurred by the mortgage lender on behalf of the borrower for services from third parties necessary to process the application, such as credit reports and appraisals;

(b) an application fee;

(c) an interest rate lock-in fee if the borrower is provided an interest rate lock-in agreement, the terms of which must include but are not limited to:

(i) the expiration date of the interest rate lock-in agreement;

(ii) the principal amount of the mortgage loan, the term of the mortgage loan, and identification of the residential real estate;

(iii) the initial interest rate and the discount points to be paid; and

(iv) the amounts and payment terms of the interest rate lock-in along with a statement as to whether the fee is refundable and the terms and conditions necessary to obtain a refund; and

(d) a commitment fee, upon approval of the mortgage loan application, if the borrower is provided a commitment in writing that it is signed by the mortgage lender and the borrower and the terms include the terms and conditions of the mortgage loan as well as the terms and conditions of the commitment, including but not limited to:

(i) the time period during which the commitment is irrevocable and may be accepted by the borrower, which may not be less than 7 calendar days from date of commitment or date of mailing, whichever is later;

(ii) the amount and payment terms of the commitment fee, along with a statement as to whether the fee is refundable and the terms and conditions necessary to obtain a refund;

(iii) the expiration date of the commitment;

(iv) conditions precedent to closing; and

(v) the terms and conditions, if any, for obtaining a refund of fees for third-party services or arranging for the transfer of third-party service work products to another mortgage lender.

(4) Any amount collected under subsection (3) in excess of the actual costs must be returned to the borrower within 60 days after rejection, withdrawal, or closing.

(5) (a) Except as provided in subsection (5)(b), fees or charges collected pursuant to this section, other than fees for third-party services collected pursuant to subsection (3)(a), must be refunded if a valid commitment is not produced or if closing does not occur.

(b) Applicable fees may be retained by the licensee in accordance with the terms of the commitment upon the licensee's ability to demonstrate any of the following:

(i) the borrower withdraws the mortgage loan application after the lender has issued a commitment on the same terms and conditions disclosed to the borrower on the most recent good faith estimate;

(ii) the borrower has made a material misrepresentation or omission on the mortgage loan application; or

(iii) the borrower has failed to provide documentation necessary to the processing or closing of the mortgage loan application and closing does not occur without fault of the lender.

Section 22. License suspension and revocation — restitution — penalty. (1) If the department finds, after providing a 10-day written notice that includes a statement of alleged violations and a notice of an opportunity for hearing, as provided in the Montana Administrative Procedure Act, that any person, licensee, or officer, director, partner, trustee, employee, or representative, whether licensed or unlicensed, of the person or licensee has violated any of the provisions of [sections 1 through 32], has failed to comply with the rules or orders promulgated by the department, has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a license, the department may impose a civil penalty not to exceed \$10,000 for each violation and may issue an order revoking or suspending the right of the person or licensee, directly or through an officer, director, partner, trustee, employee, or representative, to do business in this state as a licensee or to engage in the business of making residential mortgage loans. In addition, the department may issue an order requiring

restitution to borrowers and reimbursement of the department's cost in bringing the administrative action.

(2) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or, in the case of an unlicensed business, to the last-known address of record.

(3) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

(4) The department may reinstate any suspended or revoked license if there is not a fact or condition existing at the time of reinstatement that would have justified the department refusing to originally issue the license. If a license has been revoked for cause, an application may not be made for issuance of a new license or the reinstatement of a revoked license for a period of 6 months from the date of revocation.

(5) All civil fines collected under this section must be deposited in the general fund.

Section 23. Authority of department — rulemaking. (1) The department has the powers set forth in [sections 1 through 32]. These powers may be exercised whether or not an application for a license has been filed with the department or whether or not a license has been issued or, if issued, has been surrendered, suspended, or revoked.

(2) The department may adopt rules to implement the provisions of [sections 1 through 32]. The rules may include but are not limited to establishing forms and procedures for licensing, acceptable practices, establishing surety bond amounts, annual audits, records maintenance, and fees for license renewal and examination.

Section 24. Investigations by department — subpoenas — oaths — examination of witnesses and evidence. (1) The department may investigate any matter, upon complaint or otherwise, if it appears that a person has engaged or offered to engage in any act or practice that is in violation of any provision of [sections 1 through 32] or any rule adopted or order issued by the department pursuant to [sections 1 through 32].

(2) The department may issue subpoenas to compel the attendance of witnesses and the production of books, accounts, records, documents, and other evidence in any matter over which the department has jurisdiction, control, or supervision under [sections 1 through 32]. The department may administer oaths and affirmations to a person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by the subpoena issued by the department, a judge of the district court of Lewis and Clark County or the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of the court shall issue the subpoena requiring the person to whom it is directed to appear at the time and place designated in the subpoena.

(4) If a person served with a court-ordered subpoena refuses to obey the subpoena or to give testimony or produce evidence as required by the subpoena, the department may proceed under the contempt provisions of Title 3, chapter 1, part 5.

(5) Failure to comply with the requirements of a court-ordered subpoena is punishable pursuant to 45-7-309.

Section 25. Cease and desist orders. (1) If it appears to the department that a person is engaged in or is about to engage in any act or practice constituting a violation of any provision of [sections 1 through 32] or any rule adopted or order issued by the department pursuant to [sections 1 through 32], the department may issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for hearing. The order may apply only to the alleged act or practice constituting a violation of [sections 1 through 32]. The department may issue a temporary order pending the hearing that:

(a) remains in effect until 10 days after the hearings examiner issues proposed findings of fact and conclusions of law; or

(b) becomes final if the person to whom notice is addressed does not request a hearing within 10 days after receipt of the notice.

(2) A violation of an order issued pursuant to this section is subject to the penalty provisions of [sections 1 through 32].

Section 26. Injunctions — receivers. (1) Whenever the department has reason to believe that a person is using, has used, or is about to use any method, act, or practice that violates any provision of [sections 1 through 32] or any rule adopted or order issued by the department pursuant to [sections 1 through 32], the department, upon determining that proceeding would be in the public interest, may bring an action in the name of the state to restrain by temporary or permanent injunction or temporary restraining order the use of the unlawful method, act, or practice.

(2) The notice for an action pursuant to subsection (1) must state generally the relief sought and must be served at least 20 days before the hearing of the action in which the relief sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by 27-19-315.

(3) An action under this section may be brought in the district court in the county in which a person resides or has the person's principal place of business or in the district court of Lewis and Clark County if the person is not a resident of this state or does not maintain a place of business in this state.

(4) A district court may issue temporary or permanent injunctions or temporary restraining orders to restrain and prevent violations of [sections 1 through 32], and an injunction must be issued without bond to the department. If the department is successful in obtaining an injunction or restraining order under this section, the department is entitled to an award of reasonable attorney fees and costs.

(5) 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, accounts, records, and documents 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 32]. 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 27. Failure to comply with reporting requirements. (1) A licensee shall file any report required by the department on or before the date

required by the department or within any extension of time granted by the department.

(2) The department may charge the licensee a fine of up to \$100 a day for each day up to 10 days that a required report is late in being filed.

(3) The failure of a licensee to include in a report any matter required by law or by the department is grounds for the suspension or revocation of the licensee's license.

Section 28. Examinations by department — confidentiality — sharing information with other agencies. (1) The department and the department's appointees may examine the books, records, accounts, documents, and operations of a licensee or person required to be licensed under [sections 1 through 32] as often as the department considers necessary. The department may cooperate and share information with any agency of this state, the federal government, or agencies of other states. The department may accept an examination conducted by the federal government or an agency of this state or another state in place of an examination by the department.

(2) Within 6 months of the completion of an examination, the department shall issue a statement of findings of the examination to the licensee or person examined. The department may allow the licensee or person 30 days to respond to the examination findings. The department shall take appropriate steps to ensure correction of any violations of [sections 1 through 32] indicated by the examination.

(3) An affiliate of a licensee is subject to examination by the department on the same basis as the licensee, but only when reports from a licensee or examination of a licensee provides documented evidence of unlawful activity between a licensee and affiliate.

(4) The expenses of any examination of a licensee or affiliate of the licensee must be borne by the licensee and must be assessed by the department as established by rule. Fees collected under this section must be deposited into the department's state special revenue fund to be used by the department in administering the provisions of [sections 1 through 32].

(5) Unless otherwise required by state law, examination findings and any information contained in the examination report must be considered confidential information for the department's use only. The information may not be released to persons who are not officially associated with the department, and the information contained in the findings and report may be used by the department only in the furtherance of its official duties.

(6) Information obtained during an examination or investigation or from an application may be disclosed to law enforcement officials and other state and federal agencies for further investigation and enforcement.

Section 29. Conviction of crime — nolo contendere. (1) Any person who has pleaded guilty to, been convicted of, or pleaded nolo contendere to any offense specified in subsection (2) within the past 10 years or who has been held liable in any civil action by final judgment or administrative judgment by any public agency within the past 7 years of any of the provisions specified in subsection (2) may not serve as an officer, director, partner, trustee, independent contractor, or employee of a mortgage lender or may not be a shareholder controlling 10% or more of the ownership interest in the mortgage lender without prior written approval of the department.

(2) Subsection (1) applies to criminal convictions of, pleas of nolo contendere to, or civil or administrative judgments entered for the following:

(a) offenses involving robbery, burglary, theft, embezzlement, fraud, fraudulent conversion or misappropriation of property, forgery, bookmaking, receiving stolen property, counterfeiting, extortion, or check, credit card, or computer violations specified in the provisions of Montana's criminal laws, federal criminal laws, or another state's criminal laws; or

(b) offenses specified in provisions of the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3310, et seq.

(3) Any officer, director, partner, trustee, or other person who seeks a controlling ownership interest of 10% or more in the business of a licensed mortgage lender shall, as a condition to obtaining that interest or participation, authorize the department access to that person's criminal history information for purposes of determining whether the person has a prior conviction of or has pleaded nolo contendere to a criminal offense specified in subsection (2).

(4) A person who violates a provision of this section, including but not limited to a licensee who permits a controlling ownership interest in or other participation in the business of the licensee in violation of this section, is subject to the penalty provisions of [sections 1 through 32].

(5) For purposes of this section, the term "employee" means:

(a) a loan officer or other individual who negotiates agreements with the public; or

(b) an individual with access to or responsibility for escrow funds, trust funds, reserves, or escrow closing funds held by the licensee.

Section 30. Penalties. (1) A person who knowingly violates any provision of [sections 1 through 32] or any rule adopted or order issued pursuant to [sections 1 through 32] is subject to a fine for each violation not to exceed \$10,000 or imprisonment for not more than 1 year, or both.

(2) All fines collected under this section must be deposited in the general fund.

Section 31. Institution of criminal proceedings. (1) (a) The department may refer any evidence that is available concerning a violation of the provisions of [sections 1 through 32] or of a rule adopted or order issued pursuant to the provisions of [sections 1 through 32] to the attorney general or to the appropriate county attorney in the jurisdiction in which the violation occurred.

(b) The attorney general or the appropriate county attorney may, with or without the department's referral, institute criminal proceedings under the provisions of [sections 1 through 32].

(c) The department and its employees may, upon request of the attorney general or the appropriate county attorney, assist in presenting the law or facts at trial.

(2) After an examination, investigation, or hearing under [sections 1 through 32], if the department considers it of public interest or advantage, the department may certify a record to the proper prosecuting official of the county or city in which the act complained of, examined, or investigated occurred.

Section 32. Disciplinary action against licensee by other agencies. (1) A disciplinary action taken against a licensee by another agency of this state, another state, or the federal government for any action substantially related to

an activity regulated under [sections 1 through 32] may be grounds for disciplinary action by the department. A certified copy of the record of the disciplinary action taken against the licensee must be treated as evidence of the events related in the record.

(2) A disciplinary action taken against the licensee by another agency does not preclude the department from applying a specific statutory provision in [sections 1 through 32] that provides for discipline against a licensee.

Section 33. Section 31-1-111, MCA, is amended to read:

“31-1-111. Definition of regulated lender. The term “regulated lender”, as used in 31-1-112 and 31-1-116, means:

(1) a bank, building and loan association, savings and loan association, trust company, credit union, credit association, consumer loan licensee, *residential mortgage lender licensee*, development corporation, bank holding company, or a mutual or stock insurance company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by:

(a) an agency of the state of Montana; or

(b) an agency of the federal government;

(2) a subsidiary of an entity described in subsection (1);

(3) a Montana state agency or a federal agency that is authorized to lend money;

(4) a corporation or other entity established by congress or the state of Montana that is owned, in whole or in part, by the United States or the state of Montana and that is authorized to lend money.”

Section 34. Codification instruction. [Sections 1 through 32] are intended to be codified as an integral part of Title 32, and the provisions of Title 32 apply to [sections 1 through 32].

Approved May 3, 2007

CHAPTER NO. 370

[HB 96]

AN ACT GENERALLY REVISING THE ESTABLISHMENT OF STATE VETERANS' CEMETERIES; AUTHORIZING THE BOARD OF VETERANS' AFFAIRS TO DESIGNATE A COUNTY VETERANS' CEMETERY AS A STATE VETERANS' CEMETERY SUBJECT TO BOARD CERTIFICATION; PROVIDING AN APPROPRIATION; AMENDING SECTION 10-2-601, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 10-2-601, MCA, is amended to read:

“10-2-601. State veterans' cemeteries. (1) The board shall establish and operate state veterans' cemeteries, *except as provided in subsection (4)*.

(2) A cemetery must be located at Fort William Henry Harrison in Lewis and Clark County, Montana, and at Miles City. A cemetery may be located in Missoula County and in Yellowstone County if funding allows.

(3) The board may establish additional state veterans' cemeteries only as funding allows.

(4) (a) *The board may designate a veterans' cemetery established pursuant to [section 1 of Senate Bill No. 21] as a state veterans' cemetery if:*

(i) *the legislature has authorized the cemetery pursuant to subsection (2) or (3); and*

(ii) *the board certifies that the cemetery is operated and maintained under the same standards and interment eligibility criteria as required for a state veterans' cemetery established by the board.*

(b) *A cemetery designated under this subsection (4) as a state veterans' cemetery must be recognized and identified as a state veterans' cemetery on official state maps, in other appropriate state publications and websites, and on appropriate state road signs."*

Section 2. Appropriation. There is appropriated \$1 from the general fund to the department of military affairs for fiscal year 2008.

Section 3. Contingent voidness. If Senate Bill No. 21 is not passed and approved, then [this act] is void.

Section 4. Effective date. [This act] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 371

[HB 131]

AN ACT REVISING PUBLIC RETIREMENT LAWS; PROVIDING FOR THE ACTUARIAL FUNDING OF THE PUBLIC EMPLOYEES' AND SHERIFFS' RETIREMENT SYSTEMS BY INCREASING EMPLOYER CONTRIBUTION RATES; PROVIDING THAT THE INCREASE WILL NOT BE IMPOSED IF CERTAIN ACTUARIAL CONDITIONS ARE MET; ALLOCATING A PORTION OF THE EMPLOYER CONTRIBUTION IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM DEFINED CONTRIBUTION PLAN TO PAY FOR THE PLAN'S STARTUP LOAN; REDUCING THE GUARANTEED ANNUAL BENEFIT ADJUSTMENT FOR MEMBERS OF THE PUBLIC EMPLOYEES', SHERIFFS', AND GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEMS HIRED OR ASSUMING OFFICE ON OR AFTER JULY 1, 2007; INCREASING THE STATUTORY APPROPRIATION FOR STATE RETIREMENT CONTRIBUTIONS FOR EMPLOYEES OF SCHOOL DISTRICTS; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 19-3-316, 19-3-319, 19-3-1605, 19-3-2117, 19-7-404, 19-7-711, 19-8-1105, AND 19-21-214, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 19-3-316, MCA, is amended to read:

"19-3-316. Employer contribution rates. (1) Each employer shall contribute to the system. Except as provided in subsection (2), the employer shall pay as employer contributions 6.9% of the compensation paid to all of the employer's employees *plus any additional contribution under subsection (3)*, except for those *employees* properly excluded from membership. Of employer contributions made under this subsection for both defined benefit plan and defined contribution plan members, a portion must be allocated for educational

programs as provided in 19-3-112. Employer contributions for members under the defined contribution plan must be allocated as provided in 19-3-2117.

(2) Local government and school district employer contributions must be the total employer contribution rate provided in subsection (1) minus the state contribution ~~rate~~ *rates* under 19-3-319.

(3) *Subject to subsection (4), each employer shall contribute to the system an additional employer contribution equal to the following percentage of the compensation paid to all of the employer's employees, except for those employees properly excluded from membership:*

(a) *beginning July 1, 2007, 0.135%; and*

(b) *beginning July 1, 2009, 0.27%.*

(4) (a) *The board shall periodically review the additional employer contribution provided for under subsection (3) and recommend adjustments to the legislature as needed to maintain the amortization schedule set by the board for payment of the system's unfunded liabilities.*

(b) *The employer contribution required under subsection (3) terminates on July 1 immediately following the system's actuarial valuation if:*

(i) *the actuarial valuation determines that the period required to amortize the system's unfunded liabilities, including adjustments made for any benefit enhancements enacted by the legislature after the valuation, is less than 25 years; and*

(ii) *terminating the additional employer contribution would not cause the amortization period as of the most recent actuarial valuation to exceed 25 years."*

Section 2. Section 19-3-319, MCA, is amended to read:

"19-3-319. State contributions for local government and school district employers. (1) The state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.1% of the compensation paid to all employees of local government entities and school districts on and after July 1, 1997, except those *employees* properly excluded from membership.

(2) (a) *Subject to subsection (2)(b), in addition to the contribution required under subsection (1), the state shall contribute monthly from the general fund to the pension trust fund a sum equal to the following percentage of the compensation paid to all employees of school districts on and after July 1, 2007, except for those employees properly excluded from membership:*

(i) *beginning July 1, 2007, 0.135%; and*

(ii) *beginning July 1, 2009, 0.27%.*

(b) *The additional contribution under subsection (2)(a) terminates when the additional contribution under 19-3-316(3) terminates.*

(3) The board shall certify amounts due under this section on a monthly basis, and the state treasurer shall transfer those amounts to the pension trust fund within 1 week. ~~The payment is~~ *payments in this section are* statutorily appropriated as provided in 17-7-502."

Section 3. Section 19-3-1605, MCA, is amended to read:

"19-3-1605. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under

subsection (3) must be increased by ~~3%~~ *the applicable percentage provided in subsection (4)*.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than ~~a 3%~~ *an annualized increase of the applicable percentage provided in subsection (4)*, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of ~~3%~~ *the applicable percentage* in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than ~~a 3%~~ *an annualized increase of the applicable percentage provided in subsection (4)*, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to ~~3%~~ *the applicable percentage provided in subsection (5)* more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made.

(4) (a) *The applicable percentage is 3% for benefit recipients hired or assuming office:*

(i) *before July 1, 2007; or*

(ii) *on or after July 1, 2007, if the benefit recipient is an existing member of a benefit plan for which the applicable percentage is 3%.*

(b) *Except as provided in subsection (4)(a)(ii), the applicable percentage is 1.5% for benefit recipients hired or assuming office on or after July 1, 2007.*

(5) (a) *The applicable percentage rate for a contingent annuitant described in subsection (2)(c) is 3% if the original payee:*

(i) *was hired or assumed office before July 1, 2007; or*

(ii) *was an existing member of a benefit plan for which the applicable percentage is 3%.*

(b) *Except as provided in subsection (5)(a)(ii), the applicable percentage rate for a contingent annuitant described in subsection (2)(c) is 1.5% if the original payee was hired or assumed office on or after July 1, 2007.*

~~(4)(6)~~ The board shall adopt rules to administer the provisions of this section."

Section 4. Section 19-3-2117, MCA, is amended to read:

"19-3-2117. Allocation of contributions and forfeitures. (1) The member contributions made under 19-3-315 and additional contributions paid by the member for the purchase of service must be allocated to the plan member's retirement account.

(2) Subject to adjustment by the board as provided in 19-3-2121, of the employer contributions under 19-3-316 ~~received~~ *received*:

(a) ~~on or after July 1, 2002~~, an amount equal to:

(a)(i) 4.19% of compensation must be allocated to the member's retirement account;

(b)(ii) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate;

(c)(iii) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(b); and

(d)(iv) 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to 19-3-2141; and

(b) *on July 1, 2007, through June 30, 2009, 0.135% of compensation and on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316, 0.27% of compensation must be allocated in the following order:*

(i) *to the administrative account used by the board to meet the expenses of the plan's startup loan, until paid in full;*

(ii) *to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability; and*

(iii) *to the long-term disability plan trust fund to provide disability benefits to eligible members.*

(3) 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 5. Section 19-7-404, MCA, is amended to read:

"19-7-404. Employer contributions. (1) *The Each employer shall pay 9.535% of the compensation paid to all of the employer's employees plus any additional contribution under subsection (3), except for those employees properly excluded from membership.*

(2) *If the required contribution to the retirement system exceeds the funds available to a county from general revenue sources, a county may, subject to 15-10-420, budget, levy, and collect annually a tax on the taxable value of all taxable property within the county that is sufficient to raise the amount of revenue needed to meet the county's obligation.*

(3) *Subject to subsection (4), each employer shall contribute to the system an additional employer contribution equal to the following percentage of the compensation paid to all of the employer's employees, except for those employees properly excluded from membership:*

(a) *beginning July 1, 2007, 0.29%; and*

(b) *beginning July 1, 2009, 0.58%.*

(4) (a) *The board shall periodically review the additional employer contribution provided for under subsection (3) and recommend adjustments to the legislature as needed to maintain the amortization schedule set by the board for payment of the system's unfunded liabilities.*

(b) *The employer contribution required under subsection (3) terminates on July 1 immediately following the system's actuarial valuation if:*

(i) *the actuarial valuation determines that the period required to amortize the system's unfunded liabilities, including adjustments made for any benefit*

enhancements enacted by the legislature after the valuation, is less than 25 years; and

(ii) terminating the additional employer contribution would not cause the amortization period as of the most recent actuarial valuation to exceed 25 years.”

Section 6. Section 19-7-711, MCA, is amended to read:

“19-7-711. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by ~~3%~~ *3% the applicable percentage provided in subsection (4)*.

(2) (a) If a recipient’s benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than ~~a 3%~~ *an annualized increase of the applicable percentage provided in subsection (4)*, then the recipient’s benefit must be adjusted by an amount that will provide a total annualized increase of ~~3%~~ *the applicable percentage* in the benefit paid since the preceding January.

(b) If a recipient’s benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than ~~a 3%~~ *an annualized increase of the applicable percentage provided in subsection (4)*, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient’s monthly benefit must be increased to ~~3%~~ *3% the applicable percentage provided in subsection (5)* more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if the benefit’s commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made.

(4) (a) *The applicable percentage is 3% for benefit recipients hired or assuming office:*

(i) before July 1, 2007; or

(ii) on or after July 1, 2007, if the benefit recipient is an existing member of a benefit plan for which the applicable percentage is 3%.

(b) Except as provided in subsection (4)(a)(ii), the applicable percentage is 1.5% for benefit recipients hired or assuming office on or after July 1, 2007.

(5) (a) *The applicable percentage rate for a contingent annuitant described in subsection (2)(c) is 3% if the original payee:*

(i) was hired or assumed office before July 1, 2007; or

(ii) was an existing member of a benefit plan for which the applicable percentage is 3%.

(b) Except as provided in subsection (5)(a)(ii), the applicable percentage rate for a contingent annuitant described in subsection (2)(c) is 1.5% if the original payee was hired or assumed office on or after July 1, 2007.

(4)(6) The board shall adopt rules to administer the provisions of this section.”

Section 7. Section 19-8-1105, MCA, is amended to read:

“19-8-1105. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by ~~2%~~ *3% the applicable percentage provided in subsection (4)*.

(2) (a) If a recipient’s benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than ~~a 2%~~ *an annualized increase of the applicable percentage provided in subsection (4)*, then the recipient’s benefit must be adjusted by an amount that will provide a total annualized increase of ~~2%~~ *the applicable percentage* in the benefit paid since the preceding January.

(b) If a recipient’s benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than ~~a 2%~~ *an annualized increase of the applicable percentage provided in subsection (4)*, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient’s monthly benefit must be increased to ~~2%~~ *3% the applicable percentage provided in subsection (5)* more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if the benefit’s commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made.

(4) (a) *The applicable percentage is 3% for benefit recipients hired or assuming office:*

(i) *before July 1, 2007; or*

(ii) *on or after July 1, 2007, if the benefit recipient is an existing member of a benefit plan for which the applicable percentage is 3%.*

(b) *Except as provided in subsection (4)(a)(ii), the applicable percentage is 1.5% for benefit recipients hired or assuming office on or after July 1, 2007.*

(5) (a) *The applicable percentage rate for a contingent annuitant described in subsection (2)(c) is 3% if the original payee:*

(i) *was hired or assumed office before July 1, 2007; or*

(ii) *was an existing member of a benefit plan for which the applicable percentage is 3%.*

(b) *Except as provided in subsection (5)(a)(ii), the applicable percentage rate for a contingent annuitant described in subsection (2)(c) is 1.5% if the original payee was hired or assumed office on or after July 1, 2007.*

(4)(6) The board shall adopt rules to administer the provisions of this section.”

Section 8. Section 19-21-214, MCA, is amended to read:

“19-21-214. Contributions and allocations for employees in positions covered under the public employees’ retirement system. (1) The contribution rates for employees in positions covered under the public employees’ retirement system who elect to become program members pursuant to 19-3-2112 are as follows:

(a) the member’s contribution rate must be the rate provided in 19-3-315; and

(b) the employer’s contribution rate must be the rate provided in 19-3-316.

(2) Subject to subsection (3), ~~of the employer’s contribution under subsection (1)(b) must be allocated as follows:~~

(a) *an amount equal to:*

~~(a)(i)~~ 4.49% of compensation must be allocated to the participant’s program account;

~~(b)(ii)~~ 2.37% of compensation must be allocated to the defined benefit plan under the public employees’ retirement system as the plan choice rate; and

~~(c)(iii)~~ 0.04% of compensation must be allocated to the education fund pursuant to 19-3-112(1)(b); *and:*

(b) on July 1, 2007, through June 30, 2009, 0.135% of compensation and on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316, 0.27% of compensation must be allocated in the following order:

(i) to the administrative account used by the public employees’ retirement board to meet the expenses of the defined contribution plan’s startup loan, until paid in full; and

(ii) to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability.

(3) The allocations under subsection (2) are subject to adjustment by the public employees’ retirement board, but only as described in and in a manner consistent with the express provisions of 19-3-2121.”

Section 9. Appropriation. For the fiscal year beginning July 1, 2007, there is appropriated to the office of budget and program planning the following amounts from the indicated fund for the purpose of making the additional employer contributions in [sections 1, 2, and 4]:

	FY 2008	FY 2009
General fund	\$309,633	\$326,913
State special	212,659	221,068
Federal special	138,193	142,593
Proprietary	80,831	84,637

Section 10. 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 11. 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 12. Effective date. [This act] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 372

[HB 141]

AN ACT GENERALLY REVISING THE MONTANA CONSUMER LOAN ACT; REVISING DEFINITIONS; INCREASING LICENSING FEES; REVISING LICENSE ISSUANCE, DENIAL, SUSPENSION, REVOCATION, AND REINSTATEMENT PROVISIONS; REVISING PROVISIONS RELATING TO FEES CHARGED CONSUMERS; REVISING PROVISIONS RELATING TO INSTALLMENT AND BALLOON PAYMENTS; MODIFYING PROVISIONS RELATING TO WAGE ASSIGNMENTS; REVISING THE DEPARTMENT OF ADMINISTRATION'S AUTHORITY TO CONDUCT INVESTIGATIONS, ISSUE SUBPOENAS, TAKE OATHS, AND EXAMINE WITNESSES; PROVIDING FOR THE ISSUANCE OF CEASE AND DESIST ORDERS BY THE DEPARTMENT; MODIFYING INJUNCTION REQUIREMENTS; PROVIDING A COMPLAINT PROCEDURE; AMENDING SECTIONS 32-5-102, 32-5-103, 32-5-201, 32-5-202, 32-5-204, 32-5-207, 32-5-208, 32-5-301, 32-5-302, 32-5-303, 32-5-305, 32-5-306, 32-5-308, 32-5-310, 32-5-401, 32-5-402, 32-5-403, 32-5-405, AND 32-5-407, MCA; REPEALING SECTIONS 32-5-104, 32-5-321, 32-5-322, 32-5-323, 32-5-324, 32-5-404, 32-5-501, 32-5-502, 32-5-503, 32-5-504, 32-5-505, AND 32-5-506, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Section 32-5-102, MCA, is amended to read:

“32-5-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) *“Balloon payment” means any repayment option in which the borrower is required to repay the entire amount of any outstanding balance as of a specific date or at the end of a specified term and the aggregate amount of the required minimum periodic payments would not fully amortize the outstanding balance by the specific date or at the end of the loan term.*

(2) (a) “Consumer loan” means credit offered or extended to an individual primarily for personal, family, or household purposes, including loans for personal, family, or household purposes that are *not primarily* secured by a mortgage, deed of trust, trust indenture, or other security interest in real estate.

(b) Consumer loans do not include:

~~(i) loan transactions that are governed by 12 U.S.C. 1735f 7a, but a consumer loan business may engage in transactions that are governed by 12 U.S.C. 1735f 7a;~~

~~(ii)(i) deferred deposit loans provided for in Title 31, chapter 1, part 7; or~~

~~(ii)(ii) title loans provided for in Title 31, chapter 1, part 8.~~

~~(2) “Consumer loan business” means the business of making consumer loans as a licensee under this chapter.~~

(3) “Department” means the department of administration provided for in Title 2, chapter 15, part 10.

(4) *“Interest” means the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money and includes loan origination fees, points, and prepaid finance charges, as defined in 12 CFR 226.2.*

~~(4)(5)~~ “Licensee” means ~~one or both of the licenses~~ a license provided for by this chapter.

~~(5)(6)~~ “Licensee” means the person holding a license.

~~(6)(7)~~ “Person” means individuals, partnerships, associations, corporations, and all legal entities ~~in the loaning business.”~~

Section 2. Section 32-5-103, MCA, is amended to read:

“32-5-103. Engaging in business of making consumer loans restricted. (1) Except as provided in subsection (5), a person may not engage in the business of making consumer loans in any amount and contract for, charge, or receive directly or indirectly on or in connection with any loan any ~~charges~~ *compensation*, whether for interest, ~~compensation fees~~, *other* consideration, or expense, except as provided in and authorized by this chapter. The provisions of this chapter do not apply to any exempted person.

(2) A licensee may sell its business and assets to a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, *other licensee*, or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by an agency of the state of Montana or an agency of the federal government. All contracts for loans and all other contracts entered into by the licensee pursuant to the provisions of this chapter that are sold and transferred to an acquiring organization continue to be governed by the provisions of this chapter.

(3) The provisions of subsection (1) apply to any person who seeks to evade its applications by any device, subterfuge, or pretense.

(4) Any loan made or collected in violation of subsection (1) by a person other than a licensee or a ~~lender person~~ exempt under subsection (5) is void, and the person does not have the right to collect, receive, or retain any principal, interest, *fees*, or *other* charges.

(5) A consumer loan licensee or a person who seeks a regulated lender exemption under 31-1-112 as a consumer loan licensee shall fully comply with this chapter. A regulated lender as defined in 31-1-111, other than a consumer loan licensee, or a ~~lender person~~ who *makes fewer than four consumer loans a year with the person’s own funds and does not represent that the person is a licensee, who* complies with the provisions of Title 31, chapter 1, part 1, is not required to comply with this chapter. A deferred deposit lender, as defined in 31-1-703, who complies with the provisions of Title 31, chapter 1, part 7, is not required to comply with this chapter. A title lender, as defined in 31-1-803, who complies with the provisions of Title 31, chapter 1, part 8, is not required to comply with this chapter.”

Section 3. Section 32-5-201, MCA, is amended to read:

“32-5-201. License application and fees — ~~supplementary license.~~ (1) (a) *Each* place of business operated under this chapter shall properly display on the premises a nontransferable and nonassignable license. The same person may obtain additional licenses *for each business location* upon compliance with this chapter ~~as to each license.~~

(b) ~~Application~~ *Applications* for a license or renewal shall ~~must~~ be on a form prescribed and furnished by the department.

(c) A licensee may move ~~his~~ *the licensee's* place of business from one place to another ~~within a county without obtaining a new license, provided he obtains written permission from~~ *upon providing written notice to and receiving approval from* the department *prior to the move.*

(d) With each application the applicant shall submit ~~\$50~~ *\$500* as an investigation fee and ~~\$125~~ as a license *application* fee. ~~The license fee shall be returned to the applicant if the application is denied. The license application fee is nonrefundable.~~ The license year is the calendar year, and the license fee for any period less than 6 months is ~~\$62.50~~ *\$250*. A license remains in force until surrendered, suspended, or revoked.

(2) No licensee under the provisions of this chapter shall lend money in a total sum greater than \$1,000 to any borrower or to any borrower and spouse except under the following circumstances:

(a) ~~When any person holding a license provided for in subsection (1) desires to make loans for any amount in excess of \$1,000, the holder of such license may apply to the department for a supplementary license and pay therefor an additional license fee of \$75 per calendar year or one-half of said sum for any period less than 6 months.~~

(b) ~~The department shall grant, on application, a supplementary license to a holder of a license provided for in subsection (1).~~

(c) ~~Section 32-5-204 shall be applicable as to time of payment of supplementary license fee and penalty for failure to pay the same.~~

(d) ~~Provisions of 32-5-301 relating to refunds, fees, and charges and the other provisions of this chapter not inconsistent with this section shall be applicable to loans made under authority of a supplementary license.~~

(3)(2) ~~All moneys collected under the authority of licensing and examination fees collected pursuant to this chapter shall~~ *must* be paid by the department into the state special revenue fund for the use of the department in its supervision function.

(4) ~~The amount of \$1,000 in subsection (2) is subject to change pursuant to the provisions of 32-5-104.~~

Section 4. Section 32-5-202, MCA, is amended to read:

“32-5-202. Issuance or denial of license or license renewal. (1) Within 30 days after ~~an~~ *a complete* application for a license or a license renewal is filed with the department together with ~~the~~ *all* required fees, the department shall issue the license; *or license renewal* if the *department determines that the* character and general fitness of the applicant ~~is such as to warrant~~ *warrants the* belief that the business will be operated lawfully and fairly within the provisions of this chapter; *The department may* or enter an order denying the license or license renewal application *subject to notifying the applicant and providing the applicant an opportunity for a hearing, if it finds to the contrary.* *All notices and orders must be served as provided in 32-5-207(2).*

(2) ~~A copy of the order granting or denying a license, together with a summary of the department's findings, shall be filed in the office of the department and shall be a public record. A copy of the order denying a license, together with a summary of the department's findings, shall be mailed postage prepaid to the applicant at the address stated in the application.~~

Section 5. Section 32-5-204, MCA, is amended to read:

“32-5-204. License renewal fee. Every licensee shall ~~pay to the department, on or before December 1, pay to the department the sum of \$125 a nonrefundable license fee of \$500 for each license held as a license fee for the succeeding calendar year. Failure to pay such the license fee within the time prescribed shall results in an automatic revocation of the automatically revoke such license.”~~

Section 6. Section 32-5-207, MCA, is amended to read:

“32-5-207. Revocation and suspension of license — penalty — restitution. (1) (a) The department, ~~upon 10 days² after providing a 10-day written notice to the licensee and that includes a statement of the grounds for the proposed suspension or revocation and upon reasonable opportunity to be heard at a public hearing, if requested by the licensee, may suspend for not more than 30 days or revoke a license if it finds the licensee has knowingly violated any provision of this chapter. When the department enters an order revoking or suspending a license, it shall mail a copy of the order by certified or registered mail to the licensee at the address for which the license was issued. informing the licensee that the licensee has the right to an administrative hearing, may issue an order suspending or revoking a license if it finds that the licensee has violated any provision of this chapter, has failed to comply with any department rule, written instruction, or order, has failed or refused to make required reports, has furnished false information, or has operated without a license.~~

(b) *The department may impose a civil penalty of not more than \$1,000 for each violation of this chapter, not to exceed \$5,000 for each administrative action, and may order restitution to borrowers and reimbursement of the department’s costs in bringing an administrative action. The department may suspend or revoke the right of a person or licensee, directly or through an officer, agent, employee, or representative, to operate as a licensee or to engage in the business of making consumer loans.*

(2) *All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or in the case of an unlicensed business to the last-known address of record.*

(3) *A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.*

(4) *All civil penalties collected pursuant to this section must be deposited in the state general fund.”*

Section 7. Section 32-5-208, MCA, is amended to read:

“32-5-208. Reinstatement. The department may reinstate any ~~suspended or revoked license if no there is not a fact or condition then exists existing at the time of reinstatement that which clearly would have justified the department in refusing originally to issue such the license. In any case where the license has been revoked for cause, no an application shall may not be made for issuance of a new license or the reinstatement of a revoked license for a period of 6 months from the date of revocation.”~~

Section 8. Section 32-5-301, MCA, is amended to read:

“32-5-301. Charges, refunds, penalties, filing fees Fees charged to consumers. (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)(2) ~~If provided for in the contract so provides, the an additional charge fee may be charged~~ for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement. ~~The fee charged may be the greater of \$15 or 5% of the amount past due or \$15, not to exceed \$50. and that The fee charged for any past-due amount may be charged only once. Except as provided in subsection (3), other fees may not be charged for default or extension of the contract by the borrower.~~

(3) (a) *If provided for in the contract, a licensee may grant a deferral at any time. A deferral postpones the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled or as previously deferred for a period equal to the agreed-upon deferral period. The deferral period is that period during which an installment is not scheduled to be paid by reason of the deferral.*

(b) *A licensee may charge an additional fee for each deferral. The fee charged may be the greater of \$15 or 5% of the amount currently due, not to exceed \$50.*

(c) *Other fees may not be charged by the lender for any deferrals granted by the lender.*

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

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

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

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

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

(iii)(f) fees for notarizing deeds and other documents;

(iv)(g) appraisal fees;

(v)(h) fees for credit reports; and

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

(6)(5) (a) ~~Further or other charges~~ *Other fees* 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 fees in excess of those authorized by this chapter. If any amount in excess of the charges fees permitted by this chapter is charged, contracted for, and or received, except as the result of an accidental and bona fide error of computation, the licensee shall forfeit to the borrower a sum that is double the amount that is in excess of the charges fees authorized by this chapter.

(b) *This section does not apply to fees for services rendered in connection with a loan after the loan has been consummated and if the borrower's participation in the services is strictly voluntarily.*

~~(7) Subsections (2) and (3) 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. The contracting for, charging of, receiving of, or financing of loan origination fees, points, or prepaid finance charges on a loan on which other charges are made on an interest-bearing basis does not make the loan subject to being considered an add-on basis loan.~~

~~(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."

Section 9. Section 32-5-302, MCA, is amended to read:

"32-5-302. Installment payment — contract period and balloon payments. (1) A licensee may not enter into any contract of loan:

(a) of \$300 or less, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 21 calendar months from the date of making the contract;

(b) for more than \$300 to and including \$1,000, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 25 calendar months from the date of making; or

(c) for more than \$1,000 to and including \$2,500, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 48 calendar months from the date of making.

(2)(1) Each loan contract requires payment of principal and charges in installments that are *Except as provided in subsection (4), if the loan contract requires installment payments, the contract must provide that principal and interest be payable at approximately equal periodic intervals, except that payment dates may be omitted to accommodate borrowers with seasonal incomes.*

(2) With respect to a loan on which charges are made on an add-on basis, an An installment contracted for may not be substantially larger than any preceding installment. ~~When~~ *If a loan contract provides for monthly installments installment payments, the first installment may must be payable at any time within 45 days of the date of the loan and the charges interest may be charged for the number of days in excess of 30 from the date of the making of the loan and may be added to the scheduled amount of the installments.*

(3) *A licensee may not enter into any loan contract in which a borrower agrees to pay principal or interest in one lump sum unless the payment is due not less than 45 days from the date of the making of the loan and not more than 1 year from the date of the making of the loan.*

(4) *Loans with a balloon payment are permissible so long as all installment payments cover at least the interest that has accrued since the previous installment payment."*

Section 10. Section 32-5-303, MCA, is amended to read:

"32-5-303. Borrower to receive copy of contract or statement of contents. At the time the a loan is made, there will *must* be delivered to the borrower, or if there be two or more or borrowers to one of them, the disclosures required by the Federal federal Consumer Credit Protection Act *and the federal Truth in Lending Act, 15 U.S.C. 1601, et seq., and a copy of the loan contract; or a written statement in the English language showing in clear and distinct terms:*

(1) the name and address of the lender and of one of the borrowers or a maker of the loan;

- (2) the date of the loan contract;
- (3) the *description or schedule of installments or description thereof payments*;
- (4) the principal amount of the loan excluding *charges interest*;
- (5) the rate ~~or~~ *and* amount of *charges interest* as *provided in the contract may provide*;
- (6) the amount collected or paid out for each kind of insurance, if any;
- (7) the amount collected or paid out for filing and other fees as allowed in ~~32-5-301(5)~~ *this chapter*;
- (8) the collateral or security for the loan including all other accommodation or other joint makers *or (comakers); and*
- (9) that the borrower may prepay the loan in whole or in part *without penalty* at any time during a licensee's regular business hours ~~and, in case the charges have been added to the principal of the loan, that such charges are subject to the refund requirements of 32-5-301(3) if such loan is prepaid in full.~~"

Section 11. Section 32-5-305, MCA, is amended to read:

"32-5-305. Confessions of judgment — incomplete instruments forbidden. No A licensee shall *may not*:

- (1) take any confession of judgment *from the borrower* or any power of attorney running to ~~himself the licensee~~ or to any third person to confess judgment *for the borrower* or to appear for the borrower in a judicial proceeding;
- (2) take any note or promise to pay that does not disclose the amount of the loan, a schedule of payments or a description ~~thereof of the schedule of payments~~, and the agreed ~~charges and in which interest and fees to be charged~~. *The note or promise may not contain blanks that are left to be filled in after execution. However, such details The disclosures required by this subsection need are not appear required* on a certificate of title to a motor vehicle, *on a policy or certificate of insurance, a chattel mortgage or deed of trust covering future advances according to the law of the district or state where the property is located, or on customary powers in connection with bonds or stocks which that may be pledged as collateral; or.*
- (3) take any instrument in which blanks are left to be filled in after the loan is made."

Section 12. Section 32-5-306, MCA, is amended to read:

"32-5-306. Insurance — real property security — definitions. (1) Except as provided in this section, insurance may not be written by a licensee or employee, affiliate, or associate of the licensee in connection with any loan.

(2) Insurance permitted under the provisions of this section must be obtained through an insurance company authorized to conduct business in Montana by a licensed insurance producer or agency of this state. Premiums may not exceed those fixed by law or current applicable manual rates. Insurance written as authorized by this section may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

(3) (a) When the principal amount of the loan exceeds \$300 exclusive of the portion of the loan attributable to insurance premiums and ~~charges fees~~, the licensee may require a borrower to insure property offered as security against any substantial risk of loss, damage, or destruction for an amount not to exceed

the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It is optional with the borrower to obtain insurance in an amount greater than the amount of the loan or for a longer term.

(b) A lender may not require a borrower, as a condition of obtaining or maintaining a loan secured by real property, to provide insurance on improvements to real property in an amount that exceeds the reasonable replacement value of the improvements.

(4) Subject to the laws of this state, credit life insurance, credit disability insurance, and loss of income insurance may be provided at the expense of the borrower and may be provided by a licensee upon the request of the borrower when the principal amount of the loan exceeds \$300, exclusive of the portion of the loan attributable to insurance premiums and ~~charges fees~~.

(5) The insurance authorized by this section may be sold, obtained, or provided by or through a licensee, and the premium or identifiable ~~charge fee~~ for the insurance may be included in the principal amount of the loan. However, a licensee may not require a borrower to purchase insurance from the licensee or from any particular insurance producer, broker, or insurance company as a condition precedent for obtaining a loan. Any gain or advantage to the licensee or any employee, affiliate, or associate of the licensee from the sale, provision, or obtaining of insurance as authorized by this section may not be considered to be ~~additional charges or~~ a violation of this chapter.

(6) A licensee may not require insurance under this section until any existing insurance of the same type has expired or has been canceled ~~and the unearned portion of the premium for the canceled insurance has been rebated to the borrower.~~

~~(7) The amount of \$300 in subsections (3) and (4) is subject to change pursuant to 32-5-104 on adjustment of dollar amounts.~~

~~(8)~~(7) As used in this section:

(a) "borrower" means a mortgagor, grantor of a deed of trust, or other debtor;

(b) "improvement to real property" means a fixture, building, or other structure attached to real property and intended as a permanent addition to the real property; and

(c) "lender" means a mortgagee, beneficiary of a deed of trust, or other creditor who holds a mortgage, deed of trust, or other instrument that encumbers real property as security for the repayment of a debt."

Section 13. Section 32-5-308, MCA, is amended to read:

"32-5-308. Annual report. (1) A licensee shall file an annual report before April 15 for the preceding calendar year with the department.

~~(2) The report must provide information with respect to the financial condition of the licensee and must include:~~

~~(a) the name and address of the licensee;~~

~~(b) a statement of income and expenses;~~

~~(c) an analysis of charges, size of loans made, and types of security on loans;~~

~~(d) an analysis of suits and foreclosures; and~~

~~(e) other relevant information the department may reasonably require concerning the business conducted during the preceding calendar year for each licensed place of business of the licensee in this state.~~

(3)(2) The report must be made under oath and be in a form *and contain the information* prescribed by the department. The department shall publish annually an analysis and summary of the reports.”

Section 14. Section 32-5-310, MCA, is amended to read:

“32-5-310. Wage assignments — limitations. (1) ~~The payment in money, credit, goods, or things in action as consideration for any sale or assignment of or order for the payment of wages, salary, commission, or other compensation for services, whether earned or to be earned, shall, for the purpose of regulation under this chapter, be considered a loan secured by such assignment, and the Subject to the limitations in subsection (2), wage assignments, which include salary, wages, commissions, and other compensation for services, are permitted and any loan made subject to a wage assignment must be considered a loan secured by the wage assignment. The amount by which the assigned compensation assignment exceeds the amount of the consideration actually paid shall, for the purposes of regulation under this chapter, may not be considered interest or charges upon on the loan from the date of payment to the date the compensation is payable and must be credited to the borrower. Such transactions shall be Transactions subject to the provisions of this section are governed by and be are subject to the provisions of this chapter.~~

(2) ~~Any assignment or other transfer to a licensee or for the benefit of a licensee of salary, wages, commissions, or other compensation for services must be limited to not exceeding may not exceed 10% of such the salary, wages, commissions, or other compensation owing at the time of the notice to the debtor’s employer and thereafter to become owing or that is subsequently owed. However, no such An assignment or order is not valid unless it is in writing, signed in person by the borrower, or if the borrower is married, unless it is signed in person by both husband and wife, provided that written assent of a spouse is not required when husband and wife have been and are living separate and apart when such the assignment or order is made. Only Notice of the assignment must be given to the debtor’s employer only if the debtor defaults in payment of the whole or some part of the loan for which such the assignment or transfer is security shall notice be given to the debtor’s employer of such assignment or transfer. Such The notice must be served on the employer or a managing agent of such the employer, must be verified by the oath of the licensee or his the licensee’s agent, and must include:~~

- (a) a correct copy of the assignment;
 - (b) a statement of the amount of ~~such the~~ loan and the amount due and unpaid ~~thereon; and~~
 - (c) a copy of this section.
- (3) The acceptance and honoring of any assignment ~~shall~~ *must* be at the option of the employer.”

Section 15. Section 32-5-401, MCA, is amended to read:

“32-5-401. Department — powers and duties — adoption of rules. (1) All powers and duties of regulation and supervision conferred by this chapter are vested in the department. The department shall adopt rules necessary to carry out the intent and purposes of this chapter. ~~A copy of every rule shall be mailed to each licensee at least 15 days in advance of its effective date. However,~~

the failure of a licensee to receive a copy of a rule does not exempt him from complying with a rule adopted under this chapter.

(2) All rules adopted under this chapter are binding on all licensees persons and enforceable by the department through the power of suspension or revocation of licenses as provided in this chapter.”

Section 16. Section 32-5-402, MCA, is amended to read:

“32-5-402. Investigations by department — subpoenas — oaths — examination of witnesses and evidence. (1) The department may at any time investigate any transaction with borrowers and may examine the books, accounts, and records in this state to discover violations of this chapter by:

(1)(a) a licensee; or

(2)(b) a person whom who the department has reason to believe is violating or is about to violate this chapter.

(2) *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 may investigate any matter, upon complaint or otherwise, if it appears that a person has engaged in or offered to engage in any act or practice that is in violation of any provision of this chapter or any rule adopted or order issued by the department pursuant to this chapter.*

(3) *The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this chapter. The department may administer oaths and affirmations to a person whose testimony is required.*

(4) *If a person refuses to obey a subpoena or to give testimony or produce evidence as required by the subpoena, a judge of the district court of Lewis and Clark County or the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated in the subpoena.*

(5) *If a person served with a subpoena refuses to obey the subpoena or to give testimony or produce evidence as required by the subpoena, the department may proceed under the contempt provisions of Title 3, chapter 1, part 5.*

(6) *Failure to comply with the requirements of a court-ordered subpoena is punishable pursuant to 45-7-309.”*

Section 17. Section 32-5-403, MCA, is amended to read:

“32-5-403. Annual examinations Examinations — cost. (1) The department shall make an annual examination of may examine the books, accounts, and records of every licensee insofar as they relate to transactions with borrowers under this chapter and may make such additional examinations as the department deems necessary.

(2) The expenses of the department incurred in the examination of the books, accounts, and records of the licensees shall must be charged at a rate to be established by the department by rule. Such fees shall The amount charged must be established to recover all of the costs of the department’s supervision program of the department. Each licensee shall must be billed by the

department for the amount so charged to such the licensee pursuant to this section. If said the charge is not paid within 30 days after the mailing of such the bill, the license of said the licensee may be suspended or revoked.”

Section 18. Cease and desist orders. (1) If it appears to the department that a person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule adopted or order issued by the department pursuant to this chapter, the department may issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The order may apply only to the alleged act or practice constituting a violation of this chapter. The department may issue a temporary order pending the hearing that:

(a) remains in effect until 10 days after the hearings examiner issues proposed findings of fact and conclusions of law and a proposed order; or

(b) becomes final if the person to whom notice is addressed does not request a hearing within 10 days after receipt of the notice.

(2) A violation of an order issued pursuant to this section is subject to the penalty provisions of this chapter.

Section 19. Section 32-5-405, MCA, is amended to read:

“32-5-405. Injunctions — receivers. (1) Whenever the department has reasonable cause to believe that any a person is violating or is threatening to violate any provision of this chapter, the department may, in addition to all actions provided for in this chapter and without prejudice thereto to those actions, enter an order requiring such person to desist or to refrain from such violation bring an action in the name of the state against the person to restrain by temporary or permanent injunction or temporary restraining order the use of the unlawful method, act, or practice.

(2) An action may be brought on the relation of the attorney general and the department to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper.

(2) The notice for an action pursuant to subsection (1) must state generally the relief sought and must be served at least 20 days before the hearing of the action in which the relief sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by 27-19-315.

(3) An action under this section may be brought in the district court in the county in which a person resides or has the person’s principal place of business or in the district court of Lewis and Clark County if the person is not a resident of this state or does not maintain a place of business in this state.

(4) A district court may issue temporary or permanent injunctions or temporary restraining orders to restrain and prevent violations of this chapter, and an injunction must be issued without bond to the department.

(3)(5) In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such the action is brought shall have power and jurisdiction to may impound, and to appoint a receiver for, the property and business of the defendant, including books, papers, documents, and records pertaining thereto to the property or business or so as much thereof of the property or business as the court may deem considers reasonably necessary to prevent violations of this chapter through or by means of the use of

~~said property and business. Such~~ *The* receiver, when appointed and qualified, ~~shall have such~~ *has the* powers and duties as to custody, collection, administration, winding up, and liquidation of ~~such the~~ property and business ~~as shall from time to time be~~ *that are* conferred upon ~~him~~ *the receiver* by the court.”

Section 20. Section 32-5-407, MCA, is amended to read:

“32-5-407. Attorney fees — bad check charge fee. (1) *If provided in the contract so provides*, reasonable attorney fees may be awarded to the party in whose favor final judgment is rendered in any action on a contract entered into pursuant to the provisions of this chapter.

(2) In addition to any other ~~charges fees~~ authorized by this chapter, a licensee may charge a borrower the greater of \$25 or the licensee’s actual expense for each check, received in payment of a loan, that is dishonored for any reason.”

Section 21. Complaint procedure. (1) The department shall maintain a list of licensees that is available to interested persons and to the general public. The department shall also establish by rule a procedure under which an aggrieved consumer or any member of the public may file a complaint against a licensee or an unlicensed person who violates any provision of this chapter.

(2) The department, after giving reasonable notice, may hold hearings, subject to the contested case provisions of Title 2, chapter 4, part 6, upon the request of a party to the complaint, make findings of fact or conclusions of law, issue cease and desist orders, refer the matter to the appropriate law enforcement agency for prosecution for a violation of this chapter, seek injunctive or other relief in district court, or suspend or revoke a license granted under this chapter.

Section 22. Repealer. Sections 32-5-104, 32-5-321, 32-5-322, 32-5-323, 32-5-324, 32-5-404, 32-5-406, 32-5-501, 32-5-502, 32-5-503, 32-5-504, 32-5-505, and 32-5-506, MCA, are repealed.

Section 23. Codification instruction. [Sections 18 and 21] are intended to be codified as an integral part of Title 32, chapter 5, and the provisions of Title 32, chapter 5, apply to [sections 18 and 21].

Section 24. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2008.

(2) [Sections 3 and 5 and this section] are effective October 1, 2007.

Approved May 3, 2007

CHAPTER NO. 373

[HB 155]

AN ACT CREATING AN ACCOUNT IN THE STATE TREASURY FROM WHICH PREMIUMS PAID FOR GROUP LIFE INSURANCE BY MONTANA RESIDENTS WHO ARE MEMBERS OF THE MONTANA NATIONAL GUARD, RESERVE, OR ARMED FORCES WHO ARE ON ACTIVE DUTY FOR A CONTINGENCY OPERATION MAY BE REIMBURSED; REQUIRING THE DEPARTMENT OF MILITARY AFFAIRS TO ADOPT RULES TO DETERMINE SERVICE MEMBERS’ ELIGIBILITY FOR REIMBURSEMENT FOR GROUP LIFE INSURANCE PREMIUMS PAID AND IMPLEMENT THE

REIMBURSEMENT PROGRAM; EXEMPTING FROM STATE INCOME TAXATION THE AMOUNT RECEIVED BY A SERVICE MEMBER AS REIMBURSEMENT FOR GROUP LIFE INSURANCE PREMIUMS PAID; APPROPRIATING FUNDS TO REIMBURSE SERVICE MEMBERS WHO ARE ON ACTIVE DUTY FOR A CONTINGENCY OPERATION FOR THE PREMIUMS PAID BY MEMBERS FOR GROUP LIFE INSURANCE; AMENDING SECTION 15-30-116, 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. Legislative findings — purpose. (1) The legislature finds that:

(a) Montana has a proud tradition of military service with thousands of Montanans having answered the call of the nation and having served in the national guard, reserve, and armed forces;

(b) there have been instances in which the dependents of members of the Montana national guard, reserve, and armed forces have been left without adequate financial resources when a service member has been killed while on active duty;

(c) members of the Montana national guard, reserve, and armed forces are now being asked to serve extended periods of active duty in support of contingency operations;

(d) members of the Montana national guard, reserve, and armed forces are eligible for life insurance policies with limits of up to \$400,000 through the federal service members' group life insurance program; and

(e) members of the Montana national guard, reserve, and armed forces provide Montana and its citizens with valuable benefits through the members' service inside this state and through the members' recently extended periods of active duty in combat areas outside of Montana, and in exchange for these extended periods of active duty they should receive assistance with the premiums that members pay for the federal service members' group life insurance program.

(2) The purpose of creating and funding the account established in [section 3] is to provide a benefit to members of the Montana national guard, reserve, and armed forces in exchange for and in recognition of the members' assumption of extended periods of active duty in a contingency operation, in addition to the members' increased contributions to the safety and welfare of the citizens of Montana.

Section 2. Definitions. As used in [sections 1 through 4], unless the context requires otherwise, the following definitions apply:

(1) "Active duty" has the meaning provided in 38 U.S.C. 1965(1)(A) and generally means full-time duty in the armed forces, other than active duty for training.

(2) "Contingency operation" means an assignment within the provisions of 10 U.S.C. 101(a)(13).

(3) "National guard" has the meaning provided in 10-1-101.

(4) "Reserve" means a member of a reserve component, as defined in 38 U.S.C. 101, of the United States armed forces.

(5) "Service member" means a Montana resident who is a member of the national guard or reserve or a member of the armed forces, as defined in 10 U.S.C. 101(a)(4).

Section 3. Account for service members' life insurance. (1) There is an account in the state treasury that is composed of statutory deposits to the account and includes any gifts, grants, donations, or bequests to the account and earnings from investing the money in the account.

(2) Money in the account must be used, as provided in [section 4], to reimburse service members serving on active duty in a contingency operation for the premiums paid, if any, for service members' group life insurance.

Section 4. Military service members' life insurance — reimbursement — eligibility. (1) (a) Subject to subsections (1)(b) and (1)(c), the department shall reimburse eligible service members for premiums paid for benefits under the service members' group life insurance program pursuant to 38 U.S.C. 1965 through 1980.

(b) A service member is eligible for reimbursement of group life insurance premiums only if the service member:

(i) paid premiums for service members' life insurance available under 38 U.S.C. 1965 through 1980 after February 28, 2006;

(ii) served on active duty in a contingency operation after February 28, 2006; and

(iii) was not reimbursed for premiums paid under subsection (1)(b)(i).

(c) The maximum amount of premium to be reimbursed may not exceed \$17.50 a month for each month during which the member was on active duty in a contingency operation and purchased service members' group life insurance pursuant to 38 U.S.C. 1965 through 1980.

(2) The amount received by a service member as reimbursement for group life insurance premiums paid is considered to be a bonus for the purposes of taxation.

(3) The department shall adopt rules necessary to determine eligibility for reimbursement from the service members' life insurance reimbursement account and to implement the reimbursement program.

(4) This section does not alter, amend, or change the eligibility or applicability of the service members' group life insurance program pursuant to 38 U.S.C. 1965 through 1980 or any rights, responsibilities, or benefits under the program.

Section 5. Section 15-30-116, MCA, is amended to read:

~~"15-30-116. (Temporary) Veterans' bonus or military salary — exemptions.~~ (1) All payments made under the World War I bonus law, the Korean bonus law, and the veterans' bonus law are exempt from taxation under this chapter. Any income tax that has been or may be paid on income received from the World War I bonus law, the Korean bonus law, and the veterans' bonus law is considered an overpayment and must be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

(2) The salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana is exempt from state income tax.

~~(3) The amount received pursuant to 10-1-1104 or from the federal government by a service member, as defined in 10-1-1102, as reimbursement for group life insurance premiums paid is considered to be a bonus and is exempt from taxation under this chapter. (Terminates on occurrence of contingency—sec. 9, Ch. 604, L. 2005.)~~

15-30-116. (Effective on occurrence of contingency) Veterans' bonus or military salary — exemptions. (1) All payments made under the World War I bonus law, the Korean bonus law, and the veterans' bonus law are hereby exempt from taxation under the income tax laws of the state of Montana, and ~~any this chapter. Any income tax which that has been or may hereafter be paid on income received from this source shall be the World War I bonus law, Korean bonus law, and the veterans' bonus law is considered an overpayment and shall must~~ be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

(2) The salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana is exempt from state income tax.

(3) The amount received pursuant to [section 4] or from the federal government by a service member, as defined in [section 2], as reimbursement for group life insurance premiums paid is considered to be a bonus and is exempt from taxation under this chapter."

Section 6. Appropriation — periodic transfer — reversion. (1) There is transferred from the general fund to the account established in [section 3] to reimburse the premiums for service members' life insurance \$60,000 for fiscal year 2007, \$100,000 for fiscal year 2008, and \$100,000 for fiscal year 2009. The amount transferred is appropriated to the department of military affairs to be used as provided in [sections 1 through 4].

(2) Subject to subsection (1), the adjutant general shall, as necessary to administer the program for reimbursing service members for premiums paid for group life insurance under [sections 1 through 4], request the state treasurer to transfer sufficient funds from the general fund to the account established in [section 3]. The state treasurer shall comply with the request.

(3) Any unexpended or unencumbered balance remaining in the account at the end of a fiscal year reverts to the general fund.

Section 7. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 10, and the provisions of Title 10 apply to [sections 1 through 4].

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

Section 9. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to February 28, 2006.

Approved May 3, 2007

CHAPTER NO. 374

[HB 195]

AN ACT RELATING TO SERVICES FOR INDIVIDUALS WHO ARE DEVELOPMENTALLY DISABLED; CLARIFYING THAT AN INDIVIDUAL

MAY RETURN TO HIGH SCHOOL AFTER GRADUATION IF THE INDIVIDUAL IS NOT 19 YEARS OF AGE; PROVIDING THAT INDIVIDUALS ELIGIBLE TO RECEIVE SERVICES FOR THE DEVELOPMENTALLY DISABLED ARE NOT DISQUALIFIED FROM ALSO RECEIVING MEDICAID IF QUALIFIED FOR MEDICAID; REQUIRING THAT ASSISTANCE FOR SERVICES BE MADE AVAILABLE TO INDIVIDUALS WHO ARE DEVELOPMENTALLY DISABLED; PROVIDING AN APPROPRIATION; AMENDING SECTION 20-5-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 20-5-101, MCA, is amended to read:

“20-5-101. Admittance of child to school. (1) The trustees shall assign and admit a child to a school in the district when the child is:

(a) 6 years of age or older on or before September 10 of the year in which the child is to enroll but is not yet 19 years of age;

(b) a resident of the district; and

(c) otherwise qualified under the provisions of this title to be admitted to the school.

(2) The trustees of a district may assign and admit any nonresident child to a school in the district under the tuition provisions of this title.

(3) The trustees may at their discretion assign and admit a child to a school in the district who is under 6 years of age or an adult who is 19 years of age or older if there are exceptional circumstances that merit waiving the age provision of this section. *The trustees may also admit an individual who has graduated from high school but is not yet 19 years of age even though no special circumstances exist for waiver of the age provision of this section.*

(4) The trustees shall assign and admit a child who is homeless, as defined in the Stewart B. McKinney Homeless Assistance Act (Public Law 100-77), to a school in the district regardless of residence. The trustees may not require an out-of-district attendance agreement or tuition for a homeless child.

(5) Except for the provisions of subsection (4), tuition for a nonresident child must be paid in accordance with the tuition provisions of this title.”

Section 2. Dual eligibility for services. An individual with developmental disabilities who is eligible for services pursuant to this chapter may also apply for and, if qualified, receive medicaid services pursuant to law governing the Montana medicaid program.

Section 3. Appropriation. (1) There is appropriated from the general fund \$156,640 in fiscal year 2008 and \$161,320 in fiscal year 2009 to the department of public health and human services to provide services to individuals who have graduated from high school but have not turned 19 years of age on or before September 10 in the school year or years following graduation and who are qualified to receive developmental disability services from the department of public health and human services by:

(a) providing payments to a school district that admits an individual under the provisions of 20-5-101; or

(b) providing direct assistance to an individual to purchase community-based services.

(2) All or a portion of the money appropriated to the department of public health and human services may be used as a state match for federal funds.

(3) The appropriations in subsection (1) are one-time in nature and are not to be included in the base budget for the 2011 biennium budget.

Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 53, chapter 20, and the provisions of Title 53, chapter 20, apply to [section 2].

Section 5. Effective date. [This act] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 375

[HB 240]

AN ACT ESTABLISHING A TEMPORARY EMERGENCY LODGING PROGRAM FOR INDIVIDUALS AND FAMILIES DISPLACED FROM THEIR RESIDENCES; PROVIDING A TAX CREDIT FOR PARTICIPATING ESTABLISHMENTS; ESTABLISHING LIABILITY FOR DAMAGES; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Temporary emergency lodging program — definitions. (1) There is a voluntary temporary emergency lodging program for licensed establishments located in Montana to assist designated charitable organizations in providing short-term lodging in Montana to individuals and families displaced from their residences.

(2) Except as provided in subsection (8), participating establishments may receive a tax credit as provided in [section 3] for providing temporary lodging to an individual who is:

(a) displaced from the individual's residence because of temporary immediate danger to the individual posed by an assault, as described in 45-5-206, or potential assault by a partner or family member, as defined in 45-5-206; and

(b) referred to the establishment by a designated charitable organization.

(3) Except as provided in subsection (8), establishments participating in the temporary emergency lodging program are eligible for a tax credit as provided in [section 3] for up to five nights of lodging for each individual per calendar year.

(4) Temporary emergency lodging provided under this section must be provided at no cost to the individual or the referring organization.

(5) Participating establishments may offer lodging based on availability of rooms.

(6) The department shall maintain a registry of designated charitable organizations and shall provide a list of approved organizations to establishments upon request. The department shall seek comment from statewide nonprofit organizations that work with victims of disaster and domestic violence when developing and updating the registry.

(7) For the purposes of [section 2] and this section, "designated charitable organization" means an organization approved by the department to make referrals for temporary emergency lodging.

(8) The tax credit referred to in subsections (2) and (3) does not apply to the costs of providing lodging to an individual who is displaced by a major disaster declared by the president under 42 U.S.C. 5170 or 5191 and who receives financial assistance for temporary housing under 42 U.S.C. 5174.

Section 2. Temporary emergency lodging — liability for damages.

(1) An individual who is provided with temporary emergency lodging under [section 1] is liable for damages caused to the property during the individual's stay.

(2) If the individual is unable to pay for damages caused to the property, the designated charitable organization that referred the individual for temporary emergency lodging is responsible for the cost of the damages.

Section 3. Tax credit for providing temporary emergency lodging.

(1) There is a credit for taxes otherwise due under this chapter for participation in the temporary emergency lodging program established in [section 1].

(2) The tax credit is:

- (a) equal to \$30 for each day of lodging provided; and
- (b) limited to a maximum of five nights' lodging for each individual per calendar year.

(3) The credit may be claimed only for lodging provided in Montana.

(4) If the amount of the credit exceeds the taxpayer's liability under this chapter, the amount of the excess must be refunded to the taxpayer. The credit may be claimed even if the taxpayer has no tax liability.

(5) If the credit allowed under this section is claimed by a small business corporation, as defined in 15-30-1101, or a partnership, the credit must be attributed to shareholders or partners, using the same proportion to report the corporation's or partnership's income or loss for Montana income tax purposes.

Section 4. Codification instructions. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 50, chapter 51, and the provisions of Title 50, chapter 51, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 30, and Title 15, chapter 31, apply to [section 3].

Section 5. Applicability. [This act] applies to tax years beginning after December 31, 2007.

Approved May 3, 2007

CHAPTER NO. 376

[HB 257]

AN ACT REVISING THE TAXPAYER BILL OF RIGHTS; REQUIRING THE DEPARTMENT OF REVENUE TO TREAT SIMILARLY SITUATED TAXPAYERS IN A SIMILAR MANNER REGARDING THE ADMINISTRATION AND COLLECTION OF TAXES AND AVAILABLE TAXPAYER REMEDIES; REQUIRING THE DEPARTMENT OF REVENUE TO ADHERE TO THE SAME TAX APPEAL DEADLINES AS THE TAXPAYER; PROVIDING FOR A FEE FOR MONITORING COMPLIANCE WITH THE MONTANA TAXPAYER BILL OF RIGHTS; AMENDING

SECTIONS 15-1-222 AND 15-1-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 15-1-222, MCA, is amended to read:

“15-1-222. Taxpayer bill of rights. The department of revenue shall in the course of performing its duties in the administration and collection of the state’s taxes ensure that:

(1) the taxpayer has the right to record any interview, meeting, or conference with auditors or any other representatives of the department;

(2) the taxpayer has the right to hire a representative of the taxpayer’s choice to represent the taxpayer’s interests before the department or any tax appeal board. The taxpayer has a right to obtain a representative at any time, except that the selection of a representative may not be used to unreasonably delay a field audit that is in progress. The representative must have written authorization from the taxpayer to receive from the department confidential information concerning the taxpayer. The department shall provide copies to the authorized representative of all information sent to the taxpayer and shall notify the authorized representative concerning contacts with the taxpayer.

(3) *except as provided in subsection (5), the taxpayer has the right to be treated by the department in a similar manner as all similarly situated taxpayers regarding the administration and collection of taxes, imposition of penalties and interest, and available taxpayer remedies unless there is a rational basis for the department to distinguish them;*

(3)(4) the taxpayer has the right to obtain tax advice from the department. The taxpayer has a right to the waiver of penalties and interest, but not taxes, when ~~he~~ *the taxpayer* has relied on written advice provided to ~~him~~ *the taxpayer* by an employee of the department.

(4)(5) at the discretion of the department, *upon consideration of all facts relevant to the specific taxpayer*, the taxpayer has the right to pay delinquent taxes, interest, and penalties on an installment basis. This subsection applies only to taxes collected by the department, provided the taxpayer meets reasonable criteria.

(5)(6) the taxpayer has the right to a complete and accurate written description of the basis for any additional tax assessed by the department;

(6)(7) the taxpayer has the right to a review by management level employees of the department for any additional taxes assessed by the department;

(7)(8) the taxpayer has the right to a full explanation of the available procedures for review and appeal of additional tax assessments;

(8)(9) the taxpayer, after the exhaustion of all appropriate administrative remedies, has the right to have the state tax appeal board or a court, or both, review any final decision of the department assessing an additional tax. The taxpayer shall seek a review in a timely manner. A taxpayer is entitled to collect court costs and attorney fees from the department for frivolous or bad faith lawsuits as provided in 25-10-711.

(10) *the taxpayer has the right to expect that the department will adhere to the same tax appeal deadlines as are required of the taxpayer unless otherwise provided by law;*

(9)(11) the taxpayer has the right to a full explanation of the department's authority to collect delinquent taxes, including the procedures and notices that are required to protect the taxpayer;

(10)(12) the taxpayer has the right to have certain property exempt from levy and seizure as provided in Title 25, chapter 13, part 6, and any other applicable provisions in Montana law;

(11)(13) the taxpayer has the right to the immediate release of any lien the department has placed on property when the tax is paid or when the lien is the result of an error by the department;

(12)(14) the taxpayer has the right to assistance from the department in complying with state and local tax laws that the department administers; and

(13)(15) the taxpayer has the right to be guaranteed that an employee of the department is not paid, promoted, or in any way rewarded on the basis of assessments or collections from taxpayers."

Section 2. Section 15-1-223, MCA, is amended to read:

"15-1-223. Office of taxpayer assistance. (1) The department of revenue shall establish and maintain an office of taxpayer assistance.

(2) The office shall assist taxpayers by:

(a) providing easily understandable tax information on audits and corrections and review procedures of the department;

(b) providing easily understandable information on appeal procedures;

(c) answering questions regarding preparing and filing of returns and reports with the department; and

(d) locating documents or payments filed with or submitted to the department.

(3) The office of taxpayer assistance shall also:

(a) receive and evaluate complaints related to improper or abusive behavior or inefficient service provided by employees of the department and recommend appropriate action to the director of the department of revenue to resolve the complaints;

(b) compile data on the number and type of taxpayer complaints received and evaluate the actions taken to resolve complaints;

(c) survey taxpayers to obtain their evaluation of the quality of service provided by the department;

(d) monitor the department's compliance with the taxpayer bill of rights and report any abuses to the director of the department;

(e) monitor the department's collection activities to:

(i) report any abuses in collection activities by the department to the director;

(ii) recommend to the director whether a particular collection activity should be stopped if the taxpayer has not had an adequate opportunity to discuss alternative means of payment; and

(f) perform any other functions that the director may assign to assist taxpayers in complying with Montana's tax laws.

(4) *The department may charge a fee of \$1 for processing a complaint.*"

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

Approved May 3, 2007

CHAPTER NO. 377

[HB 278]

AN ACT SETTING THE GENETICS PROGRAM FEE; AMENDING SECTION 33-2-712, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 33-2-712, MCA, is amended to read:

“33-2-712. Genetics program fee. (1) Except as provided in 33-2-713, for each Montana resident insured under any individual or group disability or health insurance policy on February 1 of each year, the insurer or health service corporation issuing the policy, and the state group health plan provided for in Title 2, chapter 18, part 8, shall pay ~~the a fee provided for in subsection (2) of \$1~~ to the commissioner. The fee must be paid on or before March 1 of each year and be deposited in an account in the state special revenue fund provided for in 50-19-212. The fee may be used only to fund the statewide genetics program established in 50-19-211.

~~(2) (a) From October 1, 2005, through June 30, 2007, the fee is \$1.~~

~~(b) Beginning July 1, 2007, the fee is 70 cents.”~~

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

Approved May 3, 2007

CHAPTER NO. 378

[HB 330]

AN ACT CREATING THE MONTANA CLEAN RENEWABLE ENERGY BOND ACT; AUTHORIZING GOVERNMENTAL BODIES TO OWN AND OPERATE QUALIFIED ENERGY PROJECTS; AUTHORIZING GOVERNMENTAL BODIES TO ISSUE CLEAN RENEWABLE ENERGY BONDS TO FINANCE THE ACQUISITION OR CONSTRUCTION OF QUALIFIED ENERGY PROJECTS; AUTHORIZING GOVERNMENTAL BODIES TO ENTER INTO CONTRACTS NECESSARY TO ACQUIRE AND CONSTRUCT QUALIFIED ENERGY PROJECTS; PROVIDING TERMS AND CONDITIONS FOR THE ISSUANCE OF THE BONDS; PROVIDING THAT CERTAIN REQUIREMENTS BE MET PRIOR TO PROJECT FINANCING; CLARIFYING THAT THE PROVISIONS OF THIS ACT DO NOT AUTHORIZE A LOCAL GOVERNING BODY TO CONSTRUCT, OWN, OR OPERATE SOME POWERLINES; INCREASING THE AMOUNT OF BONDS ALLOWED UNDER THE MUNICIPAL FINANCE CONSOLIDATION ACT; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 17-5-1604 AND 17-5-1608, MCA; AND PROVIDING EFFECTIVE DATES.

WHEREAS, the Montana Legislature has previously determined that Montana is blessed with an abundance of diverse renewable resources, that renewable energy production promotes and sustains economic development activity in local communities across the state, that increased use of renewable

resources will enhance Montana's energy self-sufficiency, that economic and environmental benefits from renewable energy production accrue to the public at large, and that the expanded development of these resources to meet Montana's electricity demand and stabilize electricity prices should be encouraged and promoted; and

WHEREAS, Congress, pursuant to the Energy Tax Incentives Act of 2005, codified in part as section 54 of the Internal Revenue Code and referred to as the Federal Act, has created a federal tax credit program that would enable qualified issuers to issue clean renewable energy bonds for which the holder would receive a federal tax credit, in lieu of interest, to finance the capital costs of qualified projects as described in the Federal Act; and

WHEREAS, qualified issuers and qualified borrowers under the Federal Act include governmental bodies, which are defined as any state, territory, or possession of the United States, the District of Columbia, an Indian tribal government, or any political subdivision of those entities; and

WHEREAS, the Legislature, in enacting the Montana Renewable Power Production and Rural Economic Development Act, has required Montana public utilities to establish graduated renewable energy standards and to purchase renewable energy from the community renewable energy projects and has allowed Montana political subdivisions or governmental bodies to be owners of community renewable energy projects; and

WHEREAS, several Montana cities, towns, and counties have expressed a desire to issue clean renewable energy bonds and to acquire and construct qualified projects under the Federal Act that would provide the energy for their own needs at a stable price and have applied to the Internal Revenue Service for allocations under the Federal Act; and

WHEREAS, the purpose of this legislation is to authorize Montana local governmental bodies and Indian tribal governments to participate as qualified issuers or qualified borrowers under the Federal Act and to enable governmental bodies and Indian tribal governments to better access financial investments for community renewable energy projects or alternative renewable energy sources.

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

Section 1. Short title. [Sections 1 through 18] may be cited as the "Montana Clean Renewable Energy Bond Act".

Section 2. Definitions. Unless the context requires otherwise, in [sections 1 through 18], the following definitions apply:

- (1) "Ancillary services" has the meaning provided in 69-8-1003.
- (2) "Bond" means bond, note, or other obligation.
- (3) "Clean renewable energy bonds" means one or more bonds issued by a governmental body pursuant to [sections 1 through 18] and section 54 of the Internal Revenue Code, 26 U.S.C. 54.
- (4) "Commission" means the public service commission provided for in 69-1-102.
- (5) "Governing authority" means a council, board, or other body governing the affairs of the governmental body.

(6) "Governmental body" means a city, town, county, school district, consolidated city-county, Indian tribal government, or any other political subdivision of the state, however organized.

(7) "Intermittent generation resource" means a generator that operates on a limited and irregular basis due to the inconsistent nature of its fuel supply, which is primarily wind or solar power.

(8) "Internal Revenue Code" has the meaning provided in 15-30-101.

(9) "Project" means:

(a) a facility qualifying as a "qualified project" within the meaning of section 54(d)(2) of the Internal Revenue Code, 26 U.S.C. 54(d)(2);

(b) a community renewable energy project as defined in 69-8-1003; or

(c) an alternative renewable energy source as defined in 15-6-225.

Section 3. Authority to acquire, construct, and operate projects. A governmental body may:

(1) acquire, construct, reconstruct, extend, or improve a project within or outside of the boundaries of the governmental body or partially within or partially outside the boundaries of the governmental body;

(2) acquire any interest in or any right to capacity of a project and acquire by gift, purchase, or lease land or rights in land or other real or personal property that is necessary for the ownership, operation, or maintenance of a project;

(3) operate and maintain a project to provide electricity for its own use and, to the extent that production is in excess of its own requirements, sell the production to:

(a) a party allowed to choose an electricity supplier under 69-8-201;

(b) a public utility or cooperative;

(c) through June 30, 2009, a public utility under a qualifying contract governed by Title 69, chapter 3, part 6, if:

(i) the commission determines that adequate ancillary services are available for increases in the amount of intermittent generation resources connected to the transmission grid;

(ii) the cost of any ancillary services provided to the generator by the public utility can be adjusted to reflect actual costs, the costs are deductible by the public utility from the price of electricity paid to the generator, and adjustments may be made as frequently as every 12 months; and

(iii) the public utility can refuse acceptance of electricity from the generator when the loss of ancillary services threatens system reliability or the public utility is unable to purchase sufficient ancillary services to meet its obligations, subject to 90 days' written notice to the generator;

(d) a competitive electricity supplier; or

(e) an out-of-state purchaser;

(4) prescribe and collect rates, fees, and charges for the services and facilities furnished by a project;

(5) enter into and perform contracts and agreements that are necessary for the planning, construction, lease, operation, and maintenance of a project and the sale, transmission, distribution, or exchange of the electricity generated

from the project on terms and for a period of time that its governing authority may determine;

(6) contract with a person or entity, within or outside the state, for the construction of a project, for the sale or transmission of electricity generated by a project, or for any interest in the project or any right to capacity of the project on terms and conditions that its governing authority may determine.

Section 4. Cooperation among governmental bodies. (1) Two or more governmental bodies through their respective governing authorities may enter into interlocal or joint power agreements in accordance with Title 7, chapter 11, part 1, to facilitate project financing, acquisition, construction, operation, and maintenance and to provide related services including the sale and purchase of electricity.

(2) Governmental bodies that enter into agreements pursuant to subsection (1) may:

(a) authorize a board, commission, or other body to supervise, manage, or operate a project and may prescribe its powers and duties and fix the compensation of the members of the body supervising, managing, or operating the project; or

(b) hire a private party to supervise, manage, and operate the project on behalf of the governmental bodies.

Section 5. Authority to issue revenue bonds. (1) Except as provided in [section 16], a governmental body may:

(a) issue revenue bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, or extension of any project;

(b) pledge to the punctual payment of its revenue bonds issued under this section and interest on the bonds all or a portion of the gross or net revenue of the project; and

(c) create and maintain reasonable reserves.

(2) The revenue bonds provided for in subsection (1) may be authorized by a resolution adopted by the governing authority of the governmental body. The resolution must establish the terms, covenants, and conditions of the revenue bonds. It is not necessary to submit the question of issuing the revenue bonds to the electors of the governmental body. The revenue bonds do not constitute indebtedness for the purpose of statutory debt limitations.

(3) The revenue of the project must include the charges for energy used or reserved for use by the governmental body, which may be made payable from its general fund or other available revenue, and the revenue generated from the sale of energy or capacity to third parties.

Section 6. Determination of cost. The governing authority of a governmental body, in determining the cost of a project to be financed by the issuance of revenue bonds pursuant to [section 5], may include:

(1) engineering, inspection, fiscal, and legal expenses;

(2) interest estimated to accrue during the construction period of the project and for up to 6 months after the construction period on borrowed funds; and

(3) costs of issuance of the revenue bonds and the funding of a debt service reserve to secure the revenue bonds.

Section 7. Nature of revenue bonds. (1) A holder of a revenue bond issued pursuant to [section 5] does not have the right to compel the governmental body to exercise its taxing power to pay off the bonds or the interest on those bonds.

(2) Each revenue bond issued pursuant to [section 5] must state that:

(a) the bond, including interest on the bond, is payable from the revenue pledged to the payment of the bond; and

(b) the bond does not constitute a debt of the governmental body within the meaning of any constitutional or statutory limitation or provision.

Section 8. Authority to issue other bonds. If the principal amount of clean renewable energy bonds, as limited by the Internal Revenue Code, is insufficient to finance all costs of a project as determined pursuant to [section 6], the governmental body may issue bonds to finance those costs and the costs of issuance of those bonds either as:

(1) additional revenue bonds pursuant to [section 5];

(2) obligations under 7-7-4104; or

(3) general obligations of a governmental body, provided that the issuance of the bonds are submitted to the electors of the governmental body as required by law.

Section 9. Use of revenue from project. (1) A governmental body issuing bonds or entering into a contract pursuant to [sections 1 through 18] with respect to a project may appropriate, apply, or expend the revenue of the project for the following purposes:

(a) to pay when due all bonds and interest on the bonds or amounts owing under contracts for the payment of the revenue that is or has been pledged, charged, or otherwise encumbered, including reserves;

(b) to provide for all expenses of operation and maintenance of the project, including reserves;

(c) to pay and discharge bonds and interest on the bonds or amounts under contracts not issued or entered into under [sections 1 through 18], for which the revenue of the project is or has been pledged, charged, or encumbered;

(d) to pay and discharge bonds and interest on the bonds that do not constitute a lien, charge, or encumbrance on the revenue of the project and that have been issued for the purpose of financing the acquisition, purchase, construction, reconstruction, improvement, or extension of the project; and

(e) to provide a reserve for improvements to the project.

(2) A governing authority shall fulfill the requirements of subsection (1) before the governing authority may transfer any of the revenue of the project to its general fund.

Section 10. Covenants in resolution of authorizing issuance of bonds. (1) A resolution authorizing the issuance of bonds under [sections 1 through 18] or a contract entered into under [sections 1 through 18] may contain covenants as to:

(a) the purpose or purposes to which the proceeds of sale of the bonds or amounts payable under the contract may be applied and the disposition of the proceeds or amounts;

(b) the use and disposition of the revenue of the project, including the creation and maintenance of reserves;

(c) the transfer, from the general fund of the governmental body to the account or accounts of the project, of an amount equal to the cost of furnishing the municipality or any of its departments, boards, or agencies with the services, facilities, or commodities of the project;

(d) the issuance of other bonds or the incurrence of other contractual obligations payable from the revenue of the project;

(e) the operation and maintenance of the project;

(f) the insurance to be carried on the project and the use and disposition of insurance proceeds;

(g) books of account and the inspection and audit of the books; and

(h) the terms and conditions upon which the holders or trustees of the bonds or any portion of the bonds or the contracting party are entitled to the appointment of a receiver by the district court having jurisdiction.

(2) If a receiver is appointed, the receiver may:

(a) enter and take possession of the project;

(b) operate and maintain the project;

(c) prescribe rates, fees, or charges, subject to any required approval of the public service commission; and

(d) collect, receive, and apply all revenue arising from the project in the same manner as the governmental body itself might do.

Section 11. Remedies. The provisions of [sections 1 through 18] and any resolution or contract are enforceable by a bondholder or contracting party in a court of competent jurisdiction by mandamus or other appropriate suit, action, or proceeding.

Section 12. Presumptions of validity of bonds. (1) Bonds issued under [sections 1 through 18] bearing the signatures of officers in office on the date of the signing of the bonds are valid and binding obligations even if, before bond delivery and payment, the persons whose signatures appear on the bonds are no longer officers of the governmental body issuing the bonds.

(2) The validity of the bonds is not dependent on or affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, or extension of the project for which the bonds are issued.

(3) The resolution authorizing the bonds may provide that the bonds must contain a recital that they are issued pursuant to [sections 1 through 18] and that the recital is conclusive evidence of the bonds' validity and of the regularity of the bonds' issuance.

Section 13. Liens arising from bonds or contracts — mortgages. (1) A resolution or contract must specify and define the revenue or portion of the revenue that is appropriated and pledged for the security and payment of the bonds or amounts payable under the contract and the relative security of liens on the revenue in favor of bonds of one or more series or issues, whether issued concurrently or at different times, or in favor of different contracts, whether entered into concurrently or at different times.

(2) A governmental body may mortgage, pledge, and assign any or all of the real and personal property comprising a project to secure payment of bonds, contracts, or other obligations issued or incurred under [sections 1 through 18].

Section 14. Sale of bonds. Bonds issued under [sections 1 through 18] may be incurred or sold at public or private sale on terms and at prices that the governing authority determines to be advantageous.

Section 15. Interim receipts or certificates. Pending the preparation of the definitive bonds, interim receipts or certificates, in a form and with provisions as the governing authority may determine, may be issued to the purchaser or purchasers of bonds sold pursuant to [sections 1 through 18]. The bonds and interim receipts or certificates are fully negotiable, as provided in the Uniform Commercial Code.

Section 16. Requirements prior to project construction. Prior to starting construction under [sections 1 through 18], the governmental body shall enter into a contract or contracts:

- (1) with a transmission services provider to interconnect with the transmission or distribution facilities of a utility or cooperative;
- (2) that ensure that all ancillary services as required by the control area operator are available to regulate the generation of electricity from the project;
- (3) for the sale of electricity from the project; and
- (4) with a tribal government for projects being constructed within the exterior boundaries of that tribal government's Indian reservation.

Section 17. Prohibition on construction, ownership, and operation of powerlines. (1) [Sections 1 through 18] do not authorize a governmental body to:

(a) construct, own, or operate electricity distribution or transmission facilities; or

(b) use the proceeds from bonds under [sections 1 through 18] to construct, own, or operate electricity distribution or transmission facilities.

(2) Subsections (1)(a) and (1)(b) do not apply to electrical lines connecting component parts within the perimeter of an electric generation facility or to a dedicated tie line between an electric generation facility and the transmission grid or the point of use by the governmental body.

Section 18. Interpretation. (1) The powers conferred in [sections 1 through 18] are in addition and supplemental to the powers conferred by any other general, special, or local law.

(2) If the provisions of [sections 1 through 18] are inconsistent with the provisions of any other general, special, or local law, the provisions of [sections 1 through 18] are controlling.

Section 19. Section 17-5-1604, MCA, is amended to read:

“17-5-1604. Definitions. As used in this part, the following definitions apply:

- (1) “Board” means the board of investments created in 2-15-1808.
- (2) “Department” means the department of commerce created in 2-15-1801.
- (3) “Eligible government unit” means:

(a) any municipal corporation or political subdivision of the state, including without limitation any city, town, county, school district, authority as defined in 75-6-304, or other special taxing district or assessment or service district authorized by law to borrow money; or

(b) the state, any board, agency, or department of the state, or the board of regents of the Montana university system when authorized by law to borrow money; or

(c) *for the purposes of [sections 1 through 18] only, an Indian tribal government.*

(4) "Reserve fund" means the municipal finance consolidation act reserve fund created in 17-5-1630."

Section 20. Section 17-5-1608, MCA, is amended to read:

"17-5-1608. Limitations on amounts. The board may not issue any bonds or notes that cause the total outstanding indebtedness of the board under this part, except for bonds or notes issued to fund or refund other outstanding bonds or notes or to purchase registered warrants or tax or revenue anticipation notes of a local government as defined in 7-6-1101, to exceed ~~\$120~~ \$190 million."

Section 21. Appropriation. There is appropriated \$10 from the general fund to the office of the governor for the biennium beginning July 1, 2007, for administrative costs.

Section 22. Codification instruction. [Sections 1 through 18] are intended to be codified as an integral part of Title 90, chapter 4, and the provisions of Title 90, chapter 4, apply to [sections 1 through 18].

Section 23. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 21] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 379

[HB 390]

AN ACT PROVIDING FOR AND REGULATING A FORM OF PARIMUTUEL WAGERING IN WHICH A PERSON DEPOSITS MONEY IN AN ACCOUNT WITH AN ADVANCE DEPOSIT WAGERING HUB OPERATOR LICENSED BY THE BOARD OF HORSERACING TO CONDUCT ADVANCE DEPOSIT WAGERING; AMENDING SECTIONS 23-4-101, 23-4-202, 23-4-301, 23-4-302, AND 23-5-112, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 23-4-101, MCA, is amended to read:

"23-4-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "*Advance deposit wagering*" means a form of parimutuel wagering in which a person deposits money in an account with an advance deposit wagering hub operator licensed by the board to conduct advance deposit wagering, and the money is used to pay for parimutuel wagers made in person, by telephone, or through a communication by other electronic means on horse or greyhound races held in or outside this state.

(2) *“Advance deposit wagering hub operator” means a simulcast and interactive wagering hub business licensed by the board that, through a subscriber-based service located in this or another state, conducts parimutuel wagering on the races that it simulcasts and on other races that it carries in its wagering menu and that uses a computer that registers bets and divides the total amount bet among those who won.*

(1)(3) “Board” means the board of horseracing provided for in 2-15-3106.

(2)(4) “Board of stewards” means a board composed of three stewards who supervise race meets.

(3)(5) “Department” means the department of livestock provided for in Title 2, chapter 15, part 31.

(4)(6) “Immediate family” means the spouse, parents, children, grandchildren, brothers, or sisters of an official or licensee regulated by this chapter who have a permanent or continuous residence in the household of the official or licensee and all other persons who have a permanent or continuous residence in the household of the official or licensee.

(5)(7) “Minor” means a person under 18 years of age.

(6)(8) “Persons” means individuals, firms, corporations, fair boards, and associations.

(7)(9) (a) “Race meet” means racing of registered horses or mules at which the parimutuel system of wagering is used. The term includes horseraces, mule races, and greyhound races that are simulcast.

(b) The term does not include live greyhound racing.

(8)(10) “Racing” means live racing of registered horses or mules and simulcast racing of horses, mules, and greyhounds.

(9)(11) “Simulcast” means a live broadcast of an actual horserace, mule race, or greyhound race at the time it is run. The term includes races of local or national prominence.

(10)(12) “Simulcast facility” means a facility at which horseraces, mule races, or greyhound races are simulcast and wagering on the outcome is permitted under the parimutuel system.

(13) *“Source market fee” means the portion of a wager made with a licensed advance deposit wagering hub operator by a Montana resident that is paid to the board.*

(11)(14) “Steward” means an official hired by the department and by persons sponsoring a race meet to regulate and control the day-to-day conduct and operation of a sanctioned meet.”

Section 2. Section 23-4-202, MCA, is amended to read:

“23-4-202. (Temporary) Penalty for violations of law — authority of board — judicial review. (1) A person holding a race meet or an owner, trainer, or jockey participating in a race meet, without first being licensed under this chapter, or a person violating this chapter is guilty of a misdemeanor.

(2) The board or, upon the board’s authorization, the board of stewards of a race meet at which ~~they~~ *the stewards* officiate may exclude from racecourses ~~in this state~~ a person whom the board considers detrimental to the best interest of racing as defined by rules of the board.

(3) As its own formal act or through an act of a board of stewards of a race meet, the board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed \$1,000, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may forbid application for relicensure for a 2-year period. Fines collected under this subsection must be deposited in the general fund.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed under this chapter. The rules may include provisions for the following:

(a) summary imposition of penalty by the stewards of a race meet, including a fine and license suspension, subject to review under the contested case provisions of the Montana Administrative Procedure Act;

(b) stay of a summary imposition of penalty by either the board or board of stewards;

(c) retention of purses pending final disposition of complaints, protests, or appeals of stewards' rulings;

(d) setting aside of up to 3% of exotic wagering on races, including simulcast races, to be deposited in the board's agency fund account. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(e) using 2% of exotic wagering on live racing to be immediately and equally distributed to all purses except stakes races;

(f) assessment of penalty and interest on the late payment of fines, which must be paid before licenses are reinstated;

(g) definition of exotic forms of wagering on races to be allowed;

(h) standards for simulcast facilities; ~~and~~

(i) conduct and supervision of simulcast races and parimutuel betting or wagering on simulcast races; *and*

(j) *conduct and supervision of advance deposit wagering.*

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter.

23-4-202. (Effective July 1, 2007) Penalty for violations of law — authority of board — judicial review. (1) A person holding a race meet or an owner, trainer, or jockey participating in a race meet without first being licensed under this chapter or a person violating this chapter is guilty of a misdemeanor.

(2) The board or, upon the board's authorization, the board of stewards of a race meet at which the stewards officiate may exclude from racecourses a person whom the board or board of stewards considers detrimental to the best interest of racing as defined by rules of the board.

(3) As its own formal act or through an act of a board of stewards of a race meet, the board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed \$1,000, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may prohibit application for relicensure for a 2-year period. Fines collected under this subsection must be deposited in the general fund.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed under this chapter. The rules may include provisions for the following:

(a) summary imposition of penalty by the stewards of a race meet, including a fine and license suspension, subject to review under the contested case provisions of the Montana Administrative Procedure Act;

(b) stay of a summary imposition of penalty by either the board or board of stewards;

(c) retention of purses pending final disposition of complaints, protests, or appeals of stewards' rulings;

(d) setting aside of up to 3% of exotic wagering on races, including simulcast races, to be deposited in a state special revenue account and statutorily appropriated to the board as provided in 17-7-502. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(e) using 2% of exotic wagering on live racing to be immediately and equally distributed to all purses except stakes races;

(f) assessment of penalty and interest on the late payment of fines, which must be paid before licenses are reinstated;

(g) definition of exotic forms of wagering on races to be allowed;

(h) standards for simulcast facilities; ~~and~~

(i) conduct and supervision of simulcast races and parimutuel betting or wagering on simulcast races; *and*

(j) conduct and supervision of advance deposit wagering.

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter."

Section 3. Section 23-4-301, MCA, is amended to read:

"23-4-301. Parimutuel betting — other betting illegal. (1) It is unlawful to make, report, record, or register a bet or wager on the result of a contest of speed, skill, or endurance of an animal, whether the contest is held within or outside of this state, except under 23-5-502 or this chapter.

(2) A licensee conducting a race meet under this chapter may provide a place in the race meet grounds or enclosure where the licensee may conduct or supervise the use of the parimutuel system by patrons on the result of the races conducted under this chapter and the rules of the board.

(3) A person licensed under this chapter to hold a race meet may simulcast live races at a place in the race meet grounds or simulcast facility where the licensee may conduct or supervise the use of the parimutuel system by patrons on the results of simulcast races approved by the board.

(4) It is unlawful to conduct pool selling or bookmaking or to circulate handbooks or to bet or wager on a race of a licensed race meet, other than by the parimutuel system and in the race meet grounds or enclosure where the race is held, or to permit a minor to use the parimutuel system.

(5) Each licensee conducting a parimutuel system for an intrastate simulcast race meet shall combine the parimutuel pools at a simulcast facility with those at the actual racing facility for the purpose of determining the odds

and computing payoffs. The amount of the handle at the simulcast race meet must be combined with the amount of *the* parimutuel handle at the live racing facility for the purposes of distribution of money derived from parimutuel betting under 23-4-302 and 23-4-304.

(6) Negotiated purse money from intrastate and interstate simulcast parimutuel handles at racing associations that do not conduct live racing will be pooled and distributed to all tracks conducting live racing. ~~all moneys to~~ *All money must* be distributed on a ~~percent~~ *percentage*, based on each track's percent, of the total annual on-track parimutuel handle.

(7) *The board may license an advance deposit wagering hub operator to conduct advance deposit wagering. Advance deposit wagering is prohibited and illegal unless it is conducted through an advance deposit wagering hub operator licensed by the board. A licensed advance deposit wagering hub operator:*

(a) *may accept advance deposit wagering money for races conducted by a licensed race meet;*

(b) *may not accept a wager in an amount in excess of the money on deposit in the account of a person who wishes to make the wager;*

(c) *may not allow a person under 18 years of age to open an account with the advance deposit wagering hub operator, make a wager from an account, or otherwise have access to an account;*

(d) *shall include a statement in any of its advertising for advance deposit wagering that a person under 18 years of age is not allowed to participate;*

(e) *shall verify the identification, residence, and age of each person seeking to open an advance deposit wagering account;*

(f) *shall agree to pay to the board a source market fee in an amount equal to a percentage, as set forth in its license agreement, of the total amount wagered by Montana residents from their accounts with the advance deposit wagering hub operator; and*

(g) *shall agree to a payment schedule of source market fees as set forth in its license agreement."*

Section 4. Section 23-4-302, MCA, is amended to read:

"23-4-302. (Temporary) Distribution of deposits — breakage. (1) Each licensee conducting the parimutuel system shall distribute all funds deposited in any pool to the winner of the parimutuel pool, less an amount that in the case of exotic wagering on races may not exceed 26% and in all other races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(2) Each licensee conducting the parimutuel system for a simulcast race meet shall distribute all funds deposited with the licensee in any pool for the simulcast race meet, less an amount that in the case of exotic wagering on these races may not exceed 26%, unless the signal originator percentage is higher, in which case the Montana simulcast licensee may adopt the same percentage withheld as the place where the signal originated, and that in all other of these races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(3) Each licensee conducting a parimutuel system for a simulcast race meet shall deduct 1% of the total amount wagered on the race meet and deposit it in the board's agency fund account. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(4) (a) *Source market fees from licensed advance deposit wagering hub operators must be deposited by the board in the board's agency fund account.*

(b) *The board shall pay 80% of the source market fees generated between May 1 and the following April 30 to live race meet licensees based on each live race meet licensee's percentage of the total annual on-track parimutuel handle during the previous live race season. Prior to the beginning of each year's live race season, the correct percentage must be distributed by the board to each live race meet licensee to be used for race purses or other purposes that the board considers appropriate for the good of the horseracing industry.*

(c) *Ten percent of the source market fees paid to the board in a calendar year may be retained by the board for the payment of administrative expenses. One-half of the remaining 10% of the source market fees paid to the board in a calendar year must, by January 31 of the following calendar year, be paid to the owner bonus program and the other one-half to the breeder bonus program.*

23-4-302. (Effective July 1, 2007) Distribution of deposits — breakage. (1) Each licensee conducting the parimutuel system shall distribute all funds deposited in any pool to the winner of the parimutuel pool, less an amount that in the case of exotic wagering on races may not exceed 26% and in all other races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(2) Each licensee conducting the parimutuel system for a simulcast race meet shall distribute all funds deposited with the licensee in any pool for the simulcast race meet, less an amount that in the case of exotic wagering on these races may not exceed 26%, unless the signal originator percentage is higher, in which case the Montana simulcast licensee may adopt the same percentage withheld as the place where the signal originated, and that in all other of these races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(3) Each licensee conducting a parimutuel system for a simulcast race meet shall deduct 1% of the total amount wagered on the race meet and deposit it in a state special revenue account. The funds deposited are statutorily appropriated to the board as provided in 17-7-502. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(4) (a) *Source market fees from licensed advance deposit wagering hub operators must be deposited by the board in the board's state special revenue account.*

(b) *The board shall pay 80% of the source market fees generated between May 1 and the following April 30 to live race meet licensees based on each live race meet licensee's percentage of the total annual on-track parimutuel handle during the previous live race season. Prior to the beginning of each year's live race season, the correct percentage must be distributed by the board to each live race*

meet licensee to be used for race purses or other purposes that the board considers appropriate for the good of the horseracing industry.

(c) Ten percent of the source market fees paid to the board in a calendar year may be retained by the board for the payment of administrative expenses. One-half of the remaining 10% of the source market fees paid to the board in a calendar year must, by January 31 of the following calendar year, be paid to the owner bonus program and the other one-half to the breeder bonus program."

Section 5. Section 23-5-112, MCA, is amended to read:

"23-5-112. Definitions. Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. More than 75 numbers may not be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover one or more previously designated arrangements of numbers on the bingo card.

(5) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(6) "Card game table" or "table" means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

(7) "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

(8) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

(9) "Department" means the department of justice.

(10) "Distributor" means a person who:

(a) purchases or obtains from a licensed manufacturer, distributor, or route operator equipment of any kind for use in gambling activities; and

(b) sells the equipment to a licensed distributor, route operator, or operator.

(11) (a) "Gambling" or "gambling activity" means risking any money, credit, deposit, check, property, or other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise.

(b) The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(12) “Gambling device” means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

(13) “Gambling enterprise” means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(14) (a) “Gift enterprise” means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services.

(b) The term does not mean:

(i) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

(ii) a promotional game of chance; or

(iii) an amusement game regulated under Title 23, chapter 6.

(15) “Gross proceeds” means gross revenue received less prizes paid out.

(16) “Illegal gambling device” means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under Title 23, chapter 7, or under part 5 of this chapter or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, or craps table or a slot machine except as provided in 23-5-153.

(17) “Illegal gambling enterprise” means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, including craps, hazard, or chuck-a-luck, but not including activities authorized by 23-5-160;

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in Title 23, chapter 4, and parts 2, 5, and 8 of this chapter;

(d) credit gambling; and

(e) internet gambling.

(18) (a) "Internet gambling", by whatever name known, includes but is not limited to the conduct of any legal or illegal gambling enterprise through the use of communications technology that allows a person using money, paper checks, electronic checks, electronic transfers of money, credit cards, debit cards, or any other instrumentality to transmit to a computer information to assist in the placing of a bet or wager and corresponding information related to the display of the game, game outcomes, or other similar information.

(b) The term does not include the operation of a simulcast facility or *advance deposit wagering with a licensed advance deposit wagering hub operator* allowed by Title 23, chapter 4, or the state lottery provided for in Title 23, chapter 7. If all aspects of the gaming are conducted on Indian lands in conformity with federal statutes and with administrative regulations of the national Indian gaming commission, the term does not include class II gaming or class III gaming as defined by 25 U.S.C. 2703.

(19) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

(20) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

(21) "License" means a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab game seller, manufacturer of electronic live bingo or keno equipment, other manufacturer, distributor, or route operator that is issued to a person by the department.

(22) "Licensee" means a person who has received a license from the department.

(23) "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

(24) (a) "Lottery" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance.

(b) The term does not mean lotteries authorized under Title 23, chapter 7.

(25) "Manufacturer" means a person who:

(a) assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device and who sells the equipment directly to a licensed distributor, route operator, or operator; or

(b) possesses gambling devices or components of gambling devices for the purpose of testing them.

(26) "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established for purposes other than to conduct a gambling activity.

(27) "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public a gambling device or gambling enterprise authorized under parts 1 through 8 of this chapter.

(28) "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter.

(29) "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

(30) "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

(31) "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it. The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by the department that was manufactured or intended for use for purposes other than gambling.

(32) "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

(33) "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

(34) "Route operator" means a person who:

(a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in a gambling activity;

(b) leases the equipment to a licensed operator for use by the public; and

(c) may sell to a licensed operator equipment that had previously been authorized to be operated on a premises.

(35) "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of public health and human services.

(36) (a) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable

consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner.

(b) This definition does not apply to video gambling machines authorized under part 6 of this chapter.

(37) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

Section 6. Effective date. [This act] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 380

[HB 426]

AN ACT REMOVING THE \$500,000 LIMIT ON A COUNTY'S ROAD AND BRIDGE CAPITAL IMPROVEMENT FUND; AMENDING SECTION 7-14-2506, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, under current Montana law, the governing body of a county may establish a road and bridge capital improvement fund to be used for acquisition and replacement of property and equipment; and

WHEREAS, that fund currently may not exceed \$500,000; and

WHEREAS, many projects or acquisitions can substantially exceed the current limit.

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

Section 1. Section 7-14-2506, MCA, is amended to read:

"7-14-2506. County road and bridge capital improvement fund — limitation. The governing body of a county may establish a road and bridge capital improvement fund in accordance with the provisions of Title 7, chapter 6, part 6. ~~The fund may not exceed \$500,000."~~

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 381

[HB 480]

AN ACT APPROPRIATING MONEY FOR THE MAINTENANCE AND RESTORATION OF THE DALY MANSION; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Appropriation. (1) The amounts of \$25,000 in fiscal year 2008 and \$25,000 in fiscal year 2009 are appropriated from the general fund to the department of commerce to be awarded to the Daly mansion preservation trust

to be used for direct maintenance and restoration of the Daly mansion and grounds.

(2) If it is determined by the personnel or officers of the Daly mansion preservation trust that the funds provided for in this section are no longer needed, the funds must be returned to the general fund.

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 382

[HB 488]

AN ACT REQUIRING THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE TO CONDUCT A STUDY ON THE REVALUATION OF CLASS THREE AGRICULTURAL LAND, CLASS FOUR RESIDENTIAL AND COMMERCIAL PROPERTY, AND CLASS TEN FOREST LANDS; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, section 15-7-111, MCA, requires the periodic revaluation of class three agricultural land, class four residential and commercial property, and class ten forest lands; and

WHEREAS, class three, class four, and class ten property in each county must be revalued by January 1, 2009; and

WHEREAS, recent periodic revaluations have resulted in disparate changes in assessed valuations across the state; and

WHEREAS, these disparate changes in assessed valuations have a significant effect on property taxpayers, local governments, and school districts; and

WHEREAS, Article VIII, section 3, of the Montana Constitution requires that the state equalize the valuation of all property that is to be taxed in the manner provided by law; and

WHEREAS, the Legislature has not developed a prospective method for dealing with the periodic revaluation of property; and

WHEREAS, some responses to periodic revaluations have been constitutionally suspect; and

WHEREAS, the 60th Legislature desires to respond to the new revaluation of property in a systematic and rational way.

THEREFORE, it is the purpose of this bill to require the Revenue and Transportation Interim Committee to conduct a study of periodic revaluation of property and to make recommendations to the next Legislature and the Governor.

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

Section 1. Interim study on property reappraisal cycle. (1) The revenue and transportation interim committee, provided for in 5-5-227, shall conduct an interim study of the periodic revaluation of taxable property that is required by 15-7-111. In the study, the committee shall:

(a) evaluate, using the best data available for the revaluation of property that goes into effect January 1, 2009:

(i) changes in the productivity value of class three agricultural land and nonqualifying agricultural land by county;

(ii) changes in market value of class four residential and commercial property by county; and

(iii) changes in the productivity value of class ten forest lands by county;

(b) consider strategies to mitigate the effects of changes in revaluation, including strategies to maintain:

(i) equity among property taxpayers; and

(ii) the financial integrity of local governments and school districts;

(c) review the department of revenue's methods for revaluing class three, class four, and class ten property and consider procedures that would improve the periodic revaluation process;

(d) review other matters that the committee considers relevant in the conduct of the study; and

(e) make recommendations to the 61st legislature.

(2) The committee may request the assistance of the legislative services division, the legislative fiscal division, the department of revenue, other state agencies, the general public, and other interested parties in the conduct of the study.

(3) The committee shall complete the study by September 15, 2008, and report to the 61st legislature its findings and recommendations, including recommendations for legislation.

Section 2. Appropriation. There is appropriated \$50,000 to the legislative services division for the 2009 biennium for the operating expenses and personnel expenses related to the study required by [section 1].

Section 3. Effective date. [This act] is effective July 1, 2007.

Section 4. Termination. [This act] terminates September 15, 2008.

Approved May 3, 2007

CHAPTER NO. 383

[HB 512]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS THROUGH THE TREASURE STATE ENDOWMENT PROGRAM; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT STATE SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS AND FUNDS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR EMERGENCY GRANTS; APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR PRELIMINARY ENGINEERING GRANTS; APPROPRIATING MONEY FROM THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM STATE SPECIAL REVENUE ACCOUNT TO THE DEPARTMENT OF NATURAL RESOURCES AND

CONSERVATION FOR FINANCIAL ASSISTANCE TO REGIONAL WATER AUTHORITIES FOR REGIONAL WATER PROJECTS; TERMINATING A PRIOR TREASURE STATE ENDOWMENT GRANT; AMENDING SECTION 1, CHAPTER 435, LAWS OF 2001; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Appropriation from treasure state endowment state special revenue account. (1) There is appropriated to the department of commerce \$17,333,653 of the interest earnings from the treasure state endowment state special revenue account to finance grants authorized by this section.

(2) The funds appropriated in this section must be used by the department to make grants to the governmental entities listed in subsection (3) for the described purposes and in amounts not to exceed the amounts set out in subsection (3). The appropriations are subject to the conditions set forth in [sections 2 and 3] and described in the treasure state endowment program 2009 biennium report to the 60th legislature. The legislature, pursuant to 90-6-710, authorizes the grants for the projects listed in subsection (3). The department shall commit funds to projects listed in subsection (3), up to the amounts authorized, based on the manner of disbursement set forth in [section 3] until interest earnings deposited into the treasure state endowment state special revenue account during the 2009 biennium are expended.

(3) The following applicants and projects are authorized for grants:

Applicant/Project	Grant Amount
1. Lewis and Clark County for the Woodlawn Addition (water)	\$596,420
2. Bainville, Town of (wastewater)	715,000
3. Madison County (bridge)	370,100
4. Sweet Grass County (bridge)	151,493
5. Powell County (bridge)	263,074
6. Circle, Town of (wastewater)	750,000
7. Harlem, City of (water)	750,000
8. Jordan, Town of (wastewater)	700,000
9. Thompson Falls, City of (water)	363,000
10. Twin Bridges, Town of (wastewater)	750,000
11. Seeley Lake-Missoula County Water District (water)	750,000
12. Fergus County (bridge)	238,362
13. Sunny Meadows-Missoula County Water and Sewer District (water)	325,000
14. Tri-County Water District (water)	313,500
15. Blaine County (bridge)	617,017
16. Loma County Water and Sewer District (water)	750,000
17. Ekalaka, Town of (water and wastewater)	706,369
18. Stillwater County (bridge)	407,500
19. Sheridan, Town of (wastewater)	750,000
20. Carter-Chouteau County Water and Sewer District (water)	750,000

21. Bigfork County Water and Sewer District (wastewater)	750,000
22. Dayton-Lake County Water and Sewer District (wastewater)	750,000
23. Judith Basin County (bridge)	192,215
24. Pinesdale, Town of (water)	750,000
25. Power-Teton County Water and Sewer District (water)	604,286
26. Superior, Town of (water)	600,000
27. RAE Subdivision County Water and Sewer District No. 313 (water)	750,000
28. Jefferson County (bridge)	295,800
29. Fort Benton, City of (stormwater)	750,000
30. Laurel, City of (wastewater)	750,000
31. Yellowstone County (bridge)	97,079
32. Neihart, Town of (water)	223,000
33. Three Forks, City of (wastewater)	750,000
34. Manhattan, Town of (water)	600,000
35. Cut Bank, City of (water)	550,000
36. Whitehall, Town of (wastewater)	750,000
37. Crow Tribe (wastewater)	750,000
38. Big Sandy, Town of (wastewater)	750,000
39. Fairfield, Town of (wastewater)	750,000
40. Hamilton, City of (wastewater)	750,000
41. Gallatin County/Hebgen Lake Estates (wastewater)	750,000
42. Shelby, City of (water)	750,000
43. Whitefish, City of (wastewater)	750,000
44. Panoramic Mountain River Heights (water)	191,500
45. Custer County (bridge)	63,750
46. Brady, Town of (wastewater)	750,000
47. Elk Meadows (water)	410,000
48. Polson, City of (water)	750,000
49. Darby, Town of (water)	750,000
50. Goodan-Keil (water)	532,250
51. Butte-Silver Bow (water)	750,000
52. Columbia Falls, City of (wastewater)	750,000
53. North Valley County (water)	750,000
54. Saltese, Town of (wastewater)	390,000
55. Red Lodge, City of (water)	750,000
56. Black Eagle, Town of (water)	365,000

(4) This section constitutes a valid obligation of funds to the grant recipients listed in subsection (3) for purposes of encumbering the treasure state endowment state special revenue account funds during the 2009 biennium pursuant to 17-7-302. However, a grant recipient's entitlement to receive funds

is dependent on the grant recipient's compliance with the conditions described in [section 3(1)] and on the availability of funds.

(5) Funding for projects numbered 1 through 56 in subsection (3) and for the department of natural resources and conservation project in subsection (6) will be provided from interest earnings deposited into the treasure state endowment special revenue account during the biennium ending June 30, 2009. Funding for the projects listed in subsection (3) will be made available in the order that the grant recipients satisfy the conditions described in [section 3(1)]. If funds appropriated in subsection (1) are insufficient to fund any of the projects that have satisfied the conditions described in [section 3(1)] prior to June 30, 2009, the treasure state endowment program must fund the projects by borrowing money from the board of investments pursuant to 90-6-701(1)(b) for those projects that have satisfied the conditions described in [section 3(1)] by June 30, 2009. There is appropriated to the department of commerce up to \$17,563,890 for funds borrowed from the board of investments.

(6) Up to \$2,200,000 is granted to the department of natural resources and conservation in fiscal year 2009, which must be used to fund local government renewable resource projects. The grant may only be awarded for the amount of anticipated shortfall in funding all of the renewable resource program grants authorized in [section 1(3) of House Bill No. 6]. Any unexpended funds remaining from this grant on July 1, 2009, will be remitted to the department of commerce, treasure state endowment program, to be used for repayment of loans.

Section 2. Approval of grants. The legislature, pursuant to 90-6-701, authorizes grants for the projects identified in [section 1(3)].

Section 3. Conditions and manner of disbursement of grant funds.

(1) The disbursement of grant funds under [sections 1 through 3] for the projects specified in [section 1(3)] is subject to completion of the following conditions:

(a) The grant recipient shall execute a grant agreement with the department of commerce.

(b) The scope of work and budget for the project as approved by the department in the grant agreement must be consistent with the intent and circumstances under which the application was originally ranked by the department and approved by the legislature. The department may not approve amendments to the scope of work or budget affecting activities or improvements that would materially alter the intent and circumstances under which the application was originally ranked by the department and approved by the legislature.

(c) The grant recipient shall document that other matching funds required for completion of the project are firmly committed.

(d) The grant recipient must be in compliance with the auditing and reporting requirements provided for in 2-7-503 and have established a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles. Tribal governments shall comply with auditing and reporting requirements provided for in OMB Circular A-133.

(e) The grant recipient shall satisfactorily comply with any conditions described in the application (project) summaries section of the treasure state endowment program 2009 biennium report to the 60th legislature.

(f) The grant recipient shall satisfy other specific requirements considered necessary by the department to accomplish the purpose of the project as evidenced by the application to the department.

(2) The department shall commit grant funds to projects authorized in [section 1(3)] in the order that projects have met the conditions in subsection (1).

(3) The department shall disburse grant funds on a reimbursement basis as grant recipients incur eligible project expenses.

(4) If actual project expenses are lower than the projected expense of the project, the department may, at its discretion, reduce the amount of treasure state endowment program grant funds to be provided to grant recipients in proportion to all other project funding sources. In the alternative, the department may authorize the use of the remaining authorized treasure state endowment program grant amount for the construction of additional, directly related components that will further enhance the overall system.

(5) If actual project expenses are lower than the projected expense of a project as presented in the grant recipient's treasure state endowment program application, the department may, at its discretion, reduce the amount of treasure state endowment program grant funds to be provided so that the grant recipient's projected average residential user rates do not become lower than their target rate as determined by the department.

(6) With the exception of bridges, all projects must adhere to the design standards required by the department of environmental quality. Recipients of treasure state endowment program funds that are not subject to the department of environmental quality design standards must adhere to generally accepted industry standards, such as Recommended Standards for Wastewater Facilities or Recommended Standards for Water Works, published by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, latest edition.

(7) Recipients of treasure state endowment program funds are subject to the requirements of the department of commerce as described in the treasure state endowment program project administration manual, adopted by the department through the administrative rulemaking process.

Section 4. Appropriations from treasure state endowment state special revenue account for emergency grants. There is appropriated to the department of commerce \$100,000 for the biennium beginning July 1, 2007, from the interest earnings of the treasure state endowment state special revenue account for the purpose of providing local governments, as defined in 90-6-701, with emergency grants for infrastructure projects, as defined in 90-6-701.

Section 5. Appropriations from treasure state endowment state special revenue account for preliminary engineering grants. There is appropriated to the department of commerce \$600,000 for the biennium beginning July 1, 2007, from the interest earnings of the treasure state endowment state special revenue account for the purpose of providing local governments, as defined in 90-6-701, with preliminary engineering grants for infrastructure projects, as defined in 90-6-701.

Section 6. Section 1, Chapter 435, Laws of 2001, is amended to read:

"Section 1. Appropriations from treasure state endowment state special revenue account. (1) There is appropriated to the department of commerce the

interest earnings of the treasure state endowment special revenue account to finance grants authorized by this section.

(2) The funds appropriated in this section must be used by the department to make grants to the governmental entities listed in subsection (3) for the described purposes and in amounts not to exceed the amounts set out in subsection (3). The appropriations are subject to the conditions set forth in [sections 1 through 3] and described in the treasure state endowment program 2003 biennium report to the 57th legislature. The legislature, pursuant to 90-6-710, authorizes the grants for the projects listed in subsection (3). The department shall commit funds to projects listed in subsection (3), up to the amounts authorized, based on the manner of disbursement set forth in [section 3] until interest earnings deposited into the treasure state endowment special revenue account during the 2003 biennium are expended.

(3) The following applicants and projects are authorized for grants in the order of their priority:

Applicant/Project	Grant
1. Lewis and Clark County (bridge)	\$500,000
2. Alder Water and Sewer District, Madison County (wastewater)	500,000
3. Hot Springs, Town of (water)	500,000
4. Whitewater Water and Sewer District, Phillips County (wastewater)	500,000
5. Virginia City, Town of (wastewater)	500,000
6. Froid, Town of (wastewater)	390,600
7. Nashua, Town of (wastewater)	500,000
8. Richland County (bridge)	296,500
9. Lavina, Town of (wastewater)	483,000
10. Gardiner-Park County Water District, Park County (water)	398,500
11. Park City/County Water and Sewer District, Stillwater County (wastewater)	500,000
12. Stanford, Town of (wastewater)	500,000
13. Florence County Water and Sewer District, Ravalli County (wastewater)	500,000
14. Ashland County Water and Sewer District, Rosebud County (wastewater)	500,000
15. Geraldine, Town of (water)	167,460
16. Manhattan, Town of (wastewater)	500,000
17. Lambert County Water and Sewer District, Richland County (water)	403,000
18. Browning, Town of (water)	500,000
19. Kevin, Town of (wastewater)	385,000
20. Power-Teton Co. Water and Sewer District, Teton County (water)	425,000
21. Blackfeet Tribe (water)	500,000
22. Whitefish, City of (wastewater)	500,000
23. Choteau, City of (wastewater)	500,000

24. Lockwood Water and Sewer District, Yellowstone County (wastewater)	500,000
25. Eureka, Town of (water)	369,000
26. Shelby, City of (water)	500,000
27. Charlo Sewer District, Lake County (wastewater)	500,000
28. Essex Water and Sewer District, Flathead County (water)	225,000
29. Yellowstone County (bridge)	300,000
30. Hinsdale Water and Sewer District, Valley County (wastewater)	329,000
31. Havre, City of (water)	500,000
32. Helena, City of (storm drain)	500,000
33. Fairfield, Town of (wastewater)	500,000
34. Jordan, Town of (water/wastewater)	500,000

(4) If sufficient funds are available, this section constitutes a valid obligation of funds to the grant recipients listed in subsection (3) for purposes of encumbering the treasure state endowment special revenue account funds received during the 2003 biennium under 17-7-302. However, a grant recipient's entitlement to receive funds is dependent on the grant recipient's compliance with the conditions described in [section 3(1)] and on the availability of funds.

(5) If funds deposited into the treasure state endowment special revenue account during the biennium ending June 30, 2003, are insufficient to fully fund the projects numbered 1 through 31 in subsection (3) that have satisfied the conditions described in [section 3(1)] by June 30, 2003, these projects will be funded from deposits into the treasure state endowment special revenue account made during the 2005 biennium, before projects authorized by the 58th legislature receive funding from the account. However, any of the projects numbered 1 through 31 listed in subsection (3) that have not completed the conditions described in [section 3(1)] by January 1, 2003, must be reviewed by the next regular session of the legislature to determine if the authorized grant should be withdrawn.

(6) Projects numbered 32 through 34 listed in subsection (3) that have satisfied the conditions described in [section 3(1)] may not receive grant funds unless sufficient funds have been deposited into the treasure state endowment special revenue account to fully fund the projects numbered 1 through 31 in subsection (3). However, if a subsequent legislature withdraws funding for any of the projects numbered 1 through 31 listed in subsection (3), those funds could be made available to projects numbered 32 through 34 listed in subsection (3) that have completed the conditions described in [section 3(1)].

(7) In the event that any remaining funds deposited into the treasure state endowment special revenue account are insufficient to fully fund one of the grant recipients listed in subsection (3), the department may make the remaining funds from the treasure state endowment special revenue account available to the grant recipient on condition that the grant recipient is able to firmly commit the balance of the amount necessary to fund the project in its entirety."

Section 7. Appropriation from treasure state endowment regional water system special revenue account. (1) There is appropriated to the department of natural resources and conservation the interest earnings of the treasure state endowment regional water system state special revenue account

to finance the state's share of regional water system projects authorized by this section and as set forth in 90-6-715.

(2) The dry prairie rural water authority and the north central Montana regional water authority are authorized to receive funds.

(3) Up to \$6,686,000 is authorized to provide the state's share for regional water system projects.

(4) A regional water authority's receipt of funds is dependent on the authority's compliance with the conditions described in [section 9(1)].

(5) This section constitutes a valid obligation of funds to the regional water authorities listed in subsection (2) for purposes of encumbering the treasure state endowment regional water system state special revenue account funds received during the 2009 biennium under 17-7-302.

Section 8. Approval of funds — completion of appropriation. (1) The legislature, pursuant to 90-6-715, authorizes funds for the regional water authorities identified in [section 7(2)].

(2) The authorization of these funds completes an appropriation from the treasure state endowment regional water system special revenue account provided for in 17-5-703(4)(d).

Section 9. Conditions — manner of disbursement of funds. (1) The disbursement of funds under [sections 7 through 9] is subject to completion of the following conditions:

(a) The regional water authority shall execute an agreement with the department of natural resources and conservation.

(b) The regional water authority must have a project management plan that is approved by the department.

(c) The regional water authority shall establish a financial accounting system that the department can reasonably ensure conforms to generally accepted accounting principles.

(d) The regional water authority shall provide the department with a detailed preliminary engineering report.

(2) The department shall disburse funds on a reimbursement basis as the regional water authority incurs eligible project expenses.

Section 10. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 11. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2007.

(2) [Sections 7 through 9 and this section] are effective on passage and approval.

Approved May 3, 2007

CHAPTER NO. 384

[HB 569]

AN ACT GENERALLY REVISING LAWS RELATED TO THE CONTROL OF DISEASES AND INSECTS IN NURSERIES; REVISING DEFINITIONS;

DEFINING “PLANT DEALER” AND “LANDSCAPE SERVICE”; REVISING NURSERY LICENSE FEES; CLARIFYING THAT DEPARTMENT ACTIONS REQUIRED TO DEAL WITH INFECTED OR INFESTED NURSERY STOCK MUST BE CONDUCTED AT THE OWNER’S EXPENSE; REVISING THE DEPOSIT AND USE OF NURSERY OR PLANT DEALER FEES AND CIVIL PENALTIES; AND AMENDING SECTIONS 80-7-105, 80-7-106, 80-7-108, 80-7-109, 80-7-110, 80-7-122, 80-7-123, 80-7-133, AND 80-7-135, MCA.

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

Section 1. Section 80-7-105, MCA, is amended to read:

“80-7-105. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Firm” means an individual, company, partnership, association, or corporation.

(2) *“Landscape service” means a firm that buys, sells, or resells nursery stock.*

(2)(3) “Nursery” means the business or location where nursery stock is grown or offered for sale or resale or as part of a landscape service.

(3)(4) “Nursery stock” means botanically classified plants or parts of plants, *including but not limited to tropical potted plants, aquatic plants, cut trees and their products, and turf or sod grass.* The following plants and plant materials may not be considered nursery stock:

(a) ~~aquatic plants used for aquarium purposes;~~

(b) ~~(a)~~ field crop plants and seeds;

(c) ~~(b)~~ pasture grasses;

(d) ~~(c)~~ cut plants not for propagation;

(e) ~~corms, tubers, and bulbs;~~

(f) ~~(d)~~ fruits or vegetables for human or animal consumption;

(g) ~~(e)~~ cut trees and products ~~for processing that are going to be processed to a point that they no longer represent a pest risk;~~ and

(h) ~~(f)~~ plant debris for disposal or processing.

(4)(5) “Nursery stock certification” means the process by which the nursery stock or other plants have been inspected and found to meet certification standards established by department rule.

(6) *“Plant dealer” means a firm that buys plants or plant products from a producer for the purpose of offering the plants or plant products for sale or resale or as part of a landscape service.*

(5)(7) “Plant inspection certificate” means a document issued by the department or the plant pest regulatory agency of another state that declares that the nursery stock, plants, or plant material grown by the firm named on the certificate is apparently free of injurious plant pests.

(6)(8) “Plant pest” means an insect, *weed*, fungus, virus, bacteria, or other organism that can directly or indirectly injure or cause damage in a plant or a product of a plant and that meets the criteria as a pest established by department rule. For purposes of this chapter, noxious weeds, as defined in 7-22-2101(8)(a)(i), or other exotic weeds are defined as plant pests.”

Section 2. Section 80-7-106, MCA, is amended to read:

“80-7-106. License required — application and payment of license fee. (1) A firm, *nursery*, or *plant dealer* engaging in the business of selling or distributing nursery stock in this state shall obtain a license for each ~~nursery location~~ from the department.

(2) The license must be in the name of the firm, *nursery*, or *plant dealer* seeking the license and expires on the anniversary date established by rule by the board of review established in 30-16-302. The applicant shall provide information that the department finds necessary to carry out the provisions and purposes of this chapter and in the form determined by rule by the board of review established in 30-16-302.

(3) ~~(a) A nursery that earns less than \$1,000 in gross annual sales of nursery stock and that submits an affidavit to that effect to the department is exempt from licensing.~~

~~(b) A nursery that earns \$1,000 but less than \$3,000 in gross annual sales of nursery stock and that submits an affidavit to that effect to the department shall pay a license fee of \$30.~~

~~(c) A nursery that earns \$3,000 or more in gross annual sales of nursery stock shall pay a license fee of \$95.~~

~~(3) The department shall establish license fees by rule. License fees may be no less than \$95 or more than \$125. If the department determines that the revenue from the license fee is inadequate to accomplish the purposes of this chapter, the department may by rule increase the fee within the statutory limit.~~

(4) A new applicant or a firm, *nursery*, or *plant dealer* failing to renew a license on or before the annual anniversary date provided for in subsection (2) shall pay an additional nonrefundable ~~application~~ *late* fee of \$25 for each license.

(5) An out-of-state firm that imports nursery stock into Montana for resale by a licensed Montana nursery or *plant dealer* is not required to obtain a license if the firm is licensed in the state of origin of the nursery stock and if that state extends a similar exemption to Montana firms.

~~(6) If the department determines that the revenue from the license fee is inadequate to accomplish the purposes of this chapter, the department may by rule increase the fee.~~

~~(7)(6) The fees required by the provisions of this section may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.”~~

Section 3. Section 80-7-108, MCA, is amended to read:

“80-7-108. Nursery stock inspection — fees. (1) The department may enter *the premises* of a firm, ~~or~~ *nursery*, or *plant dealer* ~~premises~~ during regular business hours for the purpose of inspecting nursery stock or other materials for possible plant pests or for determining licensure compliance. An inspection fee may not be assessed if the department requests the inspection.

(2) A firm, ~~or~~ *nursery*, or *plant dealer* may request the inspection of nursery stock, plants, or other materials by giving the department 5 days’ notice prior to the time when the nursery stock, plants, or other materials are ready for inspection. A firm, ~~or~~ *nursery*, or *plant dealer* requesting an inspection shall pay a fee as established by department rule. The fee must cover the actual costs of inspection, surveys, and other services required to issue the plant inspection certificate.

(3) The department may issue a plant inspection certificate based on the results of a nursery stock or other plant inspection or inspection survey.”

Section 4. Section 80-7-109, MCA, is amended to read:

“80-7-109. Duty to notify department of infestation. A firm, ~~or~~ nursery, *or plant dealer* with nursery stock or other materials that are *infected or infested* with plant pests, as defined in 80-7-105, shall notify the department. The firm, ~~or~~ nursery, *or plant dealer* shall comply with the instructions of the department for the control of the plant pests.”

Section 5. Section 80-7-110, MCA, is amended to read:

“80-7-110. Removal of infested nursery stock — assessment of costs.

(1) If a firm, *nursery, or plant dealer that owns* ~~owning~~ nursery stock or other materials infected or infested with any injurious plant pest fails to comply with the instructions of the department for the destruction or control of the injurious plant pest or the destruction of the infested or infected nursery stock or other material within the time specified by the department, the department may condemn, remove, or destroy the nursery stock or other material or treat it with a proper remedy *at the expense of the owner*.

(2) If an owner fails to pay the actual cost of the removal, treatment, or destruction within 30 days after notice has been mailed to the owner at the owner’s last-known post-office address and to any purchaser of the property under contract for deed at the purchaser’s last-known post-office address, the cost becomes a lien on the land of the owner and must be added by the county treasurer to the taxes upon the property and collected as other taxes.”

Section 6. Section 80-7-122, MCA, is amended to read:

“80-7-122. Nursery stock certification. At the request of a *licensed firm, or nursery, or plant dealer*, the department may inspect nursery stock for the purpose of nursery stock certification. The department shall establish certification standards, inspection procedures, and fees by department rule.”

Section 7. Section 80-7-123, MCA, is amended to read:

“80-7-123. Nursery account — investment of funds. (1) There is an account in the state special revenue fund. All inspection and license fee revenue *and reimbursements for costs* authorized under 80-7-106, 80-7-108, *80-7-110*, 80-7-122, 80-7-135, and this section must be deposited in this account. *Revenue in the account must be used for the purposes and provisions of this part.*

(2) Revenue received under 80-7-106, 80-7-108, *80-7-110*, 80-7-122, 80-7-135, and this section not immediately required for the purpose of ~~80-7-105~~, 80-7-106, 80-7-108, ~~80-7-109~~, *80-7-110*, 80-7-122, 80-7-135, and this section must be invested in accordance with the unified investment program established in Title 17, chapter 6, part 2. Income from the investments must be deposited in the account.”

Section 8. Section 80-7-133, MCA, is amended to read:

“80-7-133. Acts made unlawful — penalty. (1) It is unlawful for a firm, *nursery, or plant dealer* to:

(a) fail to properly identify nursery stock offered for sale ~~at retail~~. Identification must include but is not limited to the *scientific name*, common name, and variety, *except with regard to mixed annual plantings*. Each nursery plant offered for sale as a separate plant must be identified. A single means of

identification is allowed on each bundle of bare root seedlings, liners, or hedging grade nursery stock.

(b) falsely represent or misrepresent the name, age, variety, or class of any nursery stock sold or offered for sale;

(c) falsely represent or state that any nursery stock offered for sale, sold, or delivered was grown in ~~or came from~~ a certain ~~nursery or locality~~ location, when in fact the nursery stock was grown in ~~or came from~~ another location ~~or nursery~~;

(d) deceive or defraud any firm in the sale of any nursery stock by substituting inferior or different varieties or ages from those ordered;

(e) ~~willfully or intentionally~~ bring into this state, offer for sale or distribution within this state, or ship, sell, or deliver upon any sale any nursery stock that is infected or infested with a plant pest dangerous to the horticultural interests of the state; or *that violates any federal or state quarantine*; or

(f) sell or distribute nursery stock, ~~or~~ cut decorative *plants*, or ~~aquarium aquatic~~ plants declared to be noxious weeds as defined in 7-22-2101(8)(a)(i).

(2) In case of misrepresentation, false representation, deceit, fraud, substitution, or sale and distribution of noxious weeds, the firm, *nursery, or plant dealer* is subject to punishment as provided in 80-7-135 and is liable to a party damaged or injured; to the extent of all damages sustained, ~~to which may~~ be recovered in a civil action in any court of competent jurisdiction.”

Section 9. Section 80-7-135, MCA, is amended to read:

“80-7-135. Penalty for violation. (1) A firm, ~~or~~ nursery, or *plant dealer* that ~~purposely, knowingly, or negligently~~ violates or aids in the violation of a provision of this ~~chapter part~~ or of the rules, orders, or quarantines of the department adopted under Title 2, chapter 4, and this ~~chapter part~~ commits a civil offense and is subject to a civil penalty of not more than \$1,000 for each violation.

(2) Assessment of a civil penalty may be made in conjunction with another warning, order, or administrative action authorized by this chapter. A civil penalty collected under this section must be deposited in the ~~general fund~~ *nursery account established in 80-7-123 for education, training, research, and development for the nursery industry pursuant to rules established by the department.*

(3) The department shall establish by rule:

(a) a penalty schedule that establishes the types of penalties and the amounts, not to exceed \$1,000, for initial and subsequent offenses; and

(b) other matters necessary for the administration of civil penalties.

(4) Sections 80-7-105, 80-7-106, 80-7-108, 80-7-109, 80-7-122, 80-7-123, and this section may not be construed as requiring the department or its agents to report violations of this ~~chapter part~~ when the department believes that the public interest will be best served by a suitable notice of warning.”

Approved May 3, 2007

CHAPTER NO. 385

[HB 583]

AN ACT GENERALLY REVISING THE OPENCUT MINING ACT; AMENDING DEFINITIONS AND TERMINOLOGY; EXPANDING EXEMPTIONS; PROVIDING FOR SUSPENSION AND REVOCATION ORDERS; ELIMINATING APPLICATION FEES; REVISING APPEAL PROVISIONS; AMENDING SECTIONS 82-4-402, 82-4-403, 82-4-406, 82-4-422, 82-4-424, 82-4-425, 82-4-426, 82-4-427, 82-4-431, 82-4-432, 82-4-433, 82-4-434, 82-4-436, AND 82-4-441, MCA; AND REPEALING SECTIONS 82-4-421 AND 82-4-423, MCA.

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

Section 1. Annual report. For each permitted operation, the operator shall file an annual report on a form furnished by the department. The report must contain the information and be submitted at times provided in rules of the board.

Section 2. Section 82-4-402, MCA, is amended to read:

“82-4-402. 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 operations~~. Therefore, it is the purpose of this part:

- (a) to preserve natural resources;
- (b) to aid in the protection of wildlife and aquatic resources;
- (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 operations~~;
- (d) to protect and perpetuate the taxable value of property through reclamation;
- (e) to protect scenic, scientific, historic, or other unique areas; and
- (f) to promote the health, safety, and general welfare of the people of this state.”

Section 3. Section 82-4-403, MCA, is amended to read:

“82-4-403. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) “Affected land” means the area of land and land covered by water that is disturbed by opencut ~~mining~~ operations, including the area from which overburden or ~~material~~ *materials* are to be or ~~has~~ *have* been removed and upon which the overburden is to be or has been deposited, *existing private roads that are used and* roads constructed to gain access to the ~~material~~ *materials*, areas of processing facilities on or contiguous to the opencut mine, treatment and sedimentation ponds, *soil* and ~~material~~ *materials* stockpile areas on or

contiguous to the opencut mine, *and any other surface or subsurface disturbance associated with opencut operations. For the purposes of this subsection, an existing private road may be included as affected land only with the landowner's consent.*

(2) *"Amendment" means a change to the approved permit.*

~~(2)(3)~~ "Board" means the board of environmental review provided for in 2-15-3502.

~~(3)(4)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

~~(4)~~ "Final cut" means the last pit created in an opencut-mined area.

~~(5)~~ "Landowner" means the ~~owner of~~ holder of legal title to land subjected to an ~~opencut-mining~~ opencut operation.

~~(6)~~ "Materials" means bentonite, clay, scoria, peat, sand, soil materials, or gravel, or mixtures of those substances.

~~(7)~~ "Opencut mining operation" means the mining of materials by following activities, if they are conducted for the primary purpose of sale or utilization of materials:

(a) (i) removing the overburden lying upon natural deposits of materials and mining directly from the exposed natural deposits; or

~~(b)(ii)~~ mining directly from natural deposits of materials;

(b) mine site preparation, including access;

(c) processing of materials within the area that is to be mined or contiguous to the area that is to be mined or the access road;

(d) transportation of materials on areas referred to in subsections (7)(a) through (7)(c);

(e) storing or stockpiling of materials on areas referred to in subsections (7)(a) through (7)(c);

(f) reclamation of affected land; and

(g) any other associated surface or subsurface activity conducted on areas referred to in subsections (7)(a) through (7)(c).

~~(8)~~ "Operator" means a person engaged in or controlling an ~~opencut-mining~~ opencut operation. *When a permit has been issued for an operation, a person who removes materials from the site under the control of the operator is not considered an operator.*

~~(9)~~ "Overburden" means all of the earth and other materials that lie above a natural deposit of materials.

(10) "Person" means:

(a) a natural person;

(b) a firm, association, partnership, cooperative, or corporation;

(c) a department, agency, or instrumentality of the state or any governmental subdivision; or

(d) any other entity.

(11) "Plan of operation" means a plan that:

(a) meets the requirements of 82-4-434; and

(b) contains a description of current land use, topographical data, hydrologic data, soils data, proposed mine areas, proposed mining and processing operations, proposed reclamation, and appropriate maps.

~~(11)~~(12) "Processing facilities" means:

~~(a) all crushers, screens, and pug mills; and~~

~~(b) asphalt, wash, or and concrete plants; and~~

~~(c) other equipment used in processing opencut materials.~~

(12) "Progress report" means a report on a form provided by the department, with appropriate maps, that shows:

(a) any change in ownership or control of the affected land and includes a landowner consent form if a change has occurred;

(b) any change in personnel who are in charge of the operation or responsible for reclamation;

(c) any change in any contractors or subcontractors who will be working at the site; and

~~(d) all land that has been affected by the operation.~~

(13) "Reclamation" means the reconditioning of the area of land affected ~~land by opencut mining operations~~ to make the area suitable for productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential ~~and or industrial sites development~~.

(14) "Reclamation plan" means a plan that:

~~(a) meets the requirements of 82-4-434; and~~

~~(b) contains a description of current land use, topographical data, water data, soils data, leased areas, and intended mine areas and an explanation of proposed reclamation of the land, including appropriate maps.~~

~~(15) "Refuse" means all waste material directly connected with the opencut mining operations.~~

~~(16)~~(14) "Soil materials" are those horizons that contain topsoil or other soils leached free of deleterious salts; "Soil" means the dark or root-bearing surface matter that has been generated through time by the interaction of biological activity, climate, topography, and parent material and that ~~are~~ is capable of sustaining plant growth; and ~~that are~~ is recognized and identified as such by standard authorities *and methods*.

~~(17) "Spoil" means the overburden that is disturbed from its natural state in the process of opencut mining."~~

Section 4. Section 82-4-406, MCA, is amended to read:

"82-4-406. Exemption — opencut operations on federal and state lands. This part is not applicable to operations on certain federal *and state* lands as specified by the board, provided it is first determined by the board that federal law *laws*, or regulations, or rules administered or issued by the federal agency or state agency administering or having jurisdiction over the affected land impose controls for reclamation of opencut operations on those lands equal to or greater than those imposed by this part."

Section 5. Section 82-4-422, MCA, is amended to read:

"82-4-422. Powers, duties, and functions. (1) The department has the powers, duties, and functions to:

(a) issue permits when, ~~it is found~~ on the basis of the information set forth in the application and an evaluation of the ~~operation proposed~~ *opencut operations*, by the department *finds* that the requirements of this part and rules adopted to implement this part will be observed ~~and that the operation and the reclamation of the affected area can be carried out consistently with the purpose of this part;~~

(b) amend permits in accordance with the provisions of 82-4-436;

(c) reclaim any affected land with respect to which a bond has been forfeited; ~~and~~

(d) make investigations or inspections that are considered necessary to ensure compliance with any provision of this part; *and*

(e) *enforce and administer the provisions of this part and issue orders necessary to implement the provisions of this part.*

(2) The board shall:

(a) adopt rules that pertain to opencut ~~mining~~ *operations* in order to accomplish the purposes of this part;

(b) adopt rules:

(i) establishing uniform procedures for filing of necessary records;;

(ii) *providing procedures* for the issuance of permits; ~~and for any other matters of administration not specifically enumerated in this part~~ *filing of annual reports*; and

(iii) *providing other administrative requirements that the board considers necessary to implement this part; and*

(c) conduct hearings and, for the purposes of conducting those hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the production of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or material to the inquiry.”

Section 6. Section 82-4-424, MCA, is amended to read:

“82-4-424. Receipt and expenditure of funds — disposition of fees, fines, penalties, and other money. (1) The department may receive any federal funds, state funds, or any other funds for the reclamation of ~~land~~ affected *land* by ~~opencut mining~~. The department may cause the reclamation work to be done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons.

(2) All ~~fees, fines, penalties,~~ and other money paid under the provisions of this part must be deposited in the environmental rehabilitation and response account in the state special revenue fund provided for in 75-1-110. Funds held by the department as bond or as a result of bond forfeiture that are no longer needed for reclamation and for which the department is not able to locate a surety or other person who owns the funds after diligent search must be deposited in the environmental rehabilitation and response account in the state special revenue fund.”

Section 7. Section 82-4-425, MCA, is amended to read:

“82-4-425. Inspection of opencut ~~mining~~ *operations*. The department or its accredited representatives may enter upon lands subjected to opencut ~~mining~~ *operations* at all reasonable times for the purpose of inspection to determine whether the provisions of this part have been complied with.”

Section 8. Section 82-4-426, MCA, is amended to read:

“82-4-426. Reclamation of land on which bond forfeited. In keeping with the provisions of this part, the department may reclaim any affected lands land with respect to which a bond has been forfeited. ~~If the amount of the forfeited bond exceeds the cost of reclamation, the excess must be deposited in the environmental rehabilitation and response account in the state special revenue fund provided for in 75-1-110.”~~

Section 9. Section 82-4-427, MCA, is amended to read:

“82-4-427. Hearing — appeal — venue. (1) A person ~~who is aggrieved whose interests are or may be adversely affected~~ by a final decision of the department to approve or disapprove a permit application and accompanying material or a permit amendment application and accompanying material under this part is entitled to a hearing before the board, if a written request *stating the reasons for the appeal* is submitted to the board within 30 days of the department’s decision.

(2) *An operator may request a hearing before the board on:*

(a) *a final decision of the department director pursuant to 82-4-436(4) by submitting a request for a hearing within 15 days of receipt of notice of the director’s decision; and*

(b) *an order of suspension or revocation issued under [section 16] by filing a request for hearing within 30 days of receipt of the decision.*

(3) *The operator or the landowner may request a hearing before the board on a decision on a bond release application.*

(4) 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)(5) An action to challenge the issuance of a permit~~ *A petition for judicial review of a board decision made pursuant to this section must be brought in the county in which the permitted activity is proposed to occur or, if mutually agreed upon by both parties in the action, in the first judicial district, Lewis and Clark County.* 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)(6) A judicial challenge to a permit issued pursuant to this part by a party other than the permitholder or applicant~~ *The petition for judicial review must include the party to whom the permit was issued or the applicant unless otherwise agreed to by the permitholder or applicant. All judicial challenges of permits for projects with a project cost, as determined by the court, 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 10. Section 82-4-431, MCA, is amended to read:

“82-4-431. Permit for mining, processing, and reclamation required.

(1) An operator may not conduct ~~open-cut mining operations an open-cut operation that result results~~ in the removal of a total of 10,000 cubic yards or more of materials and overburden until the department has issued a permit to the operator ~~for the reclamation of the land affected.~~ *A person An operator may not, without a permit, remove materials or overburden from a site from which a total of 10,000 cubic yards or more of materials and overburden in the aggregate*

has been removed. An operator conducting a number of *opencut* operations, each of which results in the removal of less than 10,000 cubic yards of materials and overburden but that result in the removal of 10,000 cubic yards or more of materials and overburden in the aggregate, is subject to the provisions of this part, except as provided in this section.

(2) Except as provided in or conditioned under subsections (3) and (4), an operator who holds a permit ~~for reclamation under this part~~ may ~~operate~~ *conduct* an opencut ~~mine operation~~ without first securing an additional permit or an amendment to ~~the an~~ existing permit ~~or bond~~ if the ~~mine opencut operation~~ meets the following criteria:

(a) the total amount of materials and overburden removed *from the site* does not exceed ~~2,500~~ *5,000* cubic yards *and the total area from which the materials and overburden are removed does not exceed 5 acres*; and

(b) the operator:

(i) ~~notifies submits the department prior to beginning operations~~ *appropriate site and opencut operation information*; and,

(ii) ~~within 90~~ *180* days of ~~notifying the department, submits a completed site information submitting the form, salvages and stockpiles all root-bearing soil materials from the area to be disturbed, removes the materials, regrades grades~~ the affected ~~area land~~ *land* to 3:1 or flatter ~~slope and slopes~~, blends the ~~reclaimed area graded land~~ *into the adjacent surrounding topography*, and ~~during the first appropriate growing season, replaces an appropriate amount of overburden and all topsoil and soil, and reclaims to conditions present prior to mining all access roads used for the operation, unless the landowner requests in writing that specific roads or portions of the roads remain open. Roads left open at the landowner's request must be sized to support the use of the road after opencut operations.~~

(iii) ~~reseeds or revegetates as required by the department at the first seasonal opportunity, seeds or plants all affected land to vegetative species that meet the requirements of 82-4-434.~~

(3) The department may refuse to approve an application for issuance of a permit under subsection (1) or ~~allow may prohibit~~ the operator ~~to operate from conducting~~ an opencut ~~mine operation~~ under subsections ~~(1) and subsection (2)~~ if, at the time of notification by the operator to the department, the operator has a pattern of violations or is in current violation of this part, rules adopted under this part, or provisions of a permit ~~for reclamation~~.

(4) The department may require an additional bond as a condition for the *conduct of an opencut operation* ~~of an opencut mine~~ under subsection (2).

(5) Opencut ~~mines operations~~ described in subsection (2) may not be placed ~~occur~~:

(a) in ~~flowing~~, ephemeral, ~~or~~ intermittent, *or perennial* streams;

~~(b) in the bottom or head of a confined drainage;~~

~~(e)~~(b) in an area where the ~~operation opencut operation~~ will intercept *surface water*, ground water, or ~~intercept~~ any slope that is ~~naturally~~ steeper than 3:1; or

~~(d)~~(c) in any area where mining would be restricted by other laws.

(6) Sand and gravel opencut ~~mines operations~~ must meet applicable local zoning regulations adopted under Title 76, chapter 2.”

Section 11. Section 82-4-432, MCA, is amended to read:

“82-4-432. Application for permit — contents — issuance — amendment. (1) ~~Applications~~ *An application* for a permit must be made ~~upon a form using forms~~ furnished by the department. ~~The form and~~ must contain the following:

(a) the name of the ~~operator~~ *applicant* and, if other than the owner of the land, the name and address of the owner;

(b) the type of operation to be conducted;

(c) the *estimated* volume of ~~earth overburden and materials~~ to be removed, ~~as accurately as the volume may then be estimated, and the volume that has been previously removed, if any;~~

(d) the location of the *proposed opencut* operation by legal ~~subdivision, section, township and range,~~ *description* and county;

(e) the date when the ~~operation was or will be commenced~~ *opencut operation is proposed to commence*; and

(f) a statement that the applicant has the *legal* right ~~and power, by legal estate owned, to mine, by opencut mining, to mine the designated materials in~~ the lands described.

(2) The application must be accompanied by:

(a) a bond or security meeting the requirements as set out in this part;

(b) ~~a fee of \$50 for an application to mine bentonite, clay, scoria, sand, or gravel;~~

(e)(b) a statement from the local governing body having jurisdiction over the area to be mined certifying that ~~a~~ *the* proposed sand and gravel opencut ~~mine and its operating and reclamation plans comply~~ *operation complies* with applicable local zoning regulations adopted under Title 76, chapter 2; ~~and~~

(d)(c) ~~the operator's plan of operation and a complete reclamation plan~~ *a plan of operation that meets the requirements of 82-4-434; and*

(d) *written documentation that the landowner has been consulted about the proposed plan of operation.*

(3) If, prior to applying for a permit, a person notifies the department of the intention to submit an application and requests ~~that~~ the department ~~to~~ examine the area to be mined, the department shall ~~cause the area to be examined~~ *examine the area* and make recommendations to the person regarding ~~reclamation the proposed opencut operation.~~ The person may request a meeting with the department. The department shall hold a meeting if requested.

(4) (a) Except as provided in 75-1-208(4)(b), upon receipt of an application containing all items listed in subsections (1) and (2), the department shall, within ~~15~~ *30* days, ~~review the application, inspect the proposed site, and~~ notify the person whether or not the department believes that the application is ~~complete~~ *acceptable*. ~~An application is acceptable if it complies with all requirements of subsections (1) and (2).~~ If the department determines that the application is not ~~complete~~ *acceptable*, the department shall include in the notification a detailed identification of all deficiencies.

(b) Within 30 days of receipt of ~~a complete application~~ *the applicant's responses to the identified deficiencies*, the department shall notify the applicant if it ~~has approved or denied~~ *the application is acceptable or not*. If the department ~~denies~~ *the application is unacceptable*, the notice must include a

detailed explanation describing why the application was denied of the remaining deficiencies.

(c) The department may for sufficient cause extend its period of review either or both of the 30-day review periods for an additional 30 days if it notifies the person applicant of the extension prior to the end of the respective original 30-day period. The department shall include in the notification of extension the reason for the extension.

(d) ~~Upon approval of~~ If the application is acceptable, the department shall issue a permit to the operator that entitles the operator to continue or engage in the opencut mining operation on the land described in the application.

(5) An operator desiring to have a permit amended to cover additional contiguous or nearby land may file an amended ~~may amend a permit by submitting an amendment~~ application with to the department. Upon receipt of the amended application and any additional bond that may be required and upon agreement to the terms of the amendment by the parties, ~~amendment application, the department shall review it in accordance with the requirements and procedures in subsection (4). If the amendment application is acceptable, the department may shall~~ issue an amendment to the original permit covering the additional land described in the amended application without the payment of any additional fee.

(6) ~~An operator may withdraw any land covered by a permit, except affected land, by notifying the department of the withdrawal, in which case the penalty of the bond or security filed by the operator pursuant to the provisions of this part must be reduced proportionately.”~~

Section 12. Section 82-4-433, MCA, is amended to read:

“82-4-433. Bond. (1) ~~A bond required to be filed under this part by the operator must be in a form that the department prescribes, Before a permit or permit amendment may be issued, a surety bond made payable to the state of Montana and conditioned upon the operator’s full compliance with all requirements of this part, the rules of the board adopted under this part, and the permit must be submitted to and approved by the department. The bond must be signed by the landowner or operator, as appropriate, applicant as principal, and by a good and sufficient corporate surety licensed to do business in the state of Montana, as surety. The bond must be in an amount not to exceed the costs of restoration required by this part as determined by the department. The amount of the bond may not be less than \$200 or more than \$1,000 an acre unless the department determines, in writing, that the cost of restoration of the land exceeds \$1,000 an acre. Upon the cost determination, the~~ The bond amount must be set determined by the department at the cost of restoring the reclamation of the affected land by the department. The applicant shall submit a bond that is no less than the amount determined by the department.

(2) (a) ~~For opencut-mining opencut~~ opencut operations on federal land within the state, the department may accept a bond payable to the state of Montana and the federal agency administering the land. The bond must provide at least the same amount of financial guarantee as required by this part.

(b) The bond must provide that the department may forfeit the bond without the concurrence of the federal land management agency. The bond may provide that the federal land management agency may forfeit the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable to the department and may also be payable to the federal land

management agency. If the bond is payable to the department and the federal land management agency, the department, before accepting the bond, shall enter into an agreement or memorandum of understanding with the federal land management agency providing for administration of the bond funds in a manner that will allow the department to provide for compliance with the requirements of this part, the rules adopted under this part, and the permit.

(3) In lieu of ~~the submitting a surety bond pursuant to subsection (1),~~ the operator may ~~deposit with the department~~ *submit* cash, government securities, a letter of credit in a form acceptable to the department, or a bond with property sureties in an amount equal to that of the required bond on conditions as prescribed in this part. In the discretion of the department, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities located on the land as security, in which event a surety may not be required but the department may require that the amount of the bond be adjusted to reimburse the department for foreclosure costs.

(4) ~~The penalty of the bond or amount of cash and securities other security must be increased or reduced from time to time as provided in this part.~~

(5) ~~The bond or security remains in effect until the affected land has been reclaimed as provided under the permit and the reclamation has been approved and the bond or security has been released by the department~~ *department has approved the reclamation and released the bond or security.* The bond or security may cover only actual affected land and ~~may~~ *must* be increased or reduced to cover only ~~those unreclaimed acreages as remain unreclaimed.~~

~~(4)(6)~~ If the license of a surety ~~upon that has issued~~ a bond filed with the department pursuant to this part is suspended or revoked, the operator, within 30 days after receiving notice of the suspension or revocation from the department, shall substitute ~~for that surety~~ a good and sufficient *bond from another* surety licensed to do business in the state *or shall submit another type of security pursuant to subsection (3).* Upon failure of the operator to make ~~the bond~~ substitution ~~of surety within the 30-day time period,~~ the department ~~may~~ *shall* suspend the permit of the operator to conduct *open-cut* operations upon the land described in the permit until the substitution has been made. *If the operator demonstrates in writing that the operator has been pursuing a replacement bond in good faith but additional time is necessary to complete the transaction, the department may grant up to an additional 60 days for the operator to submit a replacement bond before suspending the permit.*

(5) ~~The department shall cause the reclamation of any affected land with respect to which a bond has been forfeited.~~

~~(6)(7)~~ Whenever an operator has completed all of the *reclamation* requirements under the provisions of this part as to any affected land, the operator shall notify the department of the completed requirements *and may request bond release.* If the ~~board~~ *department* releases the operator from further obligation regarding any affected land, the ~~penalty of the bond~~ must be reduced proportionately. *The department shall notify the operator and the landowner in writing of the decision on the bond release application."*

Section 13. Section 82-4-434, MCA, is amended to read:

"82-4-434. Reclamation plan part of permit *Plan of operation* — requirements. The reclamation plan must meet the following requirements:

(1) ~~The department shall submit each reclamation plan or operator proposed amendments to the reclamation plan to the landowner for~~

~~recommendations and shall consider those recommendations in deciding whether to approve or disapprove any plan or operator proposed amendments. The department may seek technical help from any state or federal agency. (1) The department shall immediately submit the a plan of operation received in a permit or permit amendment application involving expansion of the permit area immediately to the state historic preservation office for evaluation of possible archaeological or historical values in the area to be mined.~~

~~(2) The department may approve shall accept a reclamation plan of operation only if the department has found finds that the plan provides for the best possible reclamation under the circumstances at the time, so complies with the requirements of this part and the rules adopted pursuant to this part and that after mining operations are the opencut operation is completed, the affected land will be reclaimed to a productive use. Once the reclamation plan of operation is accepted, in writing, by the department, the plan must become it becomes a part of the permit but is subject to annual review and modification amendment by the department. Any modification amendment by the department must comply with the provisions of 82-4-436(2).~~

~~(2)(3) The department may not approve a reclamation plan or accept a plan of operations operation unless the plans provide plan provides:~~

~~(a) that the affected land will be reclaimed for one or more specified uses, including but not limited to forest, pasture, orchard, cropland, residence, recreation, industry, habitat for wildlife, including food, cover, or water, or other reasonable, practical, and achievable uses;~~

~~(b) that to the extent reasonable and practicable, the operator will establish vegetative cover commensurate with the proposed land use;~~

~~(c) that whenever operations result the opencut operation results in a need to prevent acid drainage or sedimentation on or in adjoining lands or streams, for the construction of earth dams catchments, ponds, or other reasonable devices to control water drainage and sediment will be constructed and maintained, provided the formation of the impoundments or devices will not interfere with other landowners' rights or contribute to water pollution;~~

~~(d) that to accomplish practical utilization of soil and other suitable overburden materials, the material will be salvaged and utilized for placement replaced on affected areas land, if when required by the reclamation plan by the postmining land use, after completion or termination of that particular phase of the opencut operation mining operations, at a depth sufficient for plant growth on slopes of 3:1 or less. The depth of soil and other suitable overburden materials to be placed on the reclaimed area must be specified in the plan.~~

~~(e) that grading will be commensurate with the result in a postmining topography sought and conducive to the designated postmining land use designated;~~

~~(f) that metal and other waste will be removed or buried on site in a manner that protects water quality and is compatible with the postmining land use or will be disposed of off site in accordance with state laws and rules;~~

~~(g) that all access, haul, and other support roads will be located, constructed, and maintained in such a manner as to control and minimize channeling and other that controls and minimizes erosion;~~

~~(h) that the operator will submit a progress report annually to the department;~~

~~(i)(g)~~ that ~~all operations~~ *the opencut operation* will be conducted to avoid range and forest fires and spontaneous combustion and that open burning of ~~carbonaceous materials~~ will be conducted in accordance with suitable practices for fire prevention and control; *Approval of the plan for fire prevention and control under this part does not relieve the operator of the duty to comply with the air quality permitting and protection requirement of Title 75, chapter 2.*

~~(j)(h)~~ that archaeological and historical values ~~in areas to be mined on affected lands~~ will be given appropriate protection;

~~(k)(i)~~ that except for those ~~postmine~~ *postmining* land uses that do not require vegetation, each surface area of the mined premises that will be disturbed will be revegetated when its use for ~~extractive purposes~~ *the opencut operation* is no longer required;

~~(l)(j)~~ that seeding and planting will be done in a manner to achieve a permanent vegetative cover that is suitable for the ~~postmine~~ *postmining* land use and that retards erosion ~~and that all seed will be drilled unless otherwise provided in the plan;~~

~~(m)(k)~~ that reclamation will be as concurrent with ~~mining operations~~ *the opencut operation* as feasible and will be completed within a specified length of time;

~~(n)(l)~~ that surface water and ground water will be given appropriate protection, consistent with state law, from deterioration of water quality and quantity that may arise as a result of the *opencut operation*;

~~(o)(m)~~ that noise and visual impacts on residential areas will be minimized to the degree practicable through berms, vegetation screens, and reasonable limits on hours of operation; and

~~(p)(n)~~ that any additional procedures, *including monitoring*, that are necessary, consistent with the purposes of this part, to prevent significant physical harm to the affected land or adjacent land, structures, improvements, or life forms will be implemented.

~~(3)(4)~~ If reclamation according to the plan *of operation* has not been completed in the time specified, the department, after 30 days' written notice, shall order the operator to cease mining and, if the operator does not cease, may issue an order to reclaim, a notice of violation, or an order of abatement or may institute an action to enjoin further operation and may sue for damages for breach of the conditions of the permit, for payment of the performance bond, or for both.

~~(4)(5)~~ (a) At any time during the term of the permit, the operator may for good reason submit to the department a new ~~reclamation~~ plan *of operation* or amendments to the existing plan, including extensions of time *for reclamation*.

(b) The department may approve the proposed new ~~reclamation~~ plan *of operation* or amendments to the existing plan if:

(i) *the new plan of operation or amendments comply with the requirements of this section; and*

(ii) (A) the operator has in good faith ~~carried on reclamation conducted opencut operations~~ according to the existing plan *of operation* ~~and the proposed new plan or amendments to the existing plan will result in reclamation as or more desirable than the reclamation proposed under the existing plan; or~~

(ii)(B) it is highly improbable *that* reclamation will be successful unless the existing plan *of operation* is replaced or amended.

~~(c) When accepted, the proposed new reclamation plan or the proposed amendments to the existing plan become a part of the permit.~~

~~(5) The operator shall provide a performance bond or an alternative acceptable to the department in an amount commensurate with the estimated cost of reclamation, but in no case may the bond be less than \$200 an acre. The estimated cost of reclamation must be set forth in the reclamation plan.~~

(6) The permit, reclamation plan *of operation*, and amendments accepted by the department are a public record and are open to inspection.

~~(7) The permit is effective when signed by the department and the operator and remains in force until terminated by mutual consent or by the department upon 6 months' notice."~~

Section 14. Section 82-4-436, MCA, is amended to read:

"82-4-436. Plan amendments —venue by department. (1) Unless an amendment to a plan of operation, reclamation plan, or other permit is proposed by the operator, the department may ~~modify~~ *amend* only the terms of a plan or permit in compliance with this section.

(2) If the department believes, based on credible evidence, that *a* continued *opencut* operation under the terms of an existing plan *of operation* 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, *maps, drawings, and other appropriate information that constitute* 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, *if a review by the director is requested*, until 15 days 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 *in 82-4-427 of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, parts 6 and 7.*

~~(5) If the operator does not appeal requests a hearing on the proposed amendment, the amendment becomes is not effective and enforceable 15 days after the operator receives the notification until completion of the contested case process.~~

~~(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 by the court, 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 15. Section 82-4-441, MCA, is amended to read:

"82-4-441. Administrative and judicial penalties — enforcement. (1) When the department has reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, or a term or condition of a permit issued under this part, it shall send a violation letter to the person. The violation letter must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The letter must also recommend corrective actions that are necessary to return to compliance. Issuance of a violation letter under this subsection does not limit the authority of the department under this part to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.

(2) By issuance of an order pursuant to subsection (5), the department may assess against a person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a reclamation permit:

(a) an administrative penalty of not less than \$100 or more than \$1,000 for the violation; and

(b) an additional administrative penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues.

(3) The department may bring a judicial action seeking a penalty of not more than \$5,000 against a person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a permit and a penalty of not more than \$5,000 for each day that the violation continues. In determining the amount of the penalty, the district court shall consider the factors in subsection (4).

(4) Penalties assessed under this section must be determined in accordance with the penalty factors in 82-4-1001.

(5) (a) In addition to the violation letter sent pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The order may require necessary corrective action within a reasonable period of time, may assess an administrative penalty determined in accordance with this section, or both. The order must be served personally or by certified mail.

(b) An order issued pursuant to subsection (5)(a) becomes final unless, within 30 days after the order is served, the person to whom the order is issued submits to the board a written request for a hearing stating the reason for the request. Service of an order by mail is complete 3 business days after mailing. If a request for a hearing is filed, a hearing must be held within a reasonable time under the contested case provisions of the Montana Administrative Procedure

Act, Title 2, chapter 4, part 6. After a hearing, the board shall affirm, modify, or rescind the order.

(6) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part. Actions for injunctions or penalties must be filed in the district court of the county in which the opencut *mine operation* is located or, if mutually agreed on by both parties in the action, in the first judicial district, Lewis and Clark County.

(7) The provisions of this section do not limit the authority of the department to bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part.”

Section 16. Suspension and revocation orders. (1) (a) The department may, after affording the operator an opportunity for an informal conference, order the suspension of a permit if:

(i) the operator fails to comply with a penalty order or a corrective action order issued pursuant to 82-4-441; or

(ii) the operator has violated this part, a rule adopted pursuant to this part, or the permit and the violation could reasonably be expected to create a danger to the health or safety of persons outside the permit area or significant environmental harm to land, air, or water. The order of suspension must be served on the operator personally or by certified mail addressed to the permanent address shown on the most recently filed annual report. The order of suspension must specify the provision of this part, the rules adopted under this part, or the permit violated and the facts alleged to constitute the violation and must, if the violation has not been corrected, order corrective action within a specified time period.

(b) The department may order immediate suspension of a permit whenever it finds that a violation of this part, the rules adopted under this part, or a permit is creating an imminent danger to the health or safety of persons outside the permit area. The order must require immediate corrective action.

(c) The operator upon whom an order is served may file a request for hearing with the board within 30 days of service of the order. The request for hearing must specify the reason for the request. The filing of a request for hearing on an order issued does not stay the suspension or corrective action requirement, but the board may, upon written request of the operator, stay either or both of these requirements.

(2) If the operator has not complied with the requirements set forth in the order of suspension within the time limits set in the order, the permit may be revoked by order of the department and the performance bond forfeited to the department. The operator may request a hearing before the board by submitting a written request stating the reason for the request to the board within 30 days after service of the order. If a hearing is requested within the 30-day period, the permit may not be revoked and the bond may not be forfeited until the board makes a final decision.

(3) If an operator fails to file the report required under [section 1], the department shall serve personally or by certified mail a notice letter informing the operator of the failure. If the operator does not file the report within 30 days of receipt of the letter, the department may issue a penalty order pursuant to 82-4-441 or a suspension order pursuant to this section. If the permit has been suspended, the department shall reinstate the permit upon compliance.

(4) Maintenance, monitoring, reporting, reclamation, and other activities required by statute, rule, or the permit and intended to protect public health or safety or the environment must continue during any period of suspension unless otherwise provided in the order.

Section 17. Codification instruction. [Sections 1 and 16] are intended to be codified as an integral part of Title 82, chapter 4, part 4, and the provisions of Title 82, chapter 4, part 4, apply to [sections 1 and 16].

Section 18. Repealer. Sections 82-4-421 and 82-4-423, MCA, are repealed.

Approved May 3, 2007

CHAPTER NO. 386

[HB 608]

AN ACT TRANSFERRING MONEY FROM THE STATE GENERAL FUND TO THE ENDOWMENT FOR CHILDREN FUND; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to section 2-15-2214, MCA, there is a Montana Children's Trust Fund Board, established in 1985, consisting of seven members appointed by the Governor for 3-year terms; and

WHEREAS, pursuant to section 52-7-105, MCA, there is within the permanent fund type an endowment for children, the endowment is not subject to appropriation, and the purpose of the endowment is to provide a permanent source of funding to support the programs and services related to a broad range of child abuse and neglect primary prevention activities and family resource programs operated by nonprofit or public, community-based educational and service organizations; and

WHEREAS, pursuant to section 52-7-105, MCA, the endowment may receive funds from appropriations; gifts, grants, and donations, from public or private sources; and other money credited or transferred to the endowment from any other fund or source; and

WHEREAS, pursuant to section 52-7-105, MCA, the State Treasurer must receive and shall deposit money in the endowment, the Board of Investments shall invest the money in the endowment, and only interest generated by the endowment is available for expenditure by the Board; and

WHEREAS, the Montana Legislature has not transferred funds to the endowment for children to support child abuse and neglect prevention efforts statewide; and

WHEREAS, the Montana children's trust fund program receives a federal community-based child abuse and neglect prevention grant in the amount of approximately \$179,000 annually; and

WHEREAS, the Montana children's trust fund program receives approximately \$50,000 annually in state special revenue generated by the income tax checkoff and \$5 for every divorce filing in Montana; and

WHEREAS, the Montana children's trust fund program has served at-risk children and families statewide by providing a broad range of child abuse and neglect primary prevention programming, the main focus being parent education; and

WHEREAS, additional resources are needed to help at-risk families remain intact and out of the state child protective services system; and

WHEREAS, the child protective services system is overburdened by increasing caseloads and has limited financial and human resources to serve the critical cases coming into the system.

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

Section 1. Fund transfer. There is transferred \$1 million from the 2009 biennium from the state general fund to the endowment for children fund established under 52-7-105.

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 387

[HB 616]

AN ACT PROVIDING THAT IT IS LAWFUL TO WAGER ON A FANTASY SPORTS LEAGUE CONDUCTED BY A PARIMUTUEL FACILITY THAT HAS BEEN LICENSED BY THE BOARD OF HORSERACING; PROVIDING A STATUTORY APPROPRIATION; AND AMENDING SECTIONS 23-4-101, 23-4-104, 23-4-201, 23-4-202, 23-4-301, 23-4-302, 23-4-304, 23-5-801, 23-5-802, 23-5-805, AND 23-5-806, MCA.

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

Section 1. Section 23-4-101, MCA, is amended to read:

“23-4-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Board” means the board of horseracing provided for in 2-15-3106.

(2) “Board of stewards” means a board composed of three stewards who supervise race meets.

(3) “Department” means the department of livestock provided for in Title 2, chapter 15, part 31.

(4) “*Fantasy sports league*” has the meaning provided in 23-5-801.

(4)(5) “Immediate family” means the spouse, parents, children, grandchildren, brothers, or sisters of an official or licensee regulated by this chapter who have a permanent or continuous residence in the household of the official or licensee and all other persons who have a permanent or continuous residence in the household of the official or licensee.

(5)(6) “Minor” means a person under 18 years of age.

(7) “*Parimutuel facility*” means a facility licensed by the board at which fantasy sports leagues are conducted and wagering on the outcome under a parimutuel system is permitted.

(8) “*Parimutuel network*” means an association licensed by the board to compile and distribute fantasy sports league rosters and weekly point totals for licensed parimutuel facilities and to manage statewide parimutuel wagering pools on fantasy sports leagues.

(6)(9) "Persons" means individuals, firms, corporations, fair boards, and associations.

(7)(10) (a) "Race meet" means racing of registered horses or mules at which the parimutuel system of wagering is used. The term includes horseraces, mule races, and greyhound races that are simulcast.

(b) The term does not include live greyhound racing.

(8)(11) "Racing" means live racing of registered horses or mules and simulcast racing of horses, mules, and greyhounds.

(9)(12) "Simulcast" means a live broadcast of an actual horserace, mule race, or greyhound race at the time it is run. The term includes races of local or national prominence.

(10)(13) "Simulcast facility" means a facility at which horseraces, mule races, or greyhound races are simulcast and wagering on the outcome is permitted under the parimutuel system.

(14) "*Simulcast parimutuel network*" means an association licensed by the board to receive or originate intrastate and interstate simulcast race signals, relay the race signals to licensed simulcast facilities, and manage statewide parimutuel wagering pools on simulcast races. A simulcast parimutuel network may be licensed by the board to operate a statewide parimutuel wagering pool for fantasy sports leagues.

(11)(15) "Steward" means an official hired by the department and by persons sponsoring a race meet to regulate and control the day-to-day conduct and operation of a sanctioned meet."

Section 2. Section 23-4-104, MCA, is amended to read:

"23-4-104. Duties of board. The board shall adopt rules to govern race meets and the parimutuel system. These rules shall include the following:

- (1) definitions;
- (2) auditing;
- (3) supervision of the parimutuel system;
- (4) corrupt practices;
- (5) supervision, duties, and responsibilities of the executive secretary, presiding steward, racing secretary, and other racing officials;
- (6) licensing of all personnel who have anything to do with the substantive operation of racing;
- (7) the establishment of dates for race meets and meetings in the best interests of breeding and racing in this state;
- (8) the veterinary practices and standards ~~which~~ *that* must be observed in connection with race meets;
- (9) absolute responsibility of trainers for the condition of horses and mules, regardless of the acts of third parties;
- (10) licensing or renewal of a license of a person whose license has been suspended by the board or another horseracing jurisdiction;
- (11) setting license fees commensurate with the cost of issuing a license;
- (12) the time, conduct, and supervision of simulcast races *and fantasy sports leagues* and parimutuel betting on simulcast races *and fantasy sports leagues*; and

(13) licensing, approval, and regulation of simulcast facilities.”

Section 3. Section 23-4-201, MCA, is amended to read:

“23-4-201. Licenses. (1) A person may not hold a race meet, including simulcast race meets under the parimutuel system, *or conduct fantasy sports league wagering through a parimutuel facility, parimutuel network, or a simulcast parimutuel network conducting a fantasy sports league* in this state without a valid license issued by the department under this chapter. A person applying for a license to hold a race meet under this chapter shall file with the department an application that must set forth the time, place, and number of days the license will continue and other information the board requires.

(2) A person who participates in a race meet must be licensed and charged an annual fee set by the board. The annual fee must be paid to the department and used for expenses of administering this chapter. Each person holding a license under this chapter shall comply with this chapter and with the rules adopted and orders issued by the board.

(3) A license may not be issued to a person who has failed to pay the fees, taxes, or money required under this chapter.

(4) An application to hold a race meet must be submitted to the department, and the board shall act on the application within 30 days. The board is the sole judge of whether the race meet may be licensed and the number of days the meet may continue.

(5) The board shall require that a fair board and an independent racing association conducting a race meet comply with the requirements of the rules adopted by the board before granting a license.

(6) A racing association consisting of a local fair board or an association approved by a local fair board may apply for a license to hold a simulcast race meet in a simulcast facility.

(7) An unexpired license held by a person who violates this chapter or who fails to pay to the department the sums required under this chapter is subject to cancellation and revocation by the board.

(8) A license to operate a parimutuel facility conducting fantasy sports league wagering may not be issued to an applicant unless the applicant is also licensed under Title 23, chapter 5.”

Section 4. Section 23-4-202, MCA, is amended to read:

“23-4-202. (Temporary) Penalty for violations of law — authority of board — judicial review. (1) A person holding a race meet or an owner, trainer, or jockey participating in a race meet, without first being licensed under this chapter, or a person violating this chapter is guilty of a misdemeanor.

(2) The board or, upon the board’s authorization, the board of stewards of a race meet at which they officiate may exclude from racecourses in this state a person whom the board considers detrimental to the best interest of racing as defined by rules of the board.

(3) As its own formal act or through an act of a board of stewards of a race meet, the board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed \$1,000, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may forbid application for

relicensure for a 2-year period. Fines collected under this subsection must be deposited in the general fund.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed under this chapter. The rules may include provisions for the following:

(a) summary imposition of penalty by the stewards of a race meet, including a fine and license suspension, subject to review under the contested case provisions of the Montana Administrative Procedure Act;

(b) stay of a summary imposition of penalty by either the board or board of stewards;

(c) retention of purses pending final disposition of complaints, protests, or appeals of stewards' rulings;

(d) setting aside of up to 3% of exotic wagering on races, including simulcast races, to be deposited in the board's agency fund account. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(e) using 2% of exotic wagering on live racing to be immediately and equally distributed to all purses except stakes races;

(f) assessment of penalty and interest on the late payment of fines, which must be paid before licenses are reinstated;

(g) definition of exotic forms of wagering on races to be allowed;

(h) standards for simulcast facilities; and

(i) conduct and supervision of simulcast races and parimutuel betting or wagering on simulcast races.

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter.

23-4-202. (Effective July 1, 2007) Penalty for violations of law — authority of board — judicial review. (1) (a) A person holding a race meet or an owner, trainer, or jockey participating in a race meet without first being licensed under this chapter or a person violating this chapter is guilty of a misdemeanor.

(b) *A person operating a parimutuel facility, parimutuel network, or simulcast parimutuel network that conducts fantasy sports league wagering without first being licensed under this chapter or a person violating this chapter is guilty of a misdemeanor.*

(2) The board or, upon the board's authorization, the board of stewards of a race meet at which the stewards officiate may exclude from racecourses a person whom the board or board of stewards considers detrimental to the best interest of racing as defined by rules of the board.

(3) As its own formal act or through an act of a board of stewards of a race meet, the board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed \$1,000, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may prohibit application for relicensure for a 2-year period. Fines collected under this subsection must be deposited in the general fund.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed under this chapter. The rules may include provisions for the following:

(a) summary imposition of penalty by the stewards of a race meet, including a fine and license suspension, subject to review under the contested case provisions of the Montana Administrative Procedure Act;

(b) stay of a summary imposition of penalty by either the board or board of stewards;

(c) retention of purses pending final disposition of complaints, protests, or appeals of stewards' rulings;

(d) setting aside of up to 3% of exotic wagering on races, including simulcast races, to be deposited in a state special revenue account and statutorily appropriated to the board as provided in 17-7-502. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(e) using 2% of exotic wagering on live racing to be immediately and equally distributed to all purses except stakes races;

(f) assessment of penalty and interest on the late payment of fines, which must be paid before licenses are reinstated;

(g) definition of exotic forms of wagering on races to be allowed;

(h) standards for simulcast facilities; ~~and~~

(i) conduct and supervision of simulcast races and parimutuel betting or wagering on simulcast races; *and*

(j) conduct and supervision of parimutuel facilities, parimutuel networks, simulcast parimutuel networks, and parimutuel wagering on fantasy sports leagues conducted at parimutuel facilities.

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter."

Section 5. Section 23-4-301, MCA, is amended to read:

"23-4-301. Parimutuel betting — other betting illegal. (1) It is unlawful to make, report, record, or register a bet or wager on the result of a contest of speed, skill, or endurance of an animal, whether the contest is held within or outside of this state, except under 23-5-502 or this chapter.

(2) A licensee conducting a race meet under this chapter may provide a place in the race meet grounds or enclosure where the licensee may conduct or supervise the use of the parimutuel system by patrons on the result of the races conducted under this chapter and the rules of the board.

(3) A person licensed under this chapter to hold a race meet may simulcast live races at a place in the race meet grounds or simulcast facility where the licensee may conduct or supervise the use of the parimutuel system by patrons on the results of simulcast races approved by the board.

(4) It is unlawful to conduct pool selling or bookmaking or to circulate handbooks or to bet or wager on a race of a licensed race meet, other than by the parimutuel system and in the race meet grounds or enclosure where the race is held, or to permit a minor to use the parimutuel system.

(5) Each licensee conducting a parimutuel system for an intrastate simulcast race meet shall combine the parimutuel pools at a simulcast facility with those at the actual racing facility for the purpose of determining the odds and computing payoffs. The amount of the handle at the simulcast race meet must be combined with the amount of parimutuel handle at the live racing facility for the purposes of distribution of money derived from parimutuel betting under 23-4-302 and 23-4-304.

(6) Negotiated purse money from intrastate and interstate simulcast parimutuel handles at racing associations that do not conduct live racing will be pooled and distributed to all tracks conducting live racing, all moneys to be distributed on a percent, based on each track's percent, of total annual on-track parimutuel handle.

(7) *It is unlawful to:*

(a) *conduct pool selling or bookmaking or to wager on a fantasy sports league other than by the parimutuel system and by being physically present at the licensed parimutuel facility;*

(b) *permit a minor to use the parimutuel system; or*

(c) *conduct internet or telephone wagering on fantasy sports leagues."*

Section 6. Section 23-4-302, MCA, is amended to read:

"23-4-302. (Temporary) Distribution of deposits — breakage. (1) Each licensee conducting the parimutuel system shall distribute all funds deposited in any pool to the winner of the parimutuel pool, less an amount that in the case of exotic wagering on races may not exceed 26% and in all other races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(2) Each licensee conducting the parimutuel system for a simulcast race meet shall distribute all funds deposited with the licensee in any pool for the simulcast race meet, less an amount that in the case of exotic wagering on these races may not exceed 26%, unless the signal originator percentage is higher, in which case the Montana simulcast licensee may adopt the same percentage withheld as the place where the signal originated, and that in all other of these races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(3) Each licensee conducting a parimutuel system for a simulcast race meet shall deduct 1% of the total amount wagered on the race meet and deposit it in the board's agency fund account. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

23-4-302. (Effective July 1, 2007) Distribution of deposits — breakage. (1) Each licensee conducting the parimutuel system *for a simulcast race meet* shall distribute all funds deposited in any pool to the winner of the parimutuel pool, less an amount that in the case of exotic wagering on races may not exceed 26% and in all other races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(2) Each licensee conducting the parimutuel system for a simulcast race meet shall distribute all funds deposited with the licensee in any pool for the

simulcast race meet, less an amount that in the case of exotic wagering on these races may not exceed 26%, unless the signal originator percentage is higher, in which case the Montana simulcast licensee may adopt the same percentage withheld as the place where the signal originated, and that in all other of these races may not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(3) Each licensee conducting a parimutuel system for a simulcast race meet shall deduct 1% of the total amount wagered on the race meet and deposit it in a state special revenue account. The funds deposited are statutorily appropriated to the board as provided in 17-7-502. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(4) (a) *The parimutuel network licensee conducting fantasy sports league wagering shall distribute all funds deposited in the pool to the winner of the parimutuel pool less the takeout amount of 26% of the total deposits.*

(b) *The takeout amount must be distributed as follows:*

(i) *15.3846% to the parimutuel facility licensee;*

(ii) *23.0769% to the parimutuel network licensee as an administrative fee; and*

(iii) *61.5385% to the board's special revenue account. No more than \$316,000 for fiscal year 2008, or 10% for succeeding fiscal years, of the amount collected under this subsection (4)(b)(iii) may be appropriated by the legislature for administration of this chapter. The remaining portion collected under this subsection (4)(b)(iii) is statutorily appropriated, as provided in 17-7-502, to the board for distribution to live race purses and for other purposes the board considers appropriate for the good of the existing horseracing industry.*

(c) *The odd cents of all redistribution based on each dollar deposited that exceeds a sum equal to the next lowest multiple of 10, known as "breakage", as well as unclaimed winning tickets from each parimutuel pool must be distributed to the parimutuel network licensee."*

Section 7. Section 23-4-304, MCA, is amended to read:

"23-4-304. (Temporary) Gross receipts — department's percentage — collection and allocation. (1) (a) The licensee shall pay to the department within 5 days following receipt by the licensee 1% of the gross receipts of each day's parimutuel betting at each race meet. At the end of each race meet the licensee shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance must be paid to the department. Money paid to the department may be used for the expenses incurred in carrying out this chapter. The licensee shall, at the same time, pay to the department all funds collected under 23-4-202(4)(d) on exotic wagering on races. These funds must be deposited in the board's agency fund account. The board shall then distribute all funds collected under 23-4-202(4)(d) to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(b) Each licensed simulcast facility shall pay to the department either 1% of the gross receipts of each day's parimutuel betting at each race meet or the actual cost to the board of regulating the simulcast race meet, whichever is higher. The money must be paid to the department within 5 days after receipt of

the money by the licensee. At the end of each race meet the licensed simulcast facility shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance must be paid to the department. Money paid to the department must be deposited in an account in the state special revenue fund and must be used for the administration of this chapter. The licensed simulcast facility shall, at the same time, pay to the department all funds collected under 23-4-202(4)(d) on exotic wagering on races. These funds must be deposited in the board's agency fund account. The board shall then distribute all funds collected under 23-4-202(4)(d) to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.

(2) Prior to the beginning of the live racing season, funds collected under 23-4-202(4)(d) must be distributed by the department, after first passing through the board's agency fund account, to be used for race purses that are distributed to each live race meet by the board or for other purposes that the board considers appropriate for the good of the horseracing industry.

23-4-304. (Effective July 1, 2007) Gross receipts — department's percentage — collection and allocation. (1) (a) *The Each live race meet licensee shall pay to the department within 5 days following receipt by the licensee 1% of the gross receipts of each day's parimutuel betting at each race meet. At the end of each race meet the licensee shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance must be paid to the department. Money paid to the department may be used for the expenses incurred in carrying out this chapter. The licensee shall, at the same time, pay to the department all funds collected under 23-4-202(4)(d) on exotic wagering on races. These funds must be deposited in a state special revenue account. The board shall then distribute all funds collected under 23-4-202(4)(d) to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.*

(b) *Each licensed simulcast facility shall pay to the department either 1% of the gross receipts of each day's parimutuel betting at each race meet or the actual cost to the board of regulating the simulcast race meet, whichever is higher. The money must be paid to the department within 5 days after receipt of the money by the licensee. At the end of each race meet the licensed simulcast facility shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance must be paid to the department. Money paid to the department must be deposited in an account in the state special revenue fund and must be used for the administration of this chapter. The licensed simulcast facility shall, at the same time, pay to the department all funds collected under 23-4-202(4)(d) on exotic wagering on races. These funds must be deposited in a state special revenue account. The board shall then distribute all funds collected under 23-4-202(4)(d) to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.*

(c) *The licensed parimutuel network conducting fantasy sports league wagering shall pay the funds distributed pursuant to 23-4-302(4)(b)(iii) to the department within 10 days after receipt of the money by the licensee.*

(2) Prior to the beginning of the live racing season, funds collected under 23-4-202(4)(d) must be distributed by the department, after first passing through a state special revenue account, to be used for race purses that are distributed to each live race meet by the board or for other purposes that the board considers appropriate for the good of the horseracing industry.

(3) ~~The~~ *Except for funds collected under subsection (1)(c), the funds collected under this section and deposited in a state special revenue account are statutorily appropriated to the board as provided in 17-7-502.*"

Section 8. Section 23-5-801, MCA, is amended to read:

"23-5-801. Fantasy sports leagues defined. As used in this part, a "fantasy sports league" means a gambling activity conducted in the following manner:

(1) A fantasy sports league consists of a limited number of persons or groups of persons who pay an entrance fee for membership in the league. The entrance fee may include an administrative fee.

(2) Each league member creates a fictitious team composed of athletes from a given professional sport, such as baseball, basketball, or football. Player selection is conducted through random drawings ~~or~~, a bidding process, ~~or~~ by selection from a roster prepared by the parimutuel network coordinator.

(3) ~~After~~ *Except for fantasy sports leagues operated under Title 23, chapter 4, after the initial teams are selected, interim replacement of players may occur by trade or purchase. A specific fee, which may not exceed the total entrance fee, is charged for each transaction.*

(4) A method, as defined by league rules, is devised to permit each team to compete against other teams in the league. Points are awarded to a team according to the performance of individual players or teams or both during a designated time period.

(5) A league member may be eligible to receive a payout based on the number of points accumulated. Payouts, which may be in the form of cash or prizes, are awarded according to league rules.

(6) *The roster of eligible participants prepared by the parimutuel network must be provided to each league member.*

(6)(7) Rules governing the conduct of the fantasy sports league must be provided in writing to each league member."

Section 9. Section 23-5-802, MCA, is amended to read:

"23-5-802. Fantasy sports leagues authorized. It is lawful to conduct or participate in a fantasy sports league, *including a fantasy sports league that is operated under a parimutuel system of wagering regulated under Title 23, chapter 4. It is unlawful to wager on a fantasy sports league by telephone or by the internet.*"

Section 10. Section 23-5-805, MCA, is amended to read:

"23-5-805. Payouts — administrative fees charged by commercial establishments. (1) ~~The~~ *Except as provided in subsection (2)(b), the total value of payouts to all league members must equal the amount collected for entrance, administrative, and transactions fees, minus payment for administrative expenses.*

(2) (a) ~~If~~ *Except as provided in subsection (2)(b), if a commercial establishment charges an administrative fee for conducting a fantasy sports*

league, the fee for each participant may not be more than 15% of the amount charged as a participant's entrance fee.

(b) The parimutuel network, as defined in 23-4-101, shall distribute all funds wagered on fantasy sports leagues in any wagering pool pursuant to the requirements of 23-4-302 and 23-4-304."

Section 11. Section 23-5-806, MCA, is amended to read:

"23-5-806. Sports betting prohibited — applicability. Sections 23-5-801, 23-5-802, and 23-5-805 do not:

(1) authorize betting or wagering on the outcome of an individual sports event; or

(2) apply to gambling activities governed under *Title 23*, chapter 4, *except for parimutuel facilities, parimutuel networks, or simulcast parimutuel networks conducting fantasy sports leagues*, or under *Title 23*, chapter 5, part 2 or 5, ~~of this title.~~"

Approved May 3, 2007

CHAPTER NO. 388

[HB 665]

AN ACT LICENSING AND REGULATING ATHLETIC TRAINERS; ESTABLISHING A BOARD OF ATHLETIC TRAINERS; PROVIDING RULEMAKING AUTHORITY FOR THE BOARD; ESTABLISHING QUALIFICATIONS FOR LICENSURE; PROVIDING TERMS OF LICENSURE; AND PROVIDING VIOLATIONS AND PENALTIES.

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

Section 1. Board of athletic trainers. (1) There is a board of athletic trainers.

(2) The board is composed of five members appointed by the governor as follows:

(a) one member who is a physician licensed under Title 37, chapter 3, preferably with a background in the practice of sports medicine;

(b) three members who are athletic trainers who have been engaged in the practice of athletic training in the state for at least 2 years prior to being appointed. After the initial appointments are made to establish the board, each of the three members must be licensed as an athletic trainer under [sections 2 through 8]. Of these three members, at the time of appointment:

(i) one must be employed by or retired from employment with a postsecondary institution in Montana;

(ii) one must be employed in or retired from a secondary school in Montana; and

(iii) one must be employed by or retired from a health care facility or an athletic facility in Montana.

(c) one member of the public who is not engaged in or directly connected with the practice of athletic training.

(3) There may be no more than one retired athletic trainer serving on the board at anytime.

(4) A vacancy on the board must be filled for an unexpired term to maintain the representation provided in subsection (2).

(5) The board is attached for administrative purposes only, as prescribed in 2-15-121, to the department of labor and industry.

(6) Members must be compensated as provided in 2-18-501 through 2-18-503.

(7) Members shall serve 4-year, staggered terms. A member may be reappointed for one consecutive term. A member who is reappointed must be eligible under the same criteria as when first appointed.

(8) For the purposes of this section, an appointment to fill an unexpired term does not constitute a full term.

(9) The governor may remove a member from the board for neglect of duty, for incompetency, or for cause.

Section 2. Definitions. As used in [sections 2 through 8], the following definitions apply:

(1) “Athlete” means a person who participates in an athletic activity that involves exercises, sports, or games requiring physical strength, agility, flexibility, range of motion, speed, or stamina and the exercises, sports, or games are of the type conducted in association with an educational institution or a professional, amateur, or recreational sports club or organization.

(2) “Athletic injury” means a physical injury received by an athlete.

(3) “Athletic trainer” means an individual who is licensed to practice athletic training.

(4) “Athletic training” means the practice of prevention, recognition, assessment, management, treatment, disposition, and reconditioning of athletic injuries. The term includes the following:

(a) the use of heat, light, sound, cold, electricity, exercise, reconditioning, or mechanical devices related to the care and conditioning of athletes; and

(b) the education and counseling of the public on matters related to athletic training.

(5) “Board” means the board of athletic trainers provided for in [section 1].

(6) “Department” means the department of labor and industry provided for in 2-15-1701.

(7) “Licensee” means an individual licensed under [sections 2 through 8].

Section 3. Board duties — rulemaking. (1) The board shall meet at least twice a year for the purposes provided in Title 37, chapter 1, and [sections 2 through 8].

(2) The board shall adopt rules necessary to implement the provisions of [sections 2 through 8].

Section 4. Qualifications — temporary license — exemption from examination. (1) Applicants for licensure as an athletic trainer shall:

(a) satisfactorily complete an application and an examination prescribed by the department in accordance with rules adopted by the board;

(b) pay application, examination, and licensure fees established by the board;

(c) provide documentation that the applicant has received at least a baccalaureate degree from a postsecondary institution that meets the academic standards for athletic trainers established by the national athletic trainers' association board of certification;

(d) provide the board with letters of recommendation from at least two clinical supervisors familiar with the applicant's clinical training and other documentation by which the board may determine that an applicant has not had a criminal conviction or disciplinary action taken against the applicant by a board or a licensing agency in another state or territory of the United States that may have a direct bearing on the applicant's ability to practice athletic training competently.

(2) (a) The board may issue a temporary license to an applicant who:

(i) meets the qualifications in subsections (1)(b) through (1)(d) but has not yet met the examination requirement in subsection (1)(a); or

(ii) has a valid license from another state or certification as provided in subsection (3)(a) or (3)(b).

(b) A temporary license issued under this section is valid after the date of issuance for 90 days or until the board acts on the person's license application, whichever is earlier.

(3) An applicant may be exempted from the examination requirement in subsection (1)(a) if the applicant:

(a) has a current, valid license to practice athletic training in another state and that state's standards, as determined by the board, are at least equal to the standards for licensure in this state; or

(b) is certified as an athletic trainer by an organization recognized by the national commission for certifying agencies.

Section 5. License — revocation. (1) Except as provided in subsection (2), a license issued under [sections 2 through 8] is valid for 3 years.

(2) The board may revoke a license if a licensee knowingly:

(a) provided fraudulent information on the application or documentation required in [section 4];

(b) violated standards of conduct as prescribed by the board; or

(c) engaged in practices beyond the scope and limitation of the person's training and education as determined by the board.

Section 6. Representation to public — practice — exemptions. (1) (a) Except as provided in subsection (2), an individual may not practice athletic training without a license.

(b) Upon issuance of a license in accordance with [sections 2 through 8], a licensee may use the title "licensed athletic trainer" or "certified athletic trainer" and may use the abbreviations "LAT" or "AT" indicating that the individual is licensed in the practice of athletic training. A person who is not licensed may not use the titles listed in this subsection (1)(b). Except for an individual listed in subsection (2)(a), an individual who is not certified or licensed as an athletic trainer may not advertise for athletic training services.

(2) This section does not prohibit:

(a) a health care professional licensed under Title 37, chapter 3, 6, 8, 11, 12, 20, 24, or 26, from practicing an occupation or profession for which the health care professional is licensed or from practicing on an athlete;

(b) an educator or an information specialist from providing general information regarding prevention of athletic injuries;

(c) an individual from providing a first aid procedure incidental to the individual's employment or volunteer duties;

(d) an intern or student trainee studying a course of athletic training at an accredited postsecondary institution from providing athletic training under qualified supervision as part of the intern or student trainee's course of study. The intern or student trainee shall use the title "athletic training student" while carrying out athletic training activities.

(e) a personal trainer from providing personal training services;

(f) a massage therapist from providing massage; or

(g) a coach, physical education teacher, athletic director, other school employee, or supervised volunteer from providing first aid, preventative care, or continuous followup care of athletes and athletic injuries in a school setting.

Section 7. Application and administration of topical medications.

(1) A licensed athletic trainer may apply or administer topical medications by:

(a) direct application;

(b) iontophoresis, a process by which topical medications are applied through the use of electricity; or

(c) phonophoresis, a process by which topical medications are applied through the use of ultrasound.

(2) A licensed athletic trainer may apply or administer the following topical medications:

(a) bactericidal agents;

(b) debriding agents;

(c) anesthetic agents;

(d) anti-inflammatory agents;

(e) antispasmodic agents; and

(f) adrenocorticosteroids.

(3) Topical medications applied or administered by a licensed athletic trainer must be prescribed on a specific or standing basis by a licensed medical practitioner authorized to order or prescribe topical medications and must be purchased from a pharmacy certified under 37-7-321. Topical medications dispensed under this section must comply with packaging and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

(4) Appropriate recordkeeping is required of a licensed athletic trainer who applies or administers topical medications as authorized in this section.

Section 8. Violation — penalties. A person who knowingly violates any provision of [sections 2 through 8] is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$50 or more than \$500, by imprisonment in the county jail for a term of not less than 30 days or more than 6 months, or by both fine and imprisonment.

Section 9. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 17, and the provisions of Title 2, chapter 15, part 17, apply to [section 1].

(2) [Sections 2 through 8] are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 2 through 8].

Approved May 3, 2007

CHAPTER NO. 389

[HB 668]

AN ACT ESTABLISHING A PROCEDURE FOR PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS AUTHORIZED TO REQUIRE THE SUBMISSION OF FINGERPRINTS BY LICENSE APPLICANTS PRIOR TO THE ISSUANCE OF A LICENSE; AMENDING SECTIONS 37-1-201 AND 37-1-307, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 37-1-201, MCA, is amended to read:

“37-1-201. Purpose. It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when such offenders are given the opportunity to secure employment or to engage in a meaningful occupation, while licensure must be conferred with prudence to protect the interests of the public. *The legislature finds that the process of licensure will be strengthened by instituting an effective mechanism for obtaining accurate public information regarding a license applicant’s criminal background.*”

Section 2. Section 37-1-307, MCA, is amended to read:

“37-1-307. Board authority. (1) A board may:

- (a) hold hearings as provided in this part;
- (b) issue subpoenas requiring the attendance of witnesses or the production of documents and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint and must be signed by a member of the board. Subpoenas may be enforced as provided in 2-4-104.
- (c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;
- (d) establish a screening panel to determine whether there is reasonable cause to believe that a licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings. A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel’s finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(e) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

~~(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding the board's licensees and license applicants and regarding possible unlicensed practice.~~

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information, as defined in 44-5-103, regarding the board's licensees and license applicants and regarding possible unlicensed practice, but the board may not record or retain any confidential criminal justice information without complying with the provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5.

(3) A board may contact and request information from the department of justice, which is designated as a criminal justice agency within the meaning of 44-5-103, for the purpose of obtaining criminal history record information regarding the board's licensees and license applicants and regarding possible unlicensed practice.

(4) (a) A board that is statutorily authorized to obtain a criminal background check as a prerequisite to the issuance of a license shall require the applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(b) The applicant shall sign a release of information to the board and is responsible to the department of justice for the payment of all fees associated with the criminal background check.

(c) Upon completion of the criminal background check, the department of justice shall forward all criminal history record information, as defined in 44-5-103, in any jurisdiction to the board as authorized in 44-5-303.

(d) At the conclusion of any background check required by this section, the board must receive the criminal background check report but may not receive the fingerprint card of the applicant. Upon receipt of the criminal background check report, the department of justice shall promptly destroy the fingerprint card of the applicant.

~~[(5) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)~~

Section 3. Applicability. [This act] applies to applications for licensure submitted on or after [the effective date of this act].

Approved May 3, 2007

CHAPTER NO. 390

[HB 687]

AN ACT EXTENDING INSURANCE AND HEALTH PLAN COVERAGE FOR WELL-CHILD CARE FROM AGE 2 TO AGE 7; AMENDING SECTIONS

2-18-704, 33-22-303, 33-22-512, 33-30-1014, 33-31-301, AND 33-35-306, 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 2-18-704, MCA, is amended to read:

“2-18-704. Mandatory provisions. (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions of a defined benefit plan provided by law or, in the case of the defined contribution plan provided in Title 19, chapter 3, part 21, a member with at least 5 years of service and who is at least age 50 while in covered employment to remain a member of the group until the member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)(a) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and subsequently terminates membership may not rejoin the group plan unless the person again serves as a legislator.

(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues to be an inactive vested member of the judges' retirement system as provided by 19-5-301. The judge shall notify the department of administration in writing within 90 days of the end of the judge's judicial service of the judge's choice to continue membership in the group plan.

(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or

(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended.

(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.

(5) A person electing to remain a member of the group under subsection (1), (2), (3), or (4) shall pay the full premium for coverage and for that of the person's covered dependents.

(6) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation.

(7) An insurance contract or plan issued under this part must include coverage for treatment of inborn errors of metabolism, as provided for in 33-22-131.

(8) An insurance contract or plan issued under this part must include substantially equivalent or greater coverage for outpatient self-management

training and education for the treatment of diabetes and certain diabetic equipment and supplies as provided in 33-22-129.

(9) (a) An insurance contract or plan issued under this part that provides coverage for an individual in a member's family must provide coverage for well-child care for children from the moment of birth through 7 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the contract or plan.

(b) Coverage for well-child care under subsection (9)(a) must include:

(i) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(ii) routine immunizations according to the schedule for immunization recommended by the immunization practice advisory committee of the U.S. department of health and human services.

(c) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit as provided for in this subsection (9).

(d) For purposes of this subsection (9):

(i) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics; and

(ii) "well-child care" means the services described in subsection (9)(b) and delivered by a physician or a health care professional supervised by a physician."

Section 2. 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 7 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 3. 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 7 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 4. Section 33-30-1014, MCA, is amended to read:

“33-30-1014. Coverage for well-child care. (1) Each disability insurance plan or group disability insurance plan that is delivered, issued for delivery,

renewed, extended, or modified in this state by a health service corporation 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 27 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the plan.

(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, 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 at the intervals required in that subsection 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 disability insurance plan or group disability insurance plan issued by a health service corporation 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 health service corporation that issued or delivered the policy or certificate is located inside or outside of this state."

Section 5. Section 33-31-301, MCA, is amended to read:

"33-31-301. (Temporary) 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 in accordance with 33-1-501.

(3) An evidence of coverage issued or delivered to a person 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 33-22-262, 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 33-22-262, 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 requiring coverage for well-child care for children from the moment of birth through at least 7 years of age that is exempt from any deductibles and that includes:

(i) a history, a physical examination, developmental assessment and anticipatory guidance, as those terms are defined in 33-22-303, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(ii) routine immunizations according to the schedule recommended by the immunization practices advisory committee of the U.S. department of health and human services;

~~(h)~~(i) 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)~~(j) 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)~~(k) 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 in accordance with 33-1-501 and issued to the enrollee.

(5) (a) Except as provided in 33-22-262, 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) Except as provided in 33-22-262, 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 provisions of 33-1-501 govern the filing and approval of health maintenance organization forms.

(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. (Terminates June 30, 2009—sec. 14, Ch. 325, L. 2003.)

33-31-301. (Effective July 1, 2009) 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 in accordance with 33-1-501.

(3) An evidence of coverage issued or delivered to a person resident 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) 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) 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 requiring coverage for well-child care for children from the moment of birth through at least 7 years of age, including:*

(i) a history, a physical examination, developmental assessment and anticipatory guidance, as those terms are defined in 33-22-303, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(ii) routine immunizations according to the schedule recommended by the immunization practices advisory committee of the U.S. department of health and human services;

(h)(i) 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.”

(j) 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.

(k) 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 in accordance with 33-1-501 and issued to the enrollee.

(5) (a) 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 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 provisions of 33-1-501 govern the filing and approval of health maintenance organization forms.

(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 6. Section 33-35-306, MCA, is amended to read:

“33-35-306. Application of insurance code to arrangements. (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions:

(a) 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;

(f) 33-22-107, 33-22-131, 33-22-134, and 33-22-135; and

(g) 33-22-512, 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 7. Effective date. [This act] is effective January 1, 2008.

Section 8. Applicability. [This act] applies to policies, certificates, evidence of coverage, and plans issued or renewed on or after January 1, 2008.

Approved May 3, 2007

CHAPTER NO. 391

[HB 831]

AN ACT REVISING WATER LAWS IN CLOSED BASINS; DEFINING TERMS IN WATER USE LAWS; AMENDING REQUIREMENTS FOR AN APPLICATION TO APPROPRIATE GROUND WATER IN A CLOSED BASIN; PROVIDING THAT CERTAIN APPLICATIONS TO APPROPRIATE SURFACE WATER ARE EXEMPT FROM CLOSED BASIN REQUIREMENTS; PROVIDING REQUIREMENTS FOR HYDROGEOLOGIC ASSESSMENTS, MITIGATION PLANS, AND AQUIFER RECHARGE

PLANS; PROVIDING MINIMUM WATER QUALITY STANDARDS FOR CERTAIN DISCHARGES OF EFFLUENT; REQUIRING THAT DATA BE SUBMITTED TO THE BUREAU OF MINES AND GEOLOGY; PROVIDING FOR RULEMAKING; PROVIDING FOR A CASE STUDY AND REQUIREMENTS AND A FEE FOR PARTICIPATION IN THE CASE STUDY; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 85-2-102, 85-2-302, 85-2-311, 85-2-329, 85-2-330, 85-2-335, 85-2-336, 85-2-340, 85-2-341, 85-2-342, 85-2-343, 85-2-344, AND 85-2-506, MCA; REPEALING SECTION 85-2-337, MCA; DIRECTING THE AMENDMENT OF ARM 36.12.101 AND 36.12.120; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, it is the policy of this state to encourage the wise use of the state's water resources by making them available for appropriation and to provide wise utilization, development, and conservation of the water of the state for the maximum benefit of its people with the least possible degradation of the state's natural aquatic ecosystems; and

WHEREAS, there has been confusion regarding ground water issues in closed basins and the Department of Natural Resources and Conservation needs guidance from the Legislature on how to proceed; and

WHEREAS, the basin closure laws were passed to protect senior appropriators while the state water adjudication is ongoing; and

WHEREAS, ground water development in closed basins should be able to proceed as long as the applicant collects the necessary scientific information to determine if there will be an adverse effect on a prior appropriator and takes the necessary actions to mitigate or prevent any adverse effects on a prior appropriator; and

WHEREAS, it is critical that the Legislature develop state water policies in a way that protects the prior appropriation doctrine while at the same time protecting the quality of Montana's water and the ability to appropriate water consistent with section 85-1-101, MCA, and Article IX, section 3, of the Montana Constitution; and

WHEREAS, augmentation is statutorily authorized for the Clark Fork River Basin only; and

WHEREAS, the Department of Natural Resources and Conservation has developed administrative rules and applied augmentation through these administrative rules to all basins even though not specifically statutorily authorized; and

WHEREAS, administrative rules and rulemaking must comply with section 2-4-305, MCA, and may not engraft material not contemplated by the Legislature; and

WHEREAS, this bill provides definitions and a new procedure for mitigation and aquifer recharge.

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

Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. (Temporary) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436; ~~or~~

(d) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) *a use of water for aquifer recharge or mitigation as provided in [sections 14 and 16]; or*

(f) *a use of water for an aquifer storage and recovery project as provided in [section 20].*

(2) *“Aquifer recharge” means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.*

(3) *“Aquifer storage and recovery project” means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.*

(2)(4) “Beneficial use”, unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, ~~(including stock water)~~, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436; ~~or~~

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) *a use of water for aquifer recharge or mitigation as provided in [sections 14 and 16]; or*

(f) *a use of water for an aquifer storage and recovery project as provided in [section 20].*

(3)(5) “Certificate” means a certificate of water right issued by the department.

(4)(6) “Change in appropriation right” means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5)(7) “Commission” means the fish, wildlife, and parks commission provided for in 2-15-3402.

(6)(8) “Correct and complete” means that the information required to be submitted conforms to the standard of substantial credible information and that

all of the necessary parts of the form requiring the information have been filled in with the required information.

(7)(9) “Declaration” means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8)(10) “Department” means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9)(11) “Developed spring” means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(10)(12) “Existing right” or “existing water right” means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(11)(13) “Ground water” means any water that is beneath the ground surface.

(12)(14) “Late claim” means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(15) “Mitigation” means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(16) “Municipality” means an incorporated city or town organized and incorporated under Title 7, chapter 2.

(13)(17) “Permit” means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(14)(18) “Person” means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(15)(19) (a) “Political subdivision” means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

(16)(20) “Salvage” means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(17)(21) “State water reservation” means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(18)(22) “Substantial credible information” means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(19)(23) “Waste” means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(20)(24) “Water” means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(21)(25) “Water division” means a drainage basin as defined in 3-7-102.

(22)(26) “Water judge” means a judge as provided for in Title 3, chapter 7.

(23)(27) “Water master” means a master as provided for in Title 3, chapter 7.

(24)(28) “Watercourse” means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(25)(29) “Well” means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)

85-2-102. (Effective July 1, 2009) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Appropriate” means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; ~~or~~

(c) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(d) *a use of water for aquifer recharge or mitigation as provided in [sections 14 and 16]; or*

(e) *a use of water for an aquifer storage and recovery project as provided in [section 20].*

(2) “Aquifer recharge” means either controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(3) “Aquifer storage and recovery project” means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(2)(4) “Beneficial use”, unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, ~~(including stock water)~~, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; ~~or~~

(c) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(d) *a use of water for aquifer recharge or mitigation as provided in [sections 14 and 16]; or*

(e) *a use of water for an aquifer storage and recovery project as provided in [section 20].*

~~(3)~~(5) “Certificate” means a certificate of water right issued by the department.

(4)(6) “Change in appropriation right” means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5)(7) “Correct and complete” means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(6)(8) “Declaration” means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7)(9) “Department” means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8)(10) “Developed spring” means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(9)(11) “Existing right” or “existing water right” means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(10)(12) “Ground water” means any water that is beneath the ground surface.

(11)(13) “Late claim” means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(14) *“Mitigation” means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.*

(15) *“Municipality” means an incorporated city or town organized and incorporated under Title 7, chapter 2.*

(12)(16) “Permit” means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(13)(17) “Person” means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(14)(18) (a) “Political subdivision” means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

(15)(19) “Salvage” means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(16)(20) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(17)(21) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(18)(22) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(19)(23) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(20)(24) "Water division" means a drainage basin as defined in 3-7-102.

(21)(25) "Water judge" means a judge as provided for in Title 3, chapter 7.

(22)(26) "Water master" means a master as provided for in Title 3, chapter 7.

(23)(27) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(24)(28) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 2. Section 85-2-302, MCA, is amended to read:

"85-2-302. Application for permit. (1) Except as provided in 85-2-306 *and* [section 21], a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works except by applying for and receiving a permit from the department.

(2) The department shall adopt rules that are necessary to determine whether or not an application is correct and complete, based on the provisions applicable to issuance of a permit under this part. The rules must be adopted in compliance with Title 2, chapter 4.

(3) The application must be made on a form prescribed by the department. The department shall make the forms available through its offices.

(4) The applicant shall submit a correct and complete application. The determination of whether an application is correct and complete must be based on rules adopted under subsection (2) that are in effect at the time the application is submitted.

(5) The department shall notify the applicant of any defects in an application within 180 days. The defects must be identified by reference to the rules adopted under subsection (2). If the department does not notify the applicant of any defects within 180 days, the application must be treated as a correct and complete application.

(6) An application does not lose priority of filing because of defects if the application is corrected or completed within 30 days of the date of notification of the defects or within a further time as the department may allow, but not to exceed 90 days from the date of notification. If an application is made correct and complete after the mandated time period, but within 90 days of the date of

notification of the defects, the priority date of the application is the date the application is made correct and complete.

(7) An application not corrected or completed within 90 days from the date of notification of the defects is terminated.”

Section 3. Section 85-2-311, MCA, is amended to read:

“85-2-311. Criteria for issuance of permit. (1) A permit may be issued under this part prior to the adjudication of existing water rights in a source of supply. In a permit proceeding under this part, there is no presumption that an applicant for a permit cannot meet the statutory criteria of this section prior to the adjudication of existing water rights pursuant to this chapter. In making a determination under this section, the department may not alter the terms and conditions of an existing water right or an issued certificate, permit, or state water reservation. Except as provided in subsections (3) and (4), the department shall issue a permit if the applicant proves by a preponderance of evidence that the following criteria are met:

(a) (i) there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate; and

(ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

(B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and

(C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

(b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be determined based on a consideration of an applicant’s plan for the exercise of the permit that demonstrates that the applicant’s use of the water will be controlled so the water right of a prior appropriator will be satisfied;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use;

(f) the water quality of a prior appropriator will not be adversely affected;

(g) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and

(h) the ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(2) The applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not be met. For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

(3) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the proposed appropriation is a reasonable use. A finding must be based on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands, such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (4) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

(5) ~~To~~ *Subject to [section 14], to meet the preponderance of evidence standard in this section, the applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the applicant, the department, the U.S. geological survey, or the U.S. natural resources conservation service and other specific field studies.*

(6) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section.

(7) The department may adopt rules to implement the provisions of this section.

(8) *For an application for ground water in a basin closed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344 or during the period of closure for any basin that is administratively closed pursuant to 85-2-319, the applicant shall comply with the provisions of [section 14] in addition to the requirements of this section.*

Section 4. Section 85-2-329, MCA, is amended to read:

"85-2-329. Definitions. Unless the context requires otherwise, in 85-2-330 and this section, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(2) "Ground water" means ~~water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and that is not immediately or directly connected to surface water.~~

(3)(2) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the

water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(4)(3) “Teton River basin” means the drainage area of the Teton River and its tributaries above the confluence of the Teton and Marias Rivers.”

Section 5. Section 85-2-330, MCA, is amended to read:

“85-2-330. Basin closure — exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the Teton River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water *if the applicant complies with the provisions of [section 14];*

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for:

(i) domestic use from surface water or pursuant to 85-2-306; ~~municipal, or~~

(ii) stock use; or

(iii) use of surface water by or for a municipality;

(d) an application to store water during high spring flows; or

(e) ~~emergency~~ temporary *emergency* appropriations as provided for in 85-2-113(3); or

(f) *an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:*

(i) *remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;*

(ii) *aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or*

(iii) *remedial actions taken pursuant to Title 75, chapter 10, part 7.*

(3) *A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(f) may not be used for dilution.*

(4) *A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b), (2)(c), (2)(e), or (2)(f)."*

Section 6. Section 85-2-335, MCA, is amended to read:

“85-2-335. Definitions. Unless the context requires otherwise, in 85-2-335, through 85-2-336, and 85-2-338, the following definitions apply:

(1) “Application” means an application for a beneficial water use permit pursuant to 85-2-302.

(2) “Upper Clark Fork River basin” means the drainage area of the Clark Fork River and its tributaries above Milltown dam.”

Section 7. Section 85-2-336, MCA, is amended to read:

“85-2-336. Basin closure — exception. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water within the Upper Clark Fork River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water *if the applicant complies with the provisions of [section 14]*;

(b) an application filed prior to January 1, 2000, for a permit to appropriate water to conduct response actions or remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or Title 75, chapter 10, part 7, at sites designated as of January 1, 1994. The total flow rates for all permits issued under this subsection (2)(b) may not exceed 10 cubic feet per second. A permit issued to conduct response actions or remedial actions may not be used for dilution and must be limited to a term not to exceed the necessary time to complete the response or remedial action, and the permit may not be transferred to any person for any purpose other than the designated response or remedial action *an application for a permit to appropriate surface water to conduct aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387. A permit issued to conduct aquatic resource actions may not be used for dilution.*

(c) an application for a permit to appropriate water for stock use;

(d) an application to store water; or

(e) an application for power generation at existing hydroelectric dams. The department may not approve a permit for power generation if approval results in additional consumption of water.

(3) *A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b) or (2)(c).*

(4) Applications for state water reservations in the Upper Clark Fork River basin filed pursuant to 85-2-316 and pending as of May 1, 1991, have a priority date of May 1, 1991. The filing of a state water reservation application does not provide standing to object under 85-2-402.

(4)(5) The department may not process or approve applications for state water reservations in the Upper Clark Fork River basin filed pursuant to 85-2-316.”

Section 8. Section 85-2-340, MCA, is amended to read:

“85-2-340. Definitions. Unless the context requires otherwise, in 85-2-341 and this section, the following definitions apply:

(1) “Application” means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(2) “Ground water” ~~means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and that is not immediately or directly connected to surface water~~ *has the meaning provided in 85-2-102.*

(3) “Jefferson River basin” means the drainage area of the Jefferson River and its tributaries above the confluence of the Jefferson and Missouri Rivers.

(4) “Madison River basin” means the drainage area of the Madison River and its tributaries above the confluence of the Madison and Jefferson Rivers.

(5) “Nonconsumptive use” means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.”

Section 9. Section 85-2-341, MCA, is amended to read:

“85-2-341. Basin closure — exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not ~~process or~~ grant an application for a permit to appropriate water or for a state water reservation to reserve water within the Jefferson River basin or Madison River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water *if the applicant complies with the provisions of [section 14];*

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for:

(i) ~~domestic use from surface water or pursuant to 85-2-306;~~ ~~municipal, or~~

(ii) stock use; or

(iii) *use of surface water by or for a municipality;*

(d) an application to store water during high spring flows; ~~or~~

(e) temporary emergency appropriations as provided for in 85-2-113(3); or

(f) *an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:*

(i) *remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;*

(ii) *aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or*

(iii) *remedial actions taken pursuant to Title 75, chapter 10, part 7.*

(3) *A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(f) may not be used for dilution.*

(4) *A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b), (2)(c), (2)(e), or (2)(f).”*

Section 10. Section 85-2-342, MCA, is amended to read:

“85-2-342. Definitions. Unless the context requires otherwise, in 85-2-343 and this section, the following definitions apply:

(1) “Application” means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(2) ~~“Ground water” means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and that is not immediately or directly connected to surface water.~~

(3) (2) “Nonconsumptive use” means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(4) (3) “Upper Missouri River basin” means the drainage area of the Missouri River and its tributaries above Morony dam.”

Section 11. Section 85-2-343, MCA, is amended to read:

“85-2-343. Basin closure — exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not ~~process or~~ grant an application for a permit to appropriate water or for a reservation to reserve water within the upper Missouri River basin until the final decrees have been issued in accordance with part 2 of this chapter for all of the subbasins of the upper Missouri River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water *if the applicant complies with the provisions of [section 14]*;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for:

(i) *domestic use from surface water or pursuant to 85-2-306;* ~~municipal, or~~

(ii) stock use; or

(iii) *use of surface water by or for a municipality;*

(d) an application to store water during high spring flows;

(e) an application for a permit to use water from the Muddy Creek drainage, which drains to the Sun River, if the proposed use of water will help control erosion in the Muddy Creek drainage; ~~or~~

(f) temporary emergency appropriations as provided for in 85-2-113(3); or

(g) *an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:*

(i) *remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;*

(ii) *aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or*

(iii) *remedial actions taken pursuant to Title 75, chapter 10, part 7.*

(3) *A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(g) may not be used for dilution.*

(4) *A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b), (2)(c), (2)(e), (2)(f), or (2)(g)."*

Section 12. Section 85-2-344, MCA, is amended to read:

“85-2-344. Bitterroot River subbasin temporary closure — definitions — exceptions. (1) Unless the context requires otherwise, in this section, the following definitions apply:

(a) “Application” means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(b) “Bitterroot River basin” means the drainage area of the Bitterroot River and its tributaries above the confluence of the Bitterroot River and Clark Fork of the Columbia River and designated as “Basin 76H”.

(c) “Bitterroot River subbasin” means one of the following hydrologically related portions of the Bitterroot River basin:

(i) the mainstem subbasin, designated as “Subbasin 76HA”;

(ii) the north end subbasin, designated as “Subbasin 76HB”;

- (iii) the east side subbasin, designated as "Subbasin 76HC";
- (iv) the southeast subbasin, designated as "Subbasin 76HD";
- (v) the south end subbasin, designated as "Subbasin 76HE";
- (vi) the southwest subbasin, designated as "Subbasin 76HF";
- (vii) the west central subbasin, designated as "Subbasin 76HG"; or
- (viii) the northwest subbasin, designated as "Subbasin 76HH".

(2) As provided in 85-2-319, the department may not ~~process or~~ grant an application for a permit to appropriate water or for a state water reservation within a Bitterroot River subbasin until the closure for the basin is terminated pursuant to subsection (3) of this section, except for:

(a) an application for a permit to appropriate ground water *if the applicant complies with the provisions of [section 14]*;

(b) an application for a permit to appropriate water for ~~a municipal water supply~~ *use of surface water by or for a municipality*;

(c) temporary emergency appropriations pursuant to 85-2-113(3); ~~or~~

(d) an application to store water during high spring flow in an impoundment with a capacity of 50 acre-feet or more; *or*

(e) *an application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:*

(i) *remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;*

(ii) *aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or*

(iii) *remedial actions taken pursuant to Title 75, chapter 10, part 7.*

(3) *A permit issued to conduct remedial actions or aquatic resource activities under subsection (2)(e) may not be used for dilution.*

(4) *A change of use authorization for changing the purpose of use may not be issued for any permit issued pursuant to subsection (2)(b), (2)(c), or (2)(e).*

~~(3)~~(5) Each Bitterroot River subbasin is closed to new appropriations and new state water reservations until 2 years after all water rights in the subbasin arising under the laws of the state are subject to an enforceable and administrable decree as provided in 85-2-406(4)."

Section 13. Section 85-2-506, MCA, is amended to read:

"85-2-506. Controlled ground water areas — designation or modification. (1) The department may designate or modify controlled ground water areas as provided in this part.

(2) Designation or modification of an area of controlled ground water use may be proposed to the department on its own motion, by petition of a state or local public health agency for identified public health risks, or by petition signed by at least 20 or one-fourth of the users, (whichever is the lesser number), of ground water in a ground water area in which there are alleged to be facts showing *that*:

(a) ~~that~~ ground water withdrawals are in excess of recharge to the aquifer or aquifers within the ground water area;

(b) ~~that~~ excessive ground water withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the ground water area;

(c) ~~that~~ significant disputes regarding priority of rights, amounts of ground water in use by appropriators, or priority of type of use are in progress within the ground water area;

(d) ~~that~~ ground water levels or pressures in the area in question are declining or have declined excessively;

(e) ~~that~~ excessive ground water withdrawals would cause contaminant migration;

(f) ~~that~~ ground water withdrawals adversely affecting ground water quality within the ground water area are occurring or are likely to occur; or

(g) ~~that~~ water quality within the ground water area is not suited for a specific beneficial use defined by ~~85-2-102(2)(a)~~ 85-2-102(4)(a).

(3) When a proposal is made, the department shall fix a time and place for a hearing, which ~~time~~ may not be less than 90 days from the making of the proposal. The place for the hearing must be within or as close as practical to the controlled ground water area.

(4) The department shall publish a notice of the hearing, setting forth:

(a) the names of the petitioners;

(b) the description by legal subdivisions (section, township, range) of all lands included in or proposed to be included in the ground water area or subarea;

(c) the purpose of the hearing; and

(d) the time and place of the hearing where any interested person may appear, either in person or by attorney, file written objections to the granting of the proposal, and be fully heard.

(5) (a) The notice of hearing must be published at least once ~~in~~ each week for 3 successive weeks not less than 30 days before the date of the hearing in a newspaper of general circulation in the county or counties in which the ground water area or subarea is located. The department shall also cause a copy of the notice, together with a copy of the petition, to be served by mail, not less than 30 days before the hearing, upon:

(i) each well driller licensed in Montana whose address is within any county in which any part of the area in question is located; ~~upon~~

(ii) each person or public agency known from an examination of the records in the department's office to be a claimant or appropriator of ground water in the area in question (~~claimant or appropriator meaning one who diverts, impounds, or withdraws ground water and not merely one who uses or obtains ground water from another who diverts, impounds, or withdraws ground water~~); ~~upon~~

(iii) the bureau; and ~~upon~~

(iv) the mayor or presiding officer of the governing body of each incorporated municipality located in whole or in part within the proposed ground water area.

(b) The department may also serve notice upon any other person or state or federal agency that the department feels may be interested in or affected by the proposed designation or modification of a controlled ground water area. The petition need not be served on any petitioner. A copy of the notice, together with

a copy of the proposal, must be mailed to each person at the person's last-known address, and service is complete upon depositing it in the post office, postage prepaid, addressed to each person on whom it is to be served. Publication and mailing of the notice as prescribed in this section, when completed, is considered to be sufficient notice of the hearing to all interested persons.

(c) As used in subsection (5)(a), "claimant or appropriator" means a person who diverts, impounds, or withdraws ground water and not merely a person who uses or obtains ground water from another person who diverts, impounds, or withdraws ground water."

Section 14. Ground water appropriation right in closed basins. (1) An application for a ground water appropriation right in a basin closed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344 or administratively closed pursuant to 85-2-319 must be accompanied by a hydrogeologic assessment that has been conducted pursuant to [section 15] to predict whether the proposed appropriation right will result in a net depletion of surface water and must be accompanied by a plan as provided in [section 16], if necessary.

(2) If the hydrogeologic assessment conducted pursuant to [section 15] predicts that the proposed appropriation right will not result in a net depletion of surface water, the department shall proceed under the criteria provided in 85-2-311.

(3) (a) If the hydrogeologic assessment predicts that the proposed appropriation right will result in a net depletion of surface water, the applicant shall analyze whether the net depletion results in an adverse effect on a prior appropriator. If the applicant provides a correct and complete application, the department shall proceed to process the application as provided in [section 17].

(b) If the applicant has used the water for the purpose of conducting the hydrogeologic assessment, the applicant shall terminate the use of the water. Failure to terminate use of the water must result in a fine of not more than \$1,000 for each day of the violation.

(4) If the hydrogeologic assessment predicts that there will be net depletion as provided in subsection (3)(a), the department may proceed to process the application pursuant to [section 17] if, in addition to other applicable criteria, the applicant complies with [section 16].

(5) For the purposes of [sections 14 through 16], the prediction of net depletion does not mean that an adverse effect on a prior appropriator will occur or if an adverse effect does occur that the entire amount of net depletion is the cause of the adverse effect. A determination of whether or not there is an adverse effect on a prior appropriator as the result of a new appropriation right is a determination that must be made by the department based on the amount, location, and duration of the amount of net depletion that causes the adverse effect relative to the historic beneficial use of the appropriation right that may be adversely affected.

(6) The priority date for an appropriation right that is granted to an entity whose permit application was returned after April 11, 2006, and before [the effective date of this act] because of the department's interpretation of a court decision is the date of the initial application to the department.

Section 15. Hydrogeologic assessment — definition — minimum requirements. (1) (a) For the purposes of [sections 14 through 16], "hydrogeologic assessment" means a report for the project for or through which water will be put to beneficial use, the point of diversion, and the place of use

that describes the geology, hydrogeologic environment, water quality with regard to the provisions of [sections 18 and 19], and predicted net depletion, if any, including the timing of any net depletion, for surface water within the area described in subsection (2)(a)(i) within the closed basins that are subject to an appropriation right, including but not limited to rivers, streams, irrigation canals, or drains that might be affected by the new appropriation right and any predicted water quality changes that may result.

(b) In predicting net depletion of surface water from a proposed use, consideration must be given, at a minimum, to:

(i) the actual amount diverted for like beneficial uses;

(ii) any amounts that will likely be lost in conveyance, if any, and whether any lost amounts are lost to the system through evaporation or other means or whether those amounts are returned to the system through percolation or other means; and

(iii) any return flows from the proposed use, including but not limited to any treated wastewater return flows if the treated wastewater that is considered effluent meets the requirements of [sections 18 and 19].

(2) (a) A hydrogeologic assessment that will be used to predict net depletion of surface water resulting from a new appropriation right must include hydrogeologic data or a model developed by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer that incorporates for the new appropriation:

(i) the area or estimated area of ground water that will be affected not to exceed the boundaries of the drainage subdivisions established by the office of water data coordination, United States geological survey, and used by the water court, unless the applicant chooses to expand the boundaries;

(ii) the geology in the area identified in subsection (2)(a)(i), including stratigraphy and structure;

(iii) the parameters of the aquifer system within the area identified in subsection (2)(a)(i) to include, at a minimum, estimates for:

(A) the lateral and vertical extent of the aquifer;

(B) whether the aquifer is confined or unconfined;

(C) the effective hydraulic conductivity of the aquifer;

(D) transmissivity and storage coefficient related to the aquifer; and

(E) the estimated flow direction or directions of ground water and the rate of movement;

(iv) the locations of surface waters within the area described in subsection (2)(a)(i) that are subject to an appropriation right, including but not limited to springs, creeks, streams, or rivers that may or may not show a net depletion;

(v) evidence of water availability; and

(vi) the locations of all wells or other sources of ground water of record within the area identified in subsection (2)(a)(i).

(b) A hydrogeologic assessment must also include a water quality report that includes:

(i) the location of existing documented hazards that could be affected or exacerbated by the appropriation right, such as areas of subsidence, along with a plan to mitigate any conditions or impacts;

(ii) other water quality information necessary to comply with [sections 18 and 19]; and

(iii) a description of any water treatment method that will be used at the time of any type of injection or introduction of water to the aquifer to ensure compliance with [sections 18 and 19] and the water quality laws under Title 75, chapter 5.

(3) The hydrogeologic assessment must include an analysis of whether the information required by subsection (2) predicts that there may be a net depletion of surface water in the area described in subsection (2)(a)(i) and the extent of the depletion, if any.

(4) The hydrogeologic assessment, the model if provided, the test well data, the monitoring well data, and other related information must be submitted to the department. The department shall submit this information to the bureau of mines and geology. The bureau of mines and geology shall ensure that information submitted pursuant to this section is entered into the ground water information center database as part of the ground water assessment program.

(5) An entity that has previously conducted some type of hydrogeologic assessment may submit the information from that assessment as the hydrogeologic assessment required by this section if the information meets the criteria and requirements of this section.

Section 16. Aquifer recharge or mitigation plans in closed basins — minimum requirements. (1) An applicant whose hydrogeologic assessment conducted pursuant to [section 15] predicts that there will be a net depletion of surface water shall offset the net depletion that results in the adverse effect through a mitigation plan or an aquifer recharge plan.

(2) A mitigation plan must include:

- (a) where and how the water in the plan will be put to beneficial use;
- (b) when and where, generally, water reallocated through exchange or substitution will be required;
- (c) the amount of water reallocated through exchange or substitution that is required;
- (d) how the proposed project or beneficial use for which the mitigation plan is required will be operated;
- (e) evidence that an application for a change in appropriation right, if necessary, has been submitted;
- (f) evidence of water availability; and
- (g) evidence of how the mitigation plan will offset the required amount of net depletion of surface water in a manner that will offset an adverse effect on a prior appropriator.

(3) An aquifer recharge plan must include:

- (a) evidence that the appropriate water quality related permits have been granted pursuant to Title 75, chapter 5, and pursuant to [sections 18 and 19];
- (b) where and how the water in the plan will be put to beneficial use;
- (c) when and where, generally, water reallocated through exchange or substitution will be required;
- (d) the amount of water reallocated through exchange or substitution that is required;

(e) how the proposed project or beneficial use for which the aquifer recharge plan is required will be operated;

(f) evidence that an application for a change in appropriation right, if necessary, has been submitted;

(g) a description of the process by which water will be reintroduced to the aquifer;

(h) evidence of water availability; and

(i) evidence of how the aquifer recharge plan will offset the required amount of net depletion of surface water in a manner that will offset any adverse effect on a prior appropriator.

(4) The department may not require an applicant, through a mitigation plan or an aquifer recharge plan, to provide more water than the quantity needed to offset the adverse effects on a prior appropriator caused by the net depletion.

(5) An appropriation right that relies on a mitigation plan or aquifer recharge plan to offset net depletion of surface water that results in an adverse effect on a prior appropriator must be issued as a conditional permit that requires that the mitigation plan or aquifer recharge plan must be exercised when the appropriation right is exercised.

Section 17. Process for combining decisions on ground water permit applications in closed basins. (1) An applicant for a permit to appropriate ground water in a closed basin shall submit to the department a combined application consisting of a hydrogeologic assessment with an analysis of net depletion, a mitigation plan or aquifer recharge plan if required, an application for a beneficial water use permit or permits, and an application for a change in appropriation right or rights if necessary.

(2) The department shall review the application to determine if it is correct and complete under the process and requirements of 85-2-302.

(3) (a) Once an application has been determined to be correct and complete, the department shall prepare a notice and publish it as provided under 85-2-307.

(b) If no valid objection to the application is filed and the applicant proves that the criteria of 85-2-311 or 85-2-402, if necessary, have been satisfied, the application must be granted or approved in a modified form or upon terms, conditions, or limitations specified by the department.

(c) If no valid objection to the application is filed and the applicant has not proved that the criteria of 85-2-311 or 85-2-402, if necessary, have been satisfied, the application must be denied.

(d) If a valid objection to the application is filed, the department shall proceed to process the application pursuant to 85-2-308 through 85-2-311. If the applicant satisfies the criteria of 85-2-311 or 85-2-402, if necessary, and proves by a preponderance of the evidence that net depletion, if any, will not adversely affect a prior appropriator based on the applicant's mitigation plan or aquifer recharge plan, the department shall issue the permit.

Section 18. Department permit coordination — requirements for aquifer recharge plans. To ensure that the department and the department of environmental quality are coordinating their respective permitting activities:

(1) an applicant for a new appropriation right pursuant to [section 14] that involves aquifer recharge shall provide the department with a copy of a relevant discharge permit if necessary; and

(2) the department may not grant a new appropriation right pursuant to [section 14] that involves aquifer recharge until the discharge permit, if necessary, has been obtained and presented to the department.

Section 19. Water quality of return flows and discharges associated with aquifer recharge plan — minimum requirements. (1) A person who proposes to use sewage from a system requiring a water quality permit for the purposes of aquifer recharge pursuant to [section 16] or plans to use sewage from a system requiring a water quality permit as a return flow to minimize the amount of water necessary to offset adverse effects resulting from net depletion of surface water through an aquifer recharge plan pursuant to [section 16] must obtain a current permit pursuant to this chapter.

(2) The minimum treatment requirements for sewage systems subject to this section are the federal requirements provided for in 40 CFR 133, and the system must meet, at a minimum, the requirements of level two treatment for the removal of nitrogen in the effluent.

(3) In addition to the minimum treatment requirements of subsection (2), sewage systems subject to this section that are used for aquifer injection must meet the more stringent of either primary drinking water standards pursuant to Title 75, chapter 6, or the nondegradation requirements pursuant to 75-5-303 at the point of discharge.

(4) The appropriate interim legislative committee shall review drinking water standards and effluent treatment standards in other jurisdictions and recommend appropriate treatment standards for purposes of aquifer recharge and mitigation.

(5) For the purposes of this section, “aquifer injection” means the use of a well to inject water directly into an aquifer system without filtration through the geologic materials overlying the aquifer system for the purpose of aquifer recharge or for an aquifer storage and recovery project.

Section 20. Aquifer storage and recovery projects in closed basins.

(1) An aquifer storage and recovery project may be authorized in a closed basin.

(2) In addition to the criteria provided in Title 85, chapter 2, part 3, and 85-2-402, an aquifer storage and recovery project must meet the requirements provided in [sections 14 through 19].

Section 21. Aquifer testing, test well, or monitoring well data submission — not beneficial use. (1) All aquifer testing data and other related information from test wells, monitoring wells, or other sources that is collected for the purpose of obtaining a new appropriation right or a change in appropriation right pursuant to [sections 14 through 16] must be submitted to the department and the bureau of mines and geology in a form prescribed by the department and the bureau of mines and geology. The bureau of mines and geology shall ensure that information submitted pursuant to this section is entered into the ground water information center database as part of the ground water assessment program.

(2) (a) Water testing or monitoring is not a beneficial use of water requiring the filing of a permit application.

(b) A permit is not required if the intent of a person is to conduct aquifer tests, water quality tests, water level monitoring, or other testing or monitoring of a water source.

Section 22. Rulemaking. The department may adopt rules to implement the provisions of [sections 14 through 18, 19, and 20]. The rules must be oriented toward the protection of existing rights from adverse effects from net depletions caused by new appropriation rights or changes in appropriation rights in closed basins and must be consistent with and not exceed the requirements of [sections 14 through 18, 19, and 20].

Section 23. Closed basin case study. (1) (a) The Montana bureau of mines and geology, provided for in 20-25-211, shall review, assess for scientific accuracy, and compile and summarize ground water studies that have been conducted in the last 20 years in closed basins or subbasins in Montana that may have a bearing on better understanding the water balance in these basins with respect to potential ground water withdrawal impacts on surface water. The bureau of mines and geology shall also study the extent to which ground water withdrawals may result in net depletion of surface water in a closed basin or in specific areas of a closed basin.

(b) After compilation of the information, the bureau of mines and geology shall present recommendations to the appropriate legislative interim committee regarding any additional studies that would help to assess the water balance in closed basins or subbasins with respect to potential ground water withdrawal impacts on surface waters.

(2) The bureau of mines and geology shall conduct a case study to gather and develop data to determine the adequacy of any additional recommended minimum standards and criteria for hydrogeologic assessments, as defined in [section 15], associated with ground water withdrawals and the range of impacts of those withdrawals on surface water and ground water resources. The department of natural resources and conservation shall coordinate with the bureau of mines and geology with regard to surface water monitoring and other elements of the case study as necessary.

(3) The case study must be conducted in basins closed pursuant to sections 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344. The bureau of mines and geology shall ensure that at each site involved in the case study the following, at a minimum, is accomplished to provide the necessary scientific data and information to policymakers:

(a) an appropriate number of monitoring wells are drilled or available to provide scientifically defensible data;

(b) aquifer testing and recovery testing is conducted at the site;

(c) water quality samples are collected from each pumping or primary well at the beginning of the case study and at the end of the case study;

(d) if information or data has already been collected for the site, the information is reviewed, analyzed, and verified by the bureau of mines and geology;

(e) if the site has an established system, that the established system is monitored under its current or planned operating conditions; and

(f) any other information is collected that the bureau of mines and geology determines is necessary to determine recommendations for additional minimum standards and criteria for hydrogeologic assessments, as defined in

[section 15], associated with ground water withdrawals and the range of impacts those withdrawals have on surface water and ground water resources.

(4) In addition to the requirements of subsection (3), the bureau of mines and geology shall develop a system to compile existing aquifer testing data, as well as data resulting from hydrogeologic assessments, as defined in [section 15], and monitoring activities.

(5) The department of natural resources and conservation shall coordinate with the bureau of mines and geology to provide surface water measurements, as appropriate, when a well located at a case study site is pumped.

(6) The bureau of mines and geology shall:

(a) provide updates to the appropriate legislative interim committee throughout the interim related to the progress of the review pursuant to subsection (1) and the case study pursuant to subsections (2) through (5), data trends, if any, and other information necessary to assist the legislative interim committee in developing any necessary policy recommendations;

(b) upon request, provide updates to the ground water assessment steering committee provided for in 2-15-1523; and

(c) submit a report to the appropriate legislative interim committee and the 61st legislature providing a detailed analysis of the results of the review and case study.

Section 24. Case study — requirements for participation — fee. (1)

(a) Participants in the case study that are proposing a new ground water appropriation are subject to the requirements of [sections 14 through 21].

(b) Up to a maximum of 10 sites that are the result of a new appropriation or a change in appropriation right may be included in the case study provided for in [section 23]. If there are more than 10 entities wishing to participate in the case study, the bureau of mines and geology shall select participants to ensure that to the extent possible each closed basin is represented and as many different scenarios are represented as necessary to ensure a scientifically accurate analysis.

(c) If there are fewer than 10 entities wishing to participate or if there is a scenario that is not represented by case study participants that is necessary to ensure a scientifically accurate analysis, the bureau of mines and geology may request cooperation and participation from entities that hold appropriation rights for wells within closed basins.

(d) Entities that had an application pending with the department of natural resources and conservation on April 11, 2006, must be given the option to participate in the case study before the bureau accepts other requests for participation.

(2) The bureau of mines and geology, in cooperation with the appropriate legislative interim committee, shall notify each of the entities described in subsection (1)(d), in writing, of the opportunity to participate in the case study and the requirements for participation.

(3) To participate in the case study, a participant shall agree:

(a) that the use of a ground water well in accordance with an application submitted pursuant to [section 14] does not grant or give the participant an appropriation right;

(b) to allow the installation of monitoring wells and shall allow access for monitoring and review purposes;

(c) if monitoring or test wells exist at the site, to allow the bureau of mines and geology access to those wells for monitoring and review purposes;

(d) to allow for the measurement of pumping at the primary pumping well, including any plumbing requirements necessary to ensure an accurate analysis of pumping records and of the impacts, if any, resulting from pumping of the well;

(e) that the participant is responsible for costs associated with drilling the primary pumping well, maintenance associated with the well, and other costs reasonably related to the normal operation of a pumping well in the absence of the case study; and

(f) to pay a fee of \$15.

Section 25. Appropriation. There is appropriated from the general fund \$500,000 to the Montana bureau of mines and geology only for the biennium beginning July 1, 2007, for the purpose of conducting a case study in coordination with the department of natural resources and conservation to gather and develop data to determine minimum standards and criteria for hydrogeologic assessments, as defined in [section 15], associated with ground water withdrawals and the impacts of those withdrawals on surface water and ground water resources.

Section 26. Direction for amendment of rule. Pursuant to 2-4-412(2), the department shall:

(1) amend ARM 36.12.101 by striking subsection (8); and

(2) amend ARM 36.12.120 by striking subsections (6) through (10).

Section 27. Repealer. Section 85-2-337, MCA, is repealed.

Section 28. Codification instruction. (1) [Sections 14 through 18 and 20 through 22] are intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [sections 14 through 18 and 20 through 22].

(2) [Section 19] is intended to be codified as an integral part of Title 75, chapter 5, part 4, and the provisions of Title 75, chapter 5, part 4, apply to [section 19].

Section 29. 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 30. Effective date. [This act] is effective on passage and approval.

Section 31. Applicability. [This act] applies to applications for an appropriation right in a closed basin filed on or after [the effective date of this act].

Approved May 3, 2007

CHAPTER NO. 392

[HB 840]

AN ACT ALLOWING FOR GENERIC SPECIALTY LICENSE PLATES FOR TRAILERS; ALLOWING FOR PERMANENT REGISTRATION USING CERTAIN SPECIALTY PLATES; AMENDING SECTIONS 61-3-332, 61-3-479, 61-3-481, AND 61-3-562, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 61-3-332, MCA, is amended to read:

“61-3-332. Standard license plates. (1) In addition to special license plates, collegiate license plates, generic specialty license plates, and fleet license plates authorized under this chapter, a separate series of standard license plates must be issued for motor vehicles, quadricycles, travel trailers, trailers, semitrailers, and pole trailers registered in this state or offered for sale by a vehicle dealer licensed in this state. Standard license plates issued to licensed vehicle dealers must be readily distinguishable from license plates issued to vehicles owned by other persons.

(2) (a) Except as provided in 61-3-479 and subsections (2)(b), (3)(c), and (3)(d) of this section, all standard license plates for motor vehicles, trailers, semitrailers, or pole trailers must be issued for a minimum period of 4 years, bear a distinctive marking, as determined by the department, and be furnished by the department. In years when standard license plates are not issued, the department shall provide a registration decal that must be affixed to the rear license plate of the vehicle.

(b) For light vehicles that are permanently registered as provided in 61-3-562 and motor vehicles described in 61-3-303(9) that are permanently registered, the department shall provide a distinctive registration decal indicating that the motor vehicle is permanently registered. The registration decal must be affixed to the rear license plate of the permanently registered motor vehicle.

(3) (a) Subject to the provisions of this section, the department shall create a new design for standard license plates as provided in this section, and it shall manufacture the newly designed standard license plates for issuance after December 31, 2005, to replace at renewal, as required in 61-3-312, standard license plates that were displayed on motor vehicles before that date.

(b) Beginning January 1, 2006, the department shall manufacture and issue new standard license plates after the existing plates have been used for a minimum period of 4 years.

(c) A motor vehicle that is registered for a 13-month to a 24-month period, as provided in 61-3-311 and 61-3-321(2), may display the license plate and plate design in effect at the time of registration for the entire registration period.

(d) A light vehicle described in subsection (2)(b) or a motor home that is permanently registered may display the license plate and plate design in effect at the time of registration for the entire period that the light vehicle or motor home is permanently registered.

(4) For ~~passenger trailers and~~ motor vehicles, ~~and trucks,~~ other than *motorcycles and quadricycles*, 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 all license plates, and the word "Montana" must be placed on each license plate. All license plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers for standard license plates must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. Except for special license plates, collegiate license plates, generic specialty license plates, and fleet license plates, the distinctive registration number or letter-number combination assigned to the motor vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of exempt motor vehicles, trailers, semitrailers, or pole trailers and motor vehicles, trailers, semitrailers, or pole trailers that are exempt from the registration fee as provided in 61-3-321, in addition to the markings provided in this section, standard license plates must bear the following distinctive markings:

(a) For motor vehicles, trailers, semitrailers, or pole trailers owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For motor vehicles, trailers, semitrailers, or pole trailers that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for motor vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the standard license plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles, trailers, semitrailers, or pole trailers of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these standard license plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the license plates requires it and a year number may not be displayed on the plates.

(7) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon,

39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they are formed, beginning with the number 57.

(8) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463 and generic specialty license plates authorized in 61-3-472 through 61-3-481, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a 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 motor vehicle, trailer, semitrailer, or pole trailer owned by the person who is eligible to receive them, with the registration decal affixed to the rear license plate of the motor vehicle, trailer, semitrailer, or pole trailer, and must be removed upon sale or other disposition of the motor vehicle, trailer, semitrailer, or pole trailer.

(9) (a) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(b) If the motor vehicle to which the license plate is attached is permanently registered, the owner of the motor vehicle shall provide, upon request of a person authorized to enforce special parking laws or ordinances in this or any state, evidence of continued eligibility to use the license plate in the form of a valid special parking permit issued to or renewed by the vehicle owner under 49-4-304 and 49-4-305.

(c) A person with a permanent condition, as provided in 49-4-301(2)(b), who has been issued a special license plate upon written application, as provided in this subsection (9), is not required to reapply upon reregistration of the motor vehicle.

(10) The provisions of this section do not apply to a motor vehicle, trailer, semitrailer, or pole trailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733.”

Section 2. Section 61-3-479, MCA, is amended to read:

“61-3-479. Issuance of generic specialty license plates — qualifications. (1) (a) Except as provided in subsection (1)(b), the department shall issue a set of generic specialty license plates to a person who applies for a particular style of generic specialty license plates and pays the donation fee established by the plate sponsor and the administrative fee required in 61-3-480.

(b) If the sponsor of a generic specialty license plate is not listed on the county collection report published by the state and required under 15-1-504 as of the initial distribution date for the sale of the sponsor’s plates, the department shall require the sponsor to collect the initial donation fee from, and issue a special certificate of registration to, a person who is eligible to receive the sponsor’s generic specialty license plates. The person shall present the special certificate of registration upon application for the generic specialty license plates.

(2) A set of generic specialty license plates may be issued for any motor vehicle except a trailer of any size, a motorcycle, or a quadricycle.

(3) (a) Except as provided in 61-3-472 through 61-3-481 and 61-3-562, a person who receives generic specialty license plates is subject to the same rules and laws as those that govern standard license plates.

(b) Except as provided in 61-3-472 through 61-3-481 and 61-3-562, the department is subject to the same rules and laws that govern the issuance of standard license plates.

(c) Generic specialty license plates issued under 61-3-472 through 61-3-481 are not subject to any maximum issuance or use limitation that may be imposed on standard license plates.

(4) A person may combine an application for a generic specialty license plate with an application for a license plate with a design bearing a representation of a wheelchair as the symbol of a person with a disability as provided in 61-3-332(9)."

Section 3. Section 61-3-481, MCA, is amended to read:

"61-3-481. Generic specialty license plates — restrictions on use. (1) Generic specialty license plates may be issued by the department in conjunction with the registration of any motor vehicle except a trailer of any size, a motorcycle, or a quadricycle. The department may not issue generic specialty license plates without the motor vehicle having been registered.

(2) Generic specialty license plates may be used only as the official license plates for a motor vehicle."

Section 4. Section 61-3-562, MCA, is amended to read:

"61-3-562. Permanent registration — transfer of light vehicle ownership — rules. (1) (a) ~~Except as provided in subsection (1)(b), the~~ *The* owner of a light vehicle 11 years old or older subject to the registration fee, as provided in 61-3-321(2), may permanently register the light vehicle upon payment of a \$87.50 registration fee, the applicable registration and license fees under 61-3-412, *if applicable, the administrative fee and the annual one-time only donation fee for a generic specialty license plate under 61-3-480,* and an amount equal to five times the applicable fees imposed for each of the following:

(i) the local option motor vehicle tax or flat fee on vehicles under 61-3-537; and

(ii) if applicable, renewal fees for personalized plates under 61-3-406.

(b) The following series of license plates may ~~not~~ *not* be used for purposes of permanent registration of a light vehicle:

(i) Montana national guard license plates issued under 61-3-458(2)(b);

(ii) reserve armed forces license plates issued under 61-3-458(2)(c);

(iii) amateur radio operator license plates issued under 61-3-422; *and*

(iv) collegiate license plates issued under 61-3-465; ~~and.~~

~~(v) generic specialty license plates issued under 61-3-479.~~

(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 motor vehicle that is permanently registered under this section is not subject to additional registration fees 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 once each month remit to the state the amounts collected under this section, other than the local option motor vehicle tax or flat fee, for the purposes of 61-3-321(2) and 61-10-201. The county treasurer shall retain the local option motor vehicle tax or flat fee.

(5) (a) The permanent registration of a light vehicle allowed by this section may not be transferred to a new owner. If the light vehicle is transferred to a new owner, the department shall cancel the light vehicle's permanent registration.

(b) Upon transfer of a light vehicle registered under this section to a new owner, the new owner shall apply for a certificate of title under 61-3-201 and 61-3-216 and register the light vehicle under 61-3-303."

Section 5. Effective date. [This act] is effective January 1, 2008.

Section 6. Applicability. [This act] applies to motor vehicles and trailers registered, and license plates that are issued or renewed, on or after [the effective date of this act].

Approved May 3, 2007

CHAPTER NO. 393

[SB 48]

AN ACT GRANTING TO A RELATIVE WHO IS A CARETAKER BUT NOT A PARENT OF A CHILD THE POWER TO APPROVE MEDICAL CARE FOR THE CHILD UNDER CERTAIN CONDITIONS; PROVIDING FOR A CARETAKER RELATIVE MEDICAL AUTHORIZATION AFFIDAVIT; PROVIDING FOR GOVERNMENTAL IMMUNITY; AMENDING SECTIONS 20-5-412 AND 20-5-420, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Purpose — legislative intent — parental rights — definitions. (1) The legislature recognizes that the rights of parents to the custody and control of a child are based upon liberties secured by the United States and Montana constitutions and that a parent's rights to that custody and control of a child are therefore normally supreme to the interests of other persons. The legislature also recognizes a growing phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and care of their children to a grandparent or other relative for lengthy periods of time. Regardless of the purpose of the absence, a child willfully surrendered to a relative for an extended time period still has the same needs as a child in the care of its parents. In this situation, a caretaker relative assumes responsibilities for the child but has no legal right of control over the child, a situation that interferes in the caretaker relative's ability to perform routine functions of child rearing, including tending to the medical needs of the child. It is therefore the purpose of the legislature in these instances to protect the rights of a child granted by Article II, section 15, of the Montana constitution by granting a caretaker relative limited authority for a child left in the relative's care.

(2) It is the intent of the legislature that a caretaker relative given the responsibility of caring for a child with little or no warning and without any other provision having been made for the child's care, such as the appointment of a guardian or the provision of a power of attorney, be granted authority to consent to medical care for the child without superseding any parental rights regarding the child.

(3) [Section 2] and this section are not intended to affect the rights and responsibilities of a parent, legal guardian, or other custodian regarding the child, do not grant legal custody of the child to the caretaker relative, and do not grant authority to the caretaker relative to consent to the marriage or adoption of the child or to receive notice of a medical procedure, including abortion, not consented to by the relative, if notice is required by law, for the child except as expressly provided in this section.

(4) For the purposes of [section 2] and this section, the following definitions apply:

(a) "Caretaker relative" or "relative" means an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child.

(b) "Caretaker relative medical authorization affidavit" or "affidavit" means an affidavit completed in compliance with [section 2].

(c) "Health care provider" means a person who provides medical care.

(d) "Medical care" means care, by a health care provider for which parental consent is normally required, for the prevention, diagnosis, or treatment of a mental, physical, or dental injury or disease.

(e) "Parent" means a biological or adoptive parent or other legal guardian of a child.

Section 2. Caretaker relative medical authorization affidavit — use — immunity — format. (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child has the same authority as a custodial parent of the child to consent to medical care for the child for which parental consent is usually required if:

(a) in leaving the child with the caretaker relative, the parent expressed no definite time period in which the parent would return for the child;

(b) the child is residing with the caretaker relative on a full-time basis;

(c) the caretaker relative is unable to contact the parent following the voluntary leaving of the child with the relative or the parent refuses to regain custody of the child after a written request by the relative to do so;

(d) no adequate provision, such as the appointment of a guardian ad litem or execution of a power of attorney, has otherwise been made for the medical care of the child; and

(e) a caretaker relative medical authorization affidavit is completed in compliance with this section.

(2) An affidavit is effective only if it is signed by the caretaker relative, under oath, before a notary public. A clear photographic copy of an affidavit completed in compliance with this section is sufficient in any instance in which an original is required by a health care provider.

(3) Unless the rights of a parent have been judicially terminated or unless the ability to give legal consent for the child to receive medical care for which parental consent is usually required has been granted to the caretaker relative pursuant to 40-4-211 and 40-4-228, a decision by a parent of the child communicated to the health care provider regarding the health care of the child supersedes a conflicting decision by a caretaker relative made pursuant to an affidavit completed in compliance with this section. However, a decision by a parent does not supersede a decision by a relative made pursuant to an affidavit completed in compliance with this section if the decision by the parent endangers the life of the child. A health care provider may require reasonable proof of authenticity of a decision by a parent intended to supersede a decision by a caretaker relative.

(4) (a) A [public or] private health care provider or a [public or] private school official who acts in good faith reliance on a caretaker relative medical authorization affidavit completed in compliance with this section who has no actual knowledge of facts contrary to those indicated in the affidavit is not subject to civil liability or criminal prosecution or to a professional disciplinary procedure for an action that would have been proper if the facts had been as the health care provider believed them to be.

(b) This subsection (4) applies even if medical care is provided to a child against the wishes of a parent of that child if the health care provider rendering the service does not have actual knowledge of the parent's wishes.

(5) A health care provider who relies on an affidavit completed in compliance with this section has no obligation to make further inquiry or investigation.

(6) An affidavit completed in compliance with this section is effective for the earlier of:

- (a) 6 months;
- (b) until it has been revoked by the caretaker relative; or
- (c) until the child no longer resides with the caretaker relative.

(7) If the child ceases to live with the caretaker relative or the caretaker relative revokes the affidavit, the caretaker relative shall provide written notice of that fact to all health care providers to whom the caretaker relative has given the affidavit or to whom the caretaker relative has caused the affidavit to be given.

(8) This section does not relieve a person from a violation of other law, and this section does not affect the rights of a child's parent except as provided in this section.

(9) A caretaker relative medical authorization affidavit is invalid unless it is written in substantially the following form and contains the warning provided for in paragraph 5 of the format below:

CARETAKER RELATIVE'S MEDICAL AUTHORIZATION AFFIDAVIT

Use of this affidavit is authorized by [this section].

1. INSTRUCTIONS: The completion and signing of the affidavit before a notary public are sufficient to authorize medical care for the named child. Please print clearly.

The child named below lives in my home, and I am 18 years of age or older.

- a. Name of child:

- b. Child's date of birth:
- c. My name (caretaker relative):
- d. My home address:
- e. My relationship to the child (the caretaker relative must be an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the caretaker relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child):

2. I hereby certify that this affidavit is not being used for an unlawful purpose.

3. My date and year of birth:

4. Check the following if true (all must be checked for this affidavit to apply):

A parent of the child identified in paragraph 1a of this affidavit has left the child with me and has expressed no definite time period when the parent will return for the child.

The child is now residing with me on a full-time basis.

I am unable to locate or contact the parent of the child at this time to notify that parent of my intended authorization, or the parent refuses to regain custody of the child even though I have asked in writing that the parent do so.

No adequate provision, such as appointment of a guardian ad litem or execution of a power of attorney, has been made for medical care for the child.

5. **WARNING: DO NOT SIGN THIS FORM IF ANY OF THE STATEMENTS ABOVE ARE INCORRECT, OR YOU WILL BE COMMITTING A CRIME PUNISHABLE BY A FINE, IMPRISONMENT, OR BOTH.**

6. I declare under penalty of false swearing under the laws of Montana that the foregoing is true and correct.

Signed this ___ day of _____, 20__.

(Signature of caretaker relative)

(Signature, county, state, and seal of notary public)

7. NOTICES:

a. Completion of this affidavit does not affect the rights of the child's parent or legal guardian regarding the care, custody, and control of the child and does not mean that the caretaker relative has legal custody of the child.

b. A health care provider who relies on this affidavit has no obligation to make any further inquiry or investigation.

c. This affidavit is not valid for more than 6 months after the date on which it is signed by the caretaker relative.

8. ADDITIONAL INFORMATION:

a. TO CARETAKER RELATIVES:

If the child stops living with you, you shall notify anyone to whom you have given this affidavit, as well as anyone who has received the affidavit from someone else.

b. TO [PUBLIC AND] PRIVATE HEALTH CARE PROVIDERS AND [PUBLIC AND] PRIVATE SCHOOL OFFICIALS: A [public or] private health care provider or a [public or] private school official who acts in good faith reliance upon a caretaker relative medical authorization affidavit to provide medical care, without actual knowledge of facts contrary to those indicated in the affidavit, is not subject to criminal prosecution or civil liability to any person, or subject to any professional disciplinary action, for reliance on the affidavit if the form is completed in compliance with [this section].

Section 3. Section 20-5-412, MCA, is amended to read:

“20-5-412. Definition — parent-designated adult — administration of glucagon — training. (1) As used in 20-5-413 and this section, “parent-designated adult” means a school district employee, selected by a parent, *an individual who has executed a caretaker relative medical authorization affidavit pursuant to [section 2]*, or a guardian of a diabetic student, who voluntarily agrees to administer glucagon to the student.

(2) A parent, *an individual who has executed a caretaker relative medical authorization affidavit pursuant to [section 2]*, or a 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, *an individual who has executed a caretaker relative medical authorization affidavit pursuant to [section 2]*, or a 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, *an individual who has executed a caretaker relative medical authorization affidavit pursuant to [section 2]*, or a 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, *an individual who has executed a caretaker relative medical authorization affidavit pursuant to [section 2]*, or a guardian. Written documentation of the training received by the parent-designated adult must be filed with the school district.”

Section 4. Section 20-5-420, MCA, is amended to read:

“20-5-420. Self-administration of asthma medication. (1) As used in this section, the following definitions apply:

(a) “Anaphylaxis” means a systemic allergic reaction that can be fatal in a short time period and is also known as anaphylactic shock.

(b) “Asthma” means a chronic disorder or condition of the lungs that requires lifetime, ongoing, medical intervention.

(c) “Medication” means a medicine, including inhaled bronchodilators, inhaled corticosteroids, and autoinjectable epinephrine, prescribed by a licensed physician as defined in 37-3-102, a physician assistant who has been authorized to prescribe asthma medications as provided in 37-20-404, or an advanced practice registered nurse with prescriptive authority as provided in 37-8-202(5).

(d) “Self-administration” means a pupil’s discretionary use of the asthma medication prescribed for the pupil.

(2) A school, whether public or nonpublic, shall permit the self-administration of medication by a pupil with asthma if the parents or guardians of the pupil provide to the school:

(a) written authorization, acknowledging and agreeing to the liability provisions in subsection (4), for the self-administration of medication;

(b) a written statement from the pupil's physician, physician assistant, or advanced practice registered nurse containing the following information:

(i) the name and purpose of the medication;

(ii) the prescribed dosage; and

(iii) the time or times at which or the special circumstances under which the medication is to be administered;

(c) documentation that the pupil has demonstrated to the health care practitioner and the school nurse, if available, the skill level necessary to administer the medication as prescribed; and

(d) documentation that the pupil's physician, physician assistant, or advanced practice registered nurse has formulated a written treatment plan for managing asthma or anaphylaxis episodes of the pupil and for medication use by the pupil during school hours.

(3) The information provided by the parents or guardians must be kept on file in the office of the school nurse or, in the absence of a school nurse, the school's administrator.

(4) The school district or nonpublic school and its employees and agents are not liable as a result of any injury arising from the self-administration of medication by the pupil unless an act or omission is the result of gross negligence, willful and wanton conduct, or an intentional tort. The parents or guardians of the pupil must be given a written notice and sign a statement acknowledging that the school district or nonpublic school may not incur liability as a result of any injury arising from the self-administration of medication by the pupil and that the parents or guardians shall indemnify and hold harmless the school district or nonpublic school and its employees and agents against any claims, except a claim based on an act or omission that is the result of gross negligence, willful and wanton conduct, or an intentional tort.

(5) The permission for self-administration of medication is effective for the school year for which it is granted and must be renewed each subsequent school year or, if the medication dosage, frequency of administration, or other conditions change, upon fulfillment of the requirements of this section.

(6) If the requirements of this section are fulfilled, a pupil with asthma may possess and use the pupil's medication:

(a) while in school;

(b) while at a school-sponsored activity;

(c) while under the supervision of school personnel;

(d) before or after normal school activities, such as while in before-school or after-school care on school-operated property; or

(e) while in transit to or from school or school-sponsored activities.

(7) If provided by the parent, *an individual who has executed a caretaker relative medical authorization affidavit pursuant to [section 2], or a guardian* and in accordance with documents provided by the pupil's physician, physician

assistant, or advanced practice registered nurse, backup medication must be kept at a pupil's school in a predetermined location or locations to which the pupil has access in the event of an asthma or anaphylaxis emergency.

(8) Youth correctional facilities are exempt from this section and shall adopt policies related to access and use of asthma medications.”

Section 5. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 40, chapter 6, and the provisions of Title 40, chapter 6, apply to [sections 1 and 2].

Section 6. Two-thirds vote required — contingent voidness. Because [section 2(4)(a)] 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. If [this act] is not approved by at least two-thirds of the members of each house of the legislature, then the bracketed language in [section 2(4)(a)] and in the notice to health care providers and school officials in paragraph 8b of [section 2(10)] is void.

Section 7. Applicability. [This act] applies to a caretaker relative, as defined in [section 1], to whom a child is given by a parent after October 1, 2007, for care by the relative.

Approved May 3, 2007

CHAPTER NO. 394

[SB 71]

AN ACT REQUIRING A STATE AGENCY TO STATE IN ITS NOTICE OF PROPOSED RULEMAKING THE DATE AND MANNER IN WHICH IT GAVE NOTICE OF ITS INITIAL RULEMAKING EFFORTS TO THE PRIMARY SPONSOR OF THE IMPLEMENTED LEGISLATION; PROVIDING FOR THE LEGAL EFFECT OF THE LACK OF NOTICE TO A PRIMARY SPONSOR OF INTENDED RULEMAKING; AMENDING SECTION 2-4-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 2-4-302, MCA, is amended to read:

“2-4-302. Notice, hearing, and submission of views. (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasonable necessity for the intended action, and the time when, place where, and manner in which interested persons may present their views on the intended action. The reasonable necessity must be written in plain, easily understood language. If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

(a) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and

(b) the number of persons affected.

(2) (a) The notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312, and mailed within 3 days of publication to

the *primary* sponsor of the legislative bill that enacted or amended the section that is cited as implemented in the notice if the notice is the initial proposal to implement the section, to interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the appropriate administrative rule review committee when the request has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection if it includes in the notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(b) The appropriate administrative rule review committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to the agencies that the committee oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The notice required by subsections (1) and (2)(a) must be published and mailed at least 30 days in advance of the agency's intended action. In addition to publishing and mailing the notice under subsection (2)(a), the agency shall post the notice on a state electronic access system or other electronic communications system available to the public.

(d) The agency shall also, at the time that its personnel begin to work on the substantive content and the wording of the initial rule proposal to implement one or more statutes, notify the *primary* sponsor of the legislative bill that enacted or amended the section. *The agency shall state, in the notice required by subsection (1), the date on which and the manner in which the primary sponsor was notified. If notice was sent to the primary sponsor by mail, the date to be used by the agency is the date on which the notice is mailed by the agency. If an agency fails to state the date on which and the manner in which notice was given to the primary sponsor, the filing of the notice of proposed rulemaking with the secretary of state is ineffective for the purposes of this part and the authorizing and implemented law for which the rule is purported to be noticed.*

(3) If a statute provides for a method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained in this section. However, the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate administrative rule review committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of a hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the "Notice of Function of Administrative Rule Review Committee" appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.

(8) For purposes of notifying sponsors under subsections (2)(a) and (2)(d) who are no longer members of the legislature, a former legislator who wishes to receive notice may keep the former legislator's name, address, and telephone number on file with the secretary of state. An agency proposing rules shall consult the register when providing sponsor notice."

Section 2. Coordination instruction. If Senate Bill No. 47 is passed and approved and if it includes a section that amends 2-4-302, then [section 1 of this act], amending 2-4-302, is void and 2-4-302 is amended to read as follows:

"2-4-302. Notice, hearing, and submission of views. (1) (a) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its ~~intended~~ *proposed* action. The *proposal* notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasonable necessity for the ~~intended~~ *proposed* action, and the time when, place where, and manner in which interested persons may present their views on the ~~intended~~ *proposed* action. The reasonable necessity must be written in plain, easily understood language.

(b) *The agency shall state in the proposal notice the date on which and the manner in which notification was given to the primary sponsor as required in subsection (2)(d). If the notification to the primary sponsor was given by mail, the date stated in the proposal notice must be the date on which the notification was mailed by the agency. If the proposal notice fails to state the date on which and the manner in which the primary sponsor was notified, the filing of the proposal notice under subsection (2)(a) is ineffective for the purposes of this part and for the purposes of the law that the agency cites in the proposal notice as the authority for the proposed action.*

(c) If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

(~~a~~)*(i)* the cumulative amount for all persons of the proposed increase, decrease, or new amount; and

(~~b~~)*(ii)* the number of persons affected.

(2) (a) The *proposal* notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312, ~~and mailed within~~. *Within 3 days of publication, to the sponsor of the legislative bill that enacted the section that is cited as implemented in the notice if the notice is the initial proposal to*

~~implement the section~~ *a copy of the published proposal notice must be sent to interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the appropriate administrative rule review committee when the request has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection if it includes in the proposal notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).*

(b) The appropriate administrative rule review committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to the agencies that the committee oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The *proposal* notice required by ~~subsections subsection (1) and (2)(a)~~ must be published ~~and mailed~~ at least 30 days in advance of the agency's ~~intended proposed~~ action. ~~In addition to publishing and mailing the notice under subsection (2)(a), the~~ The agency shall post the *proposal* notice on a state electronic access system or other electronic communications system available to the public.

(d) ~~The (i) When an agency shall also, at the time that its personnel begin~~ *begins to work on the substantive content and the wording of the initial rule a proposal to implement one or more statutes that enacted the section notice for a rule that initially implements legislation, the agency shall notify the legislator who was the primary sponsor of the legislation. If the legislation affected more than one program, notice must be given to the sponsor pursuant to this subsection (2)(d) each time that a rule is being proposed to initially implement the legislation for a program.*

(i) *Within 3 days after a proposal notice covered under subsection (2)(d)(i) has been published as required in subsection (2)(a), a copy of the published notice must be sent to the primary sponsor notified under subsection (2)(d)(i).*

(3) If a statute provides for a method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained in this section. However, the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate administrative rule review committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of a hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the "Notice of Function of Administrative Rule Review Committee" appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.

(8) For purposes of notifying *primary* sponsors under subsections (2)(a) and (2)(d) who are no longer members of the legislature, a former legislator who wishes to receive notice may keep the former legislator's name, address, and telephone number on file with the secretary of state. An agency proposing rules shall consult the register when providing sponsor notice."

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

Section 4. Applicability. [This act] applies to notices of proposed rulemaking filed with the secretary of state on or after [the effective date of this act].

Approved May 3, 2007

CHAPTER NO. 395

[SB 94]

AN ACT REMOVING THE REQUIREMENT THAT WHOLESALE AND RETAIL NONPRESCRIPTION DRUG MANUFACTURERS BE LICENSED AND REGULATED ENTITIES THROUGH THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AND AMENDING SECTIONS 50-57-101, 50-57-102, AND 50-57-105, MCA.

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

Section 1. Section 50-57-101, MCA, is amended to read:

"50-57-101. Purpose. This chapter provides 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. Section 50-57-102, MCA, is amended to read:

"50-57-102. Definitions. Unless the context clearly requires otherwise, in this chapter, 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, or 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)(8) "Regulatory authority" means the department, the local board of health, the local health officer, or the local sanitarian.~~

~~(11)(9)~~ “Retail” means the provision of food ~~or nonprescription drugs~~ directly to the consumer.

~~(12)(10)~~ “Retail food establishment” means an establishment, as defined in 50-50-102, that provides food directly to the consumer.

~~(13)(11)~~ (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~~ food directly to the consumer.

(b) The term does not include the sale or provision of food ~~or nonprescription drugs~~ at retail.

~~(14)(12)~~ (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 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.

~~(15)(13)~~ “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)(14)~~ (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)(15)~~ (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)(16)~~ (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 onsite for retail sale.”

Section 3. Section 50-57-105, MCA, is amended to read:

“50-57-105. 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.”

Approved May 3, 2007

CHAPTER NO. 396

[SB 131]

AN ACT REVISING LAND BANKING LAWS; EXTENDING THE TERMINATION DATE FOR THE SALE OF STATE TRUST LAND AND PURCHASE OF REPLACEMENT PROPERTY THROUGH THE LAND BANKING PROGRAM; DECREASING THE TIMEFRAMES FOR POSTING OF A BID BOND; REDUCING THE PERCENTAGE USED FOR DETERMINING A MINIMUM BID BOND; REDUCING THE NUMBER OF DAYS PRIOR TO A SALE THAT A LESSEE MAY CANCEL A LAND BANKING SALE; PROVIDING FOR PAYMENT OF ESTIMATED SALE PREPARATION COSTS; PROVIDING FOR A 60-YEAR ACCOUNTING PERIOD FOR FIGURING A REASONABLE ANNUAL RATE OF RETURN; AMENDING SECTIONS 77-2-363, 77-2-364, AND 77-2-366, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 77-2-363, MCA, is amended to read:

“77-2-363. Land banking land sales and limitations — sale preparation costs. (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 77-2-364.

(2) (a) A person bidding to purchase state land offered for sale shall 45 20 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% 20% 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 77-2-364, the lessee may cancel the sale by giving notice to the department at least 30 10 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.

(5) (a) When the lessee has initiated a sale of land under this section, the lessee shall remit to the department the estimated costs of preparing the parcel for sale, including but not limited to appraisals, cultural surveys, environmental review pursuant to Title 75, chapter 1, parts 1 through 3, and land surveys. Payment must be made within 10 days after the board has provided preliminary approval for the sale of the parcel.

(b) If the parcel is sold to the lessee, the funds remitted for the costs of the sale must be applied to the actual costs at closing. If the parcel is sold to a party other than the lessee, the funds remitted by the lessee must be refunded to the lessee and actual costs of preparing the parcel for sale must be assessed to the purchaser at closing."

Section 2. Section 77-2-364, MCA, is amended to read:

"77-2-364. 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, by 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 77-2-361 through 77-2-367 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 for *Class 1, 3, and 4 lands and over a 60-year accounting period for Class 2 lands, as described in 77-1-401*, 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 77-2-363. 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 77-2-361 through 77-2-367, 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 3. Section 77-2-366, MCA, is amended to read:

"77-2-366. Land banking process — time limit — report to environmental quality council. (1) State land may not be sold through the land banking process pursuant to 77-2-361 through 77-2-367 after October 1, 2008 2011. Land banking purchases under 77-2-364 may continue after October 1, 2008 2011, 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 77-2-362(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 4. Effective date. [This act] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 397

[SB 133]

AN ACT PROVIDING THAT INTERESTS IN UNMATURED LIFE INSURANCE CONTRACTS ARE EXEMPT FROM EXECUTION OF JUDGMENT; AMENDING SECTIONS 25-13-608 AND 25-13-609, 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 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;~~

(e) except as provided in subsection (2), individual retirement accounts, as defined in 26 U.S.C. 408(a), to the extent of deductible contributions made before the suit resulting in judgment was filed and the earnings on those contributions, and Roth individual retirement accounts, as defined in 26 U.S.C. 408A, to the extent of qualified contributions made before the suit resulting in judgment was filed and the earnings on those contributions;

(f) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;

(g) maintenance and child support;

(h) a burial plot for the judgment debtor and the debtor's family;

~~(i) benefits or payments paid or payable from a retirement system or plan within Title 19, chapters 3, 5 through 9, and 13, as provided by 19-2-1004; 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~~

(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; and

(k) the judgment debtor's interest in any unmaturred life insurance contracts owned by the judgment debtor.

(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 2. Section 25-13-609, MCA, is amended to read:

“25-13-609. Personal property exempt subject to value limitations. A judgment debtor is entitled to exemption from execution of the following:

(1) the judgment debtor's interest, not to exceed \$4,500 in aggregate value, to the extent of a value not exceeding \$600 in any item of property, in household furnishings and goods, appliances, jewelry, wearing apparel, books, firearms and other sporting goods, animals, feed, crops, and musical instruments;

(2) the judgment debtor's interest, not to exceed \$2,500 in value, in one motor vehicle; *and*

(3) the judgment debtor's interest, not to exceed \$3,000 in aggregate value, in any implements, professional books, and tools, of the trade of the judgment debtor or a dependent of the judgment debtor; ~~and~~

~~(4) the judgment debtor's interest, not to exceed \$4,000 in value, in any unmaturred life insurance contracts owned by the judgment debtor."~~

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

Section 4. Applicability. [This act] applies to executions of judgment in actions resulting in judgment filed on or after [the effective date of this act].

Approved May 3, 2007

CHAPTER NO. 398

[SB 146]

AN ACT GENERALLY REVISING THE JUVENILE DELINQUENCY INTERVENTION ACT AND RELATED PROVISIONS; CLARIFYING THE PURPOSE OF THE ACT; REVISING THE DUTIES OF THE DEPARTMENT OF CORRECTIONS, THE OFFICE OF COURT ADMINISTRATOR, THE COST CONTAINMENT REVIEW PANEL, THE DISTRICT COURT COUNCIL, AND YOUTH COURTS RELATING TO IMPLEMENTATION OF THE JUVENILE DELINQUENCY INTERVENTION PROGRAM; REQUIRING JUDICIAL DISTRICTS TO PARTICIPATE IN THE JUVENILE DELINQUENCY INTERVENTION PROGRAM; REVISING THE DEPARTMENT OF CORRECTIONS' RULEMAKING AUTHORITY; REQUIRING THE DISTRICT COURT COUNCIL TO ADOPT CERTAIN POLICIES AND PROCEDURES; REMOVING COUNTIES' OBLIGATION TO PAY CERTAIN COSTS RELATED TO JUVENILE OUT-OF-HOME PLACEMENTS, PROGRAMS, AND SERVICES; AMENDING SECTIONS 41-5-103, 41-5-112, 41-5-121, 41-5-124, 41-5-130, 41-5-131, 41-5-132, 41-5-1503, 41-5-1512, 41-5-1513, 41-5-1522, 41-5-1523, 41-5-2002, 41-5-2003, 41-5-2004, 41-5-2005, 41-5-2006, 41-5-2011, 52-5-109, AND 53-1-203, MCA; REPEALING SECTIONS 41-5-104 AND 41-5-123, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Restrictions on use of funds. (1) Funds available to a judicial district under 41-5-130, 41-5-132, or [section 20] may not be used to:

(a) pay salary, benefits, or training costs of a federal, state, or county employee;

(b) purchase items for a federal, state, or county agency that the agency would normally provide for its employees;

(c) support a program or service previously paid for by another source, except as provided in subsection (2); or

(d) construct or remodel a physical structure.

(2) Available funds may be used to support a program providing direct services to youth that was previously funded through grant money if the program's demonstrated outcomes resulted in a reduction in out-of-home placements.

(3) A judicial district shall comply with state procurement laws when expending available funds.

Section 2. Section 41-5-103, MCA, is amended to read:

"41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

(4) "Commit" means to transfer legal custody of a youth to the department or to the youth court.

(5) "Correctional facility" means a public or private, physically secure residential facility under contract with the department and operated solely for the purpose of housing adjudicated delinquent youth.

(6) "Cost containment ~~funds pool~~" means funds ~~retained~~ *allocated* by the department under 41-5-132 for distribution by the cost containment review panel.

(7) "Cost containment review panel" means the panel established in 41-5-131.

(8) "Court", when used without further qualification, means the youth court of the district court.

(9) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to 41-5-206.

(10) (a) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given. ~~but~~

(b) *The term* does not include a person who has only physical custody.

(11) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who has been placed on probation as a delinquent youth and who has violated any condition of probation.

(12) "Department" means the department of corrections provided for in 2-15-2301.

(13) (a) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed under ~~41-5-1512(1)(c) or~~ 41-5-1513(1)(b) or who are under parole supervision.

(b) Department records do not include information provided by the department to the department of public health and human services' management information system or information maintained by the youth court through the office of the court administrator.

(14) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;

(b) contempt of court or violation of a valid court order; or

(c) violation of a youth parole agreement.

(15) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(16) "Emergency placement" means placement of a youth in a youth care facility for less than 45 days to protect the youth when there is no alternative placement available.

(17) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

(18) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

(19) (a) "Formal youth court records" means information or data, either in written or electronic form, on file with the clerk of district court pertaining to a youth under the jurisdiction of the youth court and includes petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, and predispositional studies.

(b) The term does not include information provided by the youth court to the department of public health and human services' management information system.

(20) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

(21) "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

(22) "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian.

(23) (a) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility.

(b) The term does not include a jail.

(24) (a) “Informal youth court records” means information or data, either in written or electronic form, maintained by youth court probation offices pertaining to a youth under the jurisdiction of the youth court and includes reports of preliminary inquiries, youth assessment materials, medical records, school records, and supervision records of probationers.

(b) The term does not include information provided by the youth court to the department of public health and human services’ management information system.

(25) (a) “Jail” means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

(b) The term does not include a colocated juvenile detention facility that complies with 28 CFR, part 31.

(26) “Judge”, when used without further qualification, means the judge of the youth court.

(27) “Juvenile home arrest officer” means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

(28) “Law enforcement records” means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

(29) (a) “Legal custody” means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

- (i) have physical custody of the youth;
- (ii) determine with whom the youth shall live and for what period;
- (iii) protect, train, and discipline the youth; and
- (iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual’s rights and duties as guardian unless otherwise authorized by the court entering the order.

(30) “Necessary parties” includes the youth and the youth’s parents, guardian, custodian, or spouse.

(31) (a) “Out-of-home placement” means placement of a youth in a program, facility, or home, other than a custodial parent’s home, for purposes other than preadjudicatory detention.

(b) The term does not include shelter care or emergency placement of less than 45 days.

(32) (a) “Parent” means the natural or adoptive parent.

(b) The term does not include:

- (i) a person whose parental rights have been judicially terminated; or
- (ii) the putative father of an illegitimate youth unless the putative father’s paternity is established by an adjudication or by other clear and convincing proof.

(33) “Probable cause hearing” means the hearing provided for in 41-5-332.

(34) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(35) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

(36) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

(37) "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(38) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(39) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(40) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-347.

(41) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

(42) "State youth correctional facility" means the Pine Hills youth correctional facility in Miles City or the Riverside youth correctional facility in Boulder.

(43) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

(44) "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection (44)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

(45) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(46) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1203.

(47) “Youth assessment center” means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth’s family in addressing the youth’s behavior.

(48) “Youth care facility” has the meaning provided in 52-2-602.

(49) “Youth court” means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth or a youth in need of intervention and includes the youth court judge, probation officers, and assessment officers.

(50) “Youth detention facility” means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

(a) (i) operated, administered, and staffed separately and independently of a jail; or

(ii) a colocated secure detention facility that complies with 28 CFR, part 31; and

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

(51) “Youth in need of intervention” means a youth who is adjudicated as a youth and who:

(a) commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(i) violates any Montana municipal or state law regarding alcoholic beverages; or

(ii) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth’s parents, foster parents, physical custodian, or guardian despite the attempt of the youth’s parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth’s behavior; or

(b) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention.”

Section 3. Section 41-5-112, MCA, is amended to read:

“41-5-112. Parental contributions account — allocation of proceeds.

(1) There is a parental contributions account in the state special revenue fund.

(2) Contributions paid by the parents and guardians of youth under ~~41-3-446, 41-5-1501, or 41-5-1525~~ *this chapter* must be deposited in the account.

(3) All money in the account, except any amount required to be returned to federal ~~or county~~ sources, is allocated to the department of public health and human services ~~to carry out its duties under 52-1-103 to offset the cost of out-of-home placements, programs, and services for youth under the jurisdiction of the youth court or department.~~

Section 4. Section 41-5-121, MCA, is amended to read:

“41-5-121. Youth placement committees — composition. (1) In each judicial district, the youth court and the department shall establish a youth placement committee for the purposes of:

(a) recommending an appropriate placement of a youth ~~referred committed~~ *committed* to the youth court *under 41-5-1512 or 41-5-1513* or *committed to* the department under ~~41-5-1512 and 41-5-1513~~; or

(b) recommending available community services or alternative placements whenever a change is required in the placement of a youth who is currently in the *legal* custody of the ~~department youth court~~ *youth court* under 41-5-1512 or 41-5-1513 or *the department under 41-5-1513*. However, the committee may not substitute its judgment for that of the superintendent of a state youth correctional facility regarding the discharge of a youth from the facility *or the placement of a youth on parole under the department's jurisdiction*.

(2) (a) The committee consists of not less than five members and must include persons who are knowledgeable about the youth, treatment and placement options, and other resources appropriate to address the needs of the youth.

(b) The committee must include:

(i) a juvenile parole officer employed by the department;

(ii) a representative of the department of public health and human services;

(iii) the chief *juvenile* probation officer or the chief *juvenile* probation officer's designee, ~~who~~. *The officer or the officer's designee* is the presiding officer of the committee;

(iv) a mental health professional; and

(v) if an Indian youth is involved, a person, preferably an Indian, knowledgeable about Indian culture and Indian family matters.

(c) The committee may include:

(i) a representative of a school district located within the boundaries of the judicial district who has knowledge of and experience with youth;

(ii) the youth's parent or guardian;

(iii) a youth services provider; and

(iv) the youth's *juvenile* probation officer.

(3) The youth court judge shall appoint all members of the youth placement committee except the juvenile parole officer. The director of the department shall appoint the juvenile parole officer and shall, when making the appointment, take into consideration:

(a) the juvenile parole officer's qualifications;

(b) the costs involved in the juvenile parole officer's attendance at youth placement committee meetings; and

(c) the location of the juvenile parole officer's home in relation to the location of the youth placement committee.

(4) Committee members serve without compensation.

(5) ~~Notwithstanding the provisions of 41-5-123, the~~ *The* committee may be convened by *request of* the department *to the presiding officer* or by the chief *juvenile* probation officer ~~of the youth court~~.

(6) If a representative of the school district within the boundaries of which the youth is recommended to be placed and will be attending school is not included on the committee, the person who convened the committee shall inform the school district of the final placement decision for the youth.

(7) The department may not disburse funds from the budget allocation accounts charge expenditures to the judicial district allocations established pursuant to 41-5-130 unless the youth court and the department have established a youth placement committee as provided in this section.”

Section 5. Section 41-5-124, MCA, is amended to read:

“41-5-124. Temporary and emergency placements — limit. (1) A temporary placement of a youth in a shelter care facility for less than 45 days or an emergency placement of a youth in a youth care facility is exempt from the requirements of 41-5-123 review by the appropriate youth placement committee.

(2) If a temporary or emergency placement of a youth continues for 45 or more days, the department youth court shall refer the placement of the youth to the appropriate youth placement committee for review. The committee shall make a recommendation for placement to the youth court in accordance with 41-5-123.”

Section 6. Section 41-5-130, MCA, is amended to read:

“41-5-130. Participating and nonparticipating jurisdictions Department to administer juvenile placement funds — transfer of funds to conduct evaluations — department allocation — judicial district allocations — use of annual allocations — transfer of unexpended funds. (1) Each judicial district may elect to participate in the juvenile delinquency intervention program. (1) The department shall administer juvenile placement funds as appropriated by the legislature in accordance with this chapter. The department shall consult with the office of court administrator when developing its budget request for juvenile placement funds for submission to the budget director as provided in 17-7-112.

(2) For each fiscal year, the department shall transfer \$25,000 from the appropriated juvenile placement funds to the office of court administrator for evaluations of out-of-home placements, programs, and services as provided in 41-5-2003. The office shall deposit the funds in the youth court intervention and prevention account provided for in 41-5-2011.

(3) For each fiscal year, the department shall, after transferring funds under subsection (2) and allocating funds to the cost containment pool under 41-5-132, allocate 11% of the remaining appropriated juvenile placement funds for juvenile parole out-of-home placements, programs, and services.

(4) For each fiscal year, the department shall, after allocating funds under subsection (3), allocate the remaining appropriated juvenile placement funds to each judicial district according to a formula established by the cost containment review panel provided for in 41-5-131.

(2)(5) A jurisdiction that elects to participate in the program judicial district may expend funds from a juvenile placement fund its annual allocation for out-of-home placements or for other programs or services intended to reduce or prevent juvenile delinquency subject to restrictions in this chapter and administrative rules adopted by the department the provisions of subsection (6).

(3) A jurisdiction that does not elect to participate in the program may commit youth to the department for out-of-home placements pursuant to this chapter.

(4) A jurisdiction that has not previously participated in the program may elect to participate in the program prior to the start of a new biennium. Participation must be for a complete biennium. A jurisdiction may elect to

discontinue participation in future bienniums upon 3 months' written notice to the department prior to the beginning of the next biennium.

~~(5) A youth court that does not participate in the program may not expend any juvenile placement funds for placements or services unless approved by the department pursuant to 41-5-123.~~

~~(6) The department shall establish an account for each judicial district in order to administer a juvenile placement fund as appropriated by the legislature. The accounts must be used by the youth courts for funding out-of-home placements and for other services intended to reduce or prevent juvenile delinquency subject to restrictions in this chapter and administrative rules adopted by the department. At the end of a fiscal year, the balance in the accounts established under this subsection must be transferred to the youth intervention and prevention account established in 41-5-2011.~~

(6) (a) Except as provided in subsection (6)(b), a judicial district shall reserve at least 80% of its annual allocation for out-of-home placements and the remainder for programs or services.

(b) A judicial district may reserve up to 50% of its annual allocation for programs or services if:

(i) the programs or services have, based on demonstrated outcomes, reduced the number of placements in correctional facilities or higher cost residential placements; and

(ii) the judicial district would not require funding from the cost containment pool, provided for in 41-5-132, in the same fiscal year in which the annual allocation is made under this subsection (6)(b).

(7) A judicial district that intends to expend funds from its annual allocation on an out-of-home placement, program, or service for a person who is 18 years of age or older shall submit to the cost containment review panel a plan describing how the funds will be used. The cost containment review panel shall approve or disapprove the plan. If the plan is approved, the judicial district may expend funds from its annual allocation to implement the plan.

(8) At the end of each fiscal year, after all valid obligations have been paid or encumbered for payment, the department shall transfer any unexpended funds from the judicial districts' annual allocations provided for in this section to the office of court administrator for deposit into the youth court intervention and prevention account provided for in 41-5-2011."

Section 7. Section 41-5-131, MCA, is amended to read:

"41-5-131. Cost containment review panel — duties. (1) The department shall establish a cost containment review panel.

(2) (a) ~~The members of the cost containment review panel shall consist of the following members must be appointed by the department as follows:~~

~~(a)(i) two three members from appointed by the director of the department of corrections;~~

~~(ii) three members appointed by the chief justice of the supreme court; and~~

~~(b)(iii) a one member from who is a professional working in the field of children's mental health appointed by the director of the department of public health and human services;~~

~~(c) a representative from the field of mental health;~~

- (d) a youth court judge;
- (e) two chief juvenile probation officers;
- (f) a county commissioner; and
- (g) a representative of the youth justice council.

(b) *Each appointing authority under subsection (2)(a) shall appoint one person to serve as the alternate for a member appointed by the authority who is unable to participate in a cost containment review panel meeting.*

(3) Decisions of the cost containment review panel must be *made* by majority vote of *the members of the cost containment review panel or their alternates*.

(4) ~~The cost containment review panel shall determine the distribution of funds allocated in 41-5-132.~~

~~(5) The cost containment review panel may evaluate the effectiveness of new or innovative programs for the treatment of troubled youth and make recommendations to the youth courts and the department.~~

~~(6) A youth court shall request funds from the cost containment review panel prior to exceeding its account allocation under 41-5-130. If a panel member referred to in subsections (2)(d) through (2)(g) is a resident of or is employed in the judicial district of a youth court requesting cost containment funds, the panel member may not serve as a panel member for purposes of a decision regarding disbursement of cost containment funds to the youth court and an alternate panel member must be appointed by the department for purposes of the decision.~~

(4) *The cost containment review panel shall:*

(a) *establish the formula for the annual allocation to each judicial district as provided in 41-5-130;*

(b) *approve or disapprove plans for out-of-home placements, programs, or services for persons 18 years of age or older as provided in 41-5-130;*

(c) *recommend an amount to be allocated to the cost containment pool as provided in 41-5-132;*

(d) *approve requests by judicial districts for allocations from the cost containment pool as provided in 41-5-132;*

(e) *approve requests by the department for reimbursement from the cost containment pool as provided in 41-5-132;*

(f) *provide recommendations on the evaluation of out-of-home placements, programs, and services as provided in 41-5-2003;*

(g) *review plans submitted under [section 20] and recommend to the office of court administrator whether each plan should be approved; and*

(h) *adopt procedures for the operation of the cost containment review panel."*

Section 8. Section 41-5-132, MCA, is amended to read:

"41-5-132. Cost containment fund pool — allocation of appropriated funds — use of funds authorization of allocation from pool — transfer of unexpended funds. (1) (a) *The department of corrections shall establish a cost containment fund for the purposes of 41-5-131 and pool. After considering the cost containment review panel's recommendation as provided for in subsection (1)(b), the department shall allocate to the fund cost containment pool at the beginning of each fiscal year not less than \$1 million each fiscal year from the*

funds appropriated for the juvenile placement budget for the fiscal biennium beginning July 1, 2001, to be used for the purposes of 41-5-131 placements.

(2)(b) The department shall determine the amount of the cost containment fund at the beginning of each fiscal year. The cost containment review panel shall submit to the department a recommended amount to be allocated to the cost containment fund pool at least 1 month prior to the start of a new each fiscal year. The cost containment review panel shall establish a methodology for determining the recommended amount to be allocated to the cost containment pool.

(2) According to criteria and procedures adopted by the cost containment review panel, the cost containment review panel may authorize an allocation from the cost containment pool to a judicial district that has exceeded its annual allocation under 41-5-130 for juvenile out-of-home placements, programs, and services. The judicial district shall request an allocation from the cost containment review panel before exceeding its annual allocation.

(3) (a) According to criteria and procedures established by the cost containment review panel, the cost containment review panel may authorize an allocation from the cost containment pool to the department for a request submitted under subsection (3)(b).

(b) The department may request at the end of the fiscal year that the cost containment review panel reimburse the department from the cost containment pool for costs incurred under 41-5-1504(3) for placing a youth found to be suffering from a mental disorder, including costs for transporting the youth. Before requesting reimbursement, the department shall expend its state youth correctional facility budgets for mental health placements and any parental contributions or federal funds, for which the department has spending authority, or private insurance payments received for treatment.

(4) In addition to any disbursement made by the cost containment review panel under subsection (2) or (3), the department may expend funds from the cost containment pool to reimburse cost containment review panel members or alternates for travel expenses, as provided in 2-18-501 through 2-18-503, and to pay the actual costs incurred in conducting a cost containment review panel meeting, excluding salary and benefits for employees providing support services to the cost containment review panel.

(5) The department shall transfer any amount remaining in the cost containment pool at the end of each fiscal year to the office of court administrator for deposit in the youth court intervention and prevention account provided for in 41-5-2011."

Section 9. Section 41-5-1503, MCA, is amended to read:

"41-5-1503. Medical or psychological evaluation of youth — urinalysis. (1) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-331. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (2). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court. Except as provided in subsection (2), the youth court shall pay for the cost of the evaluation from its judicial district's allocation provided for in 41-5-130 or [section 20].

(2) The youth court shall determine the financial ability of the youth's parents or guardians to pay the cost of an evaluation ordered by the court under subsection (1). If they are financially able, the court shall order the youth's parents or guardians to pay all or part of the cost of the evaluation.

(3) Subject to 41-5-1512(1)(o)(i), the youth court may not order an evaluation or placement of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is listed under *in* 41-5-206.

(4) An evaluation of a youth may not be performed at the Montana state hospital ~~unless the youth is transferred to the district court under 41-5-208 or 41-5-1605 or the jurisdiction of the youth court is terminated following the filing of an information in district court pursuant to 41-5-206.~~

(5) In a proceeding alleging a youth to be a delinquent youth, upon a finding of an offense related to use of alcohol or illegal drugs, the court may order the youth to undergo urinalysis for the purpose of determining whether the youth is using alcoholic beverages or illegal drugs."

Section 10. Section 41-5-1512, MCA, is amended to read:

"41-5-1512. Disposition of youth in need of intervention or youth who violate consent adjustments. (1) If a youth is found to be a youth in need of intervention or to have violated a consent adjustment, the youth court may enter its judgment making one or more of the following dispositions:

(a) place the youth on probation. The youth court shall retain jurisdiction in a disposition under this subsection.

(b) place the youth in a residence that ensures that the youth is accountable, that provides for rehabilitation, and that protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee.

(c) ~~commit the youth to the department in jurisdictions that do not participate in the juvenile delinquency intervention program or to the youth court in jurisdictions that participate in the juvenile delinquency intervention program~~ for the purposes of *placement in a private, out-of-home, residential placement facility* subject to the conditions in 41-5-1522. In an order committing a youth to ~~the department or to the youth court~~, the court shall determine whether continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home.

(d) order restitution for damages that result from the offense for which the youth is disposed by the youth or by the person ~~that~~ *who* contributed to the delinquency of the youth;

(e) require the performance of community service;

(f) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community;

(j) subject to the provisions of 41-5-1504, commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is found to be suffering from a mental disorder, as defined in 53-21-102, and meets the criteria in 53-21-126(1);

(k) place the youth under home arrest as provided in Title 46, chapter 18, part 10;

(l) order confiscation of the youth's driver's license, if the youth has one, by the probation officer for a specified period of time, not to exceed 90 days. The probation officer shall notify the department of justice of the confiscation and its duration. The department of justice may not enter the confiscation on the youth's driving record. The probation officer shall notify the department of justice when the confiscated driver's license has been returned to the youth. A youth's driver's license may be confiscated under this subsection more than once. The probation officer may, in the probation officer's discretion and with the concurrence of a parent or guardian, return a youth's confiscated driver's license before the termination of the time period for which it had been confiscated. The confiscation may not be used by an insurer as a factor in determining the premium or part of a premium to be paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth, ~~nor~~ and may ~~it~~ not be used as grounds for denying coverage for an accident or other occurrence under an existing policy.

(m) order the youth to pay a contribution covering all or a part of the costs for the adjudication, disposition, and attorney fees for the costs of prosecuting or defending the youth; and costs of detention, supervision, care, custody, and treatment of the youth, including the costs of counseling;

(n) order the youth to pay a contribution covering all or a part of the costs of a victim's counseling;

(o) defer imposition of sentence for up to 45 days for a placement evaluation at a suitable program or facility with the following conditions:

(i) The court may not order placement for evaluation at a youth correctional facility of a youth who has committed an offense that would not be a criminal offense if committed by an adult or a youth who has violated a consent adjustment.

(ii) The placement for evaluation must be on a space-available basis ~~at the county's expense, which is not reimbursable under part 19 of this chapter.~~ *Except as provided in subsection (1)(o)(iii), the court shall pay the cost of the placement for evaluation from its judicial district's allocation provided for in 41-5-130 or [section 20].*

(iii) The court may require the youth's parents or guardians to pay a contribution covering all or a part of the costs of the evaluation if the court determines after an examination of financial ability that the parents or guardians are able to pay the contribution. Any remaining unpaid costs of evaluation are the financial responsibility of the judicial district of the court that ordered the evaluation.

(p) order placement of a youth in a youth assessment center for up to 10 days;

(q) order the youth to participate in mediation that is appropriate for the offense committed.

(2) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may *not* order a local government entity to pay for evaluation and in-state transportation of a youth.

(3) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the ~~account~~ *annual allocation* established for that district under 41-5-130 without approval from the cost containment review panel.”

Section 11. Section 41-5-1513, MCA, is amended to read:

“41-5-1513. Disposition — delinquent youth — restrictions. (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-1512;

(b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age. The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b). The court may not place a youth adjudicated to be a delinquent youth in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless:

(i) the youth committed four or more misdemeanors in the prior 12 months;

(ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or a licensed clinical social worker has evaluated the youth and recommends placement in a state youth correctional facility; and

(iii) the court finds that the youth will present a danger to the public if the youth is not placed in a state youth correctional facility.

(c) require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a sexual offense or violent offense, as defined in 46-23-502, if committed by an adult, to register as a sexual or violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection.

(d) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

(e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a sex offense, the youth court may require completion of sex offender treatment before a youth is discharged.

(3) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may *not* order a local government entity to pay for evaluation and in-state transportation of a youth, *except as provided in 52-5-109.*

(4) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the ~~account~~ *annual allocation* established for that district under 41-5-130 without approval from the cost containment review panel.”

Section 12. Section 41-5-1522, MCA, is amended to read:

“41-5-1522. Commitment to department — restrictions on placement. When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made ~~under 41-5-123~~ by the youth placement committee. Placement is subject to the following limitations:

(1) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the power of the department to enter into a parole agreement with the youth pursuant to 52-5-126.

(2) A youth may not be placed in or transferred to a state adult correctional facility or other facility used for the execution of sentences of adults convicted of crimes.

(3) The department may not place a youth in need of intervention, a youth adjudicated delinquent for commission of an act that would not be an offense if committed by an adult, or a youth who violates a consent adjustment in a state youth correctional facility.”

Section 13. Section 41-5-1523, MCA, is amended to read:

“41-5-1523. Commitment to department or youth court — supervision. (1) A youth placed in a state youth correctional facility or other facility or program operated by the department or who signs a parole agreement under 52-5-126 must be supervised by the department.

(2) A youth ~~who is~~ placed in any private, out-of-home, residential placement facility by the youth court ~~or the youth court’s juvenile probation officer~~ must be supervised by ~~the~~ a juvenile probation officer of the youth court having jurisdiction over the youth under 41-5-205, ~~whether or not the youth is committed to the department for purposes of funding a private, out-of-home, residential placement.~~

(3) ~~Supervision by the youth probation officer includes but is~~ *Responsibilities of the juvenile probation officer relating to placement of the youth include but are* not limited to:

(a) submitting information and documentation necessary for the ~~person, committee, or team~~ that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth’s school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) *managing the youth’s case* ~~management of the youth~~ while in a private, out-of-home, residential placement facility and upon release until ~~discharged by the department~~ *supervision is terminated by the youth court.*”

Section 14. Section 41-5-2002, MCA, is amended to read:

“41-5-2002. Purpose. The purposes of this part are to:

- (1) provide an alternate method of funding juvenile ~~placement out-of-home placements, programs, and services;~~
- (2) increase the ability of ~~local government youth courts~~ youth courts to respond to juvenile delinquency through early intervention and expanded community alternatives; ~~and~~
- (3) enhance the ability of ~~local government youth courts~~ youth courts to control costs;
- (4) *enhance community safety, hold youth accountable, and promote the competency development of youth;*
- (5) *use local resources for the placement of troubled youth, when appropriate and available;*
- (6) *reduce placements in out-of-state residential facilities and programs; and*
- (7) *use state youth correctional facilities when appropriate.”*

Section 15. Section 41-5-2003, MCA, is amended to read:

“41-5-2003. Establishment of program — department duties — office of court administrator duties. (1) ~~(a)~~ There is a juvenile delinquency intervention program. *Each judicial district shall participate in the program.*

~~(b) Participation in the juvenile delinquency intervention program is voluntary.~~

~~(2) The department and the youth court shall monitor the youth court’s account created under 41-5-130 to ensure that the youth court does not exceed its allocated account budget.~~

~~(3) Account funds not used by the youth court for placements must be distributed to participating youth courts in accordance with rules adopted by the department to be used for placement alternatives and early intervention alternatives.~~

(2) The department and the judicial district shall monitor the judicial district’s annual allocation provided for in 41-5-130 to ensure that the judicial district does not exceed its allocation.

~~(4)(3) The department shall provide technical assistance to each youth court judicial district for the monitoring of account funds and the evaluation and development of placement alternatives and effective intervention programming its annual allocation.~~

~~(5)(4) The department shall review and monitor office of court administrator shall assist each youth court to enable the development of in developing placement alternatives by the youth courts and the development of early intervention alternatives by the youth courts and community intervention and prevention programs and services.~~

(5) (a) Each fiscal year, the office of court administrator shall select out-of-home placements, programs, and services to be evaluated for their effectiveness in achieving the purposes provided in 41-5-2002. The cost containment review panel shall provide recommendations to the office on out-of-home placements, programs, and services to be evaluated and on the scope of the evaluation. Before conducting any evaluation, the office shall obtain approval from the district court council established in 3-1-1602.

~~(b) The department office shall report to the legislature on the results of its monitoring the results of any evaluation conducted under subsection (5)(a) each year to the department, cost containment review panel, district court council, and law and justice interim committee.”~~

Section 16. Section 41-5-2004, MCA, is amended to read:

“41-5-2004. Youth court duties. Each youth court shall:

(1) use available resources to develop alternatives for the placement of youth;

(2) use available resources for early intervention strategies for troubled youth;

(3) use a *validated* risk assessment instrument approved by the ~~department office of court administrator~~ for the measurement of risk assessment and the effectiveness of treatment or intervention services for youth adjudicated pursuant to 41-5-1512 or 41-5-1513;

(4) submit quarterly reports to the *office of court administrator and the department* documenting the use of ~~diversionary diversion~~ and prevention programs and the use of placement services; *and*

~~(5) participate in the cost containment review panel established under 41-5-131; and~~

~~(6)(5) provide the department and the legislative auditor with access to all records maintained by the youth court.”~~

Section 17. Section 41-5-2005, MCA, is amended to read:

“41-5-2005. Judicial districts participating in juvenile delinquency intervention program — youth Youth placement committee to submit recommendation to department youth court judge — acceptance or rejection of recommendation by department judge. (1) (a) Prior to commitment of a youth to the legal custody of the youth court under 41-5-1512 or 41-5-1513 or to the department pursuant to 41-5-1512 or under 41-5-1513, a youth placement committee must be convened. ~~The~~ *Except as provided in subsection (1)(b),* the committee shall submit in writing to the youth court judge its primary and alternative recommendations for placement of the youth.

(b) *An alternative recommendation is unnecessary if the committee’s recommendation is placement in a youth correctional facility.*

(2) The committee shall first consider placement of the youth in a community-based facility or program and shall give priority to placement of the youth in a facility or program located in the state of Montana.

(3) If in-state alternatives for placement of the youth are inappropriate, the committee may recommend an out-of-state placement. The committee shall state in its recommendation the reasons why in-state services are not appropriate.

(4) The primary and alternative recommendations of the youth placement committee must be for similar facilities or programs. The youth court may require a youth placement committee to reevaluate a youth if the recommended placements are dissimilar.

(5) If the youth court rejects both of the committee’s recommendations, it shall promptly notify the committee in writing of the reasons for rejecting the recommendations and shall make an appropriate placement for the youth.

(6) The youth court may not order a placement or change of placement that results in a deficit in the ~~account~~ *annual allocation* established for that district under 41-5-130 without approval from the cost containment review panel.

(7) The youth court shall evaluate the cost of the placement or change of placement and ensure that the placement or change of placement will not overspend the ~~budget~~ *annual allocation* provided by the department under 41-5-130.

~~(8) This section applies only to those judicial districts that elect to participate in the juvenile delinquency intervention program administered by the department."~~

Section 18. Section 41-5-2006, MCA, is amended to read:

"41-5-2006. Rulemaking authority — *policies and procedures.* (1) The department shall adopt rules necessary for the implementation of 41-5-130 through 41-5-132 and this part to perform its duties under this chapter, including but not limited to rules regarding:

(a) defining and establishing criteria for early intervention regarding troubled youth and the development of community alternatives;

(b) evaluating each youth court to ensure that the court is using early intervention strategies and community alternatives and is effectively controlling costs for youth placements;

(c) distributing unused account funds to the youth courts;

(d) determining the allocation of funds to the accounts for the youth courts;

(e) determining the amount of funds to be withheld by the department as cost containment funds;

(f) monitoring and auditing each youth court to ensure that account funds are being used as required by law;

(g) distributing cost containment funds to youth courts;

(h) monitoring youth courts to promote consistency and uniformity in the placement of juvenile offenders;

(i) developing procedures for the operation of the cost containment review panel;

(j) developing one or more risk assessment tools; and

(k) developing procedures for removing youth with serious mental illness from the juvenile correctional system.

(2) It is the intent of the legislature that rules adopted by the department encourage the use of local, regional, and state resources for the placement of troubled youth.

(a) *monitoring judicial districts' annual allocations provided for in 41-5-130;*

(b) *processing payments for out-of-home placements, programs, and services on behalf of the youth courts;*

(c) *determining the amount to be allocated to the cost containment pool as provided for in 41-5-132; and*

(d) *removing youth with a mental disorder, as defined in 53-21-102, from state youth correctional facilities.*

(2) *The district court council, established in 3-1-1602, shall adopt policies and procedures, subject to review by the supreme court, necessary for the youth courts and office of court administrator to perform their duties under this chapter, including but not limited to policies and procedures regarding:*

(a) *guidelines for evaluating out-of-home placements, programs, and services as provided in 41-5-2003;*

(b) *administration of the youth court intervention and prevention account provided for in 41-5-2011;*

(c) *monitoring of youth courts to promote consistency and uniformity in the placement of juveniles referred to the youth courts; and*

(d) *approval of one or more risk assessment tools to be used by the youth courts.”*

Section 19. Section 41-5-2011, MCA, is amended to read:

“41-5-2011. Youth court intervention and prevention account — statutory appropriation — administration. (1) There is a youth court intervention and prevention account in the state special revenue fund. ~~The money in the account must be used for the youth court intervention and prevention programs authorized in this part. All unexpended funds remaining at the end of a fiscal year in the accounts established under 41-5-130(6) must be transferred to the account established in this subsection. The office of court administrator shall deposit in the account the following funds transferred by the department:~~

(a) *funds transferred under 41-5-130(2) for evaluations of out-of-home placements, programs, and services;*

(b) *unexpended funds from the judicial districts’ annual allocations as provided for in 41-5-130(8); and*

(c) *unexpended funds from the cost containment pool as provided for in 41-5-132.*

(2) The youth court intervention and prevention account is statutorily appropriated, as provided in 17-7-502, to the supreme court ~~for the purposes of 41-5-2003(3).~~ The office of the court administrator shall administer the account in accordance with rules adopted by the department of corrections *[section 20].”*

Section 20. Allocation to judicial districts from youth court intervention and prevention account — judicial district plans — cost containment review panel review and recommendations — district court council and cost containment review panel policies and procedures. (1) (a) At the beginning of each fiscal year, the office of court administrator shall allocate from the youth court intervention and prevention account to each judicial district an amount equal to the unexpended funds from the judicial district’s annual allocation for the previous fiscal year under 41-5-130.

(b) In addition to the amount allocated under subsection (1)(a), at the beginning of each fiscal year, the office of court administrator shall allocate from the youth court intervention and prevention account to all judicial districts the unexpended funds from the cost containment pool transferred from the previous fiscal year under 41-5-132. The office shall allocate the funds according to the formula that was used to determine the judicial districts’ annual allocations for the previous fiscal year under 41-5-130.

(2) Upon approval of the youth court judge, a judicial district may submit a plan to the office of court administrator for approval to expend the amounts allocated to the judicial district under subsection (1) for one or more of the following purposes:

(a) to establish or expand community prevention and intervention programs and services for youth;

(b) to provide an alternative method for funding out-of-home placements; and

(c) to provide matching funds for federal money for intervention and prevention programs that provide direct services to youth.

(3) Two or more judicial districts may jointly submit a plan to combine any portion of the amounts allocated to the districts under subsection (1) to expend funds on a regional or statewide basis in accordance with subsection (2).

(4) The cost containment review panel provided for in 41-5-131 shall review each plan submitted to the office of court administrator. The cost containment review panel shall recommend to the office whether each plan should be approved. The office shall consider the cost containment review panel's recommendation before approving or disapproving a plan.

(5) The office of court administrator shall notify the judicial district, cost containment review panel, and department in writing as to whether a plan has been approved or disapproved. If the office disapproves a plan, the judicial district may submit a revised plan.

(6) (a) A judicial district shall expend the amounts allocated to the district under subsection (1) in accordance with an approved plan by the end of the fiscal year following the fiscal year in which the amounts were allocated under subsection (1).

(b) Any portion of the amounts allocated under subsection (1) not expended within the time provided for in subsection (6)(a) must be transferred to the general fund.

(7) (a) Except as provided in subsection (7)(b), the district court council, established in 3-1-1602, shall adopt policies and procedures, subject to review by the supreme court, for administering this section, including procedures for submitting plans to the office of court administrator and criteria to be used by the office in evaluating and approving the plans.

(b) The cost containment review panel shall adopt procedures for reviewing plans submitted to the office of court administrator and making recommendations to the office on plan approval.

Section 21. Section 52-5-109, MCA, is amended to read:

~~“52-5-109. Commitment expenses — transportation~~ *Transportation costs — arrangement for transportation.* (1) ~~The expenses of committing a youth to the department or to the youth court must be borne by the committing youth court.~~

~~(2) (a) After adjudication, the costs of transporting a youth to and from an out-of-home placement within the state must be paid as follows:~~

~~(i) in a jurisdiction that does not participate in the juvenile delinquency intervention program, the county shall pay the costs;~~

(ii) ~~in a jurisdiction that participates in the juvenile delinquency intervention program, the youth court shall pay the costs from the account established under 41-5-130 or out of county funds of the committing county.~~

~~(b) After adjudication, the costs of transporting a youth to and from an out-of-home placement in another state must be paid by the youth court and must be paid for out of the account established under 41-5-130, except that the department shall pay transportation costs in a case in which a youth is placed in an out-of-state correctional facility pursuant to 41-5-355. (1) Prior to adjudication:~~

~~(a) for a youth placed in a facility, other than a state youth correctional facility or a detention facility, the judicial district of the youth court to which the youth has been referred shall pay the cost for transporting the youth to the facility and for any other transportation costs incurred while the youth is in the facility. The district shall pay these costs from its annual allocation provided for in 41-5-130.~~

~~(b) for a youth detained in a detention facility, the county of the youth court to which the youth has been referred shall pay the cost for transporting the youth to the facility and for any other transportation costs while the youth is in the facility.~~

~~(2) After adjudication:~~

~~(a) for a youth placed in a nonsecure facility within or outside the state, the judicial district of the youth court in which the youth was adjudicated shall pay the costs for transporting the youth to and from the facility from its annual allocation established under 41-5-130;~~

~~(b) for a youth committed to the department for placement in an in-state youth correctional facility, the county of the youth court in which the youth was adjudicated shall pay the cost for transporting the youth to the facility. The department shall pay the cost for transporting the youth after the youth is released from the facility or provide other arrangements for transporting the youth.~~

~~(c) for a youth placed in an out-of-state correctional facility pursuant to 41-5-355, the department shall pay the cost for transporting the youth to the facility and the cost for transporting the youth after the youth is released from the facility.~~

~~(3) The youth court probation office shall arrange for all transportation to and from an out-of-home placement except when the youth is under the parole supervision of the department or when the department is responsible for transportation costs as provided for in subsections (2)(b) and (2)(c)."~~

Section 22. Section 53-1-203, MCA, is amended to read:

"53-1-203. Powers and duties of department of corrections. (1) The department of corrections shall:

(a) adopt rules necessary to carry out the purposes of ~~41-5-123 through 41-5-125~~, rules necessary for the siting, establishment, and expansion of prerelease centers, rules for the establishment and maintenance of residential methamphetamine treatment programs, and rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law. However, rules adopted by the department may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers

must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations to establish and maintain:

(i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for release into the community, providing an alternative placement for offenders who have violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs. This subsection does not affect the department's authority to operate and maintain prerelease centers.

(ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for persons convicted of possession of methamphetamine. The department shall issue a request for proposals using a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

(d) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of corrections, including programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed in correctional facilities or programs;

(f) encourage the establishment of programs at the local and state level for the rehabilitation and education of felony offenders;

(g) administer all state and federal funds allocated to the department for youth in need of intervention and delinquent youth, as defined in 41-5-103, *except as provided in [section 20]*;

(h) collect and disseminate information relating to youth ~~in need of intervention and delinquent youth~~ *who are committed to the department for placement in a state youth correctional facility*;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to

youth in need of intervention and delinquent youth in out-of-home care facilities;

(j) provide funding for ~~and place youth who are adjudicated to be delinquent or in need of intervention~~ and who are committed to the department *for placement in a state youth correctional facility*;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for delinquent youth committed to the department; and

(ii) coordinate and apply the principles of modern correctional administration to the facilities and programs administered by the department.

(2) The department and a private, nonprofit Montana corporation may not enter into a contract under subsection (1)(c) for a period that exceeds 20 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c). Prior to entering into a contract for a period of 10 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

(3) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for ~~youth in need of intervention~~ and delinquent youth in *state youth correctional facilities or on juvenile parole supervision*.

(4) The department may contract with Montana corporations to operate a day reporting program as an alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015. The department shall adopt by rule the requirements for a day reporting program, including but not limited to requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance with any conditions of probation, such as drug testing.”

Section 23. Repealer. Sections 41-5-104 and 41-5-123, MCA, are repealed.

Section 24. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 41, chapter 5, part 1, and the provisions of Title 41, chapter 5, part 1, apply to [section 1].

(2) [Section 20] is intended to be codified as an integral part of Title 41, chapter 5, part 20, and the provisions of Title 41, chapter 5, part 20, apply to [section 20].

Section 25. Effective date. [This act] is effective June 30, 2007.

Approved May 3, 2007

CHAPTER NO. 399

[SB 157]

AN ACT GENERALLY REVISING INSURANCE LAWS ADMINISTERED BY THE STATE AUDITOR; REMOVING REDUNDANT REFERENCES FOR REVOKING OR REFUSING TO ISSUE AN INSURANCE CONSULTANT LICENSE; AMENDING SECTIONS 33-1-201, 33-1-311, 33-4-312, 33-17-211, 33-17-214, 33-17-232, 33-17-511, 33-17-1103, 33-18-235, 33-19-105, 33-20-1303, 33-20-1315, 33-22-121, 33-22-122, 33-22-513, 33-22-1517, 33-22-2001, 33-22-2002, 33-22-2004, 33-25-212, 33-25-214, 33-30-1015, 33-31-111, 33-31-311, 33-35-103, 33-35-306, 33-38-105, AND 50-4-703, MCA; REPEALING SECTIONS 33-17-506 AND 33-17-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES.

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

Section 1. Section 33-1-201, MCA, is amended to read:

“33-1-201. Definitions — insurance in general. For the purposes of this code, the following definitions apply unless the context requires otherwise:

(1) An ~~“alien~~ *“Alien insurer”* is ~~one an insurer~~ formed under the laws of any country other than the United States; ~~or its states, districts, territories, and commonwealths.~~

(2) An ~~“authorized~~ *“Authorized insurer”* is ~~one an insurer~~ duly authorized by ~~subsisting a certificate of authority issued by the commissioner to transact insurance in this state.~~

(3) A ~~“domestic~~ *“Domestic insurer”* is ~~one an insurer~~ incorporated under the laws of this state.

(4) A ~~“foreign~~ *“Foreign insurer”* is ~~one an insurer~~ formed under the laws of any jurisdiction other than this state. Except ~~where~~ *when* distinguished by context, ~~foreign insurer the term~~ includes ~~also~~ an alien insurer.

(5) (a) “Insurance” is a contract ~~whereby through which~~ one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.

(b) Insurance does not include contracts for the installation, maintenance, and provision of inside telecommunications wiring to residential or business premises.

(6) “Insurer” includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance. The term also includes a health service corporation in the provisions listed in 33-30-102.

(7) A ~~“resident~~ *“Resident domestic insurer”* is an insurer incorporated under the laws of this state and:

(a) if a mutual company, not less than one-half of the policyholders are ~~natural persons~~ *individuals* who are residents of this state; or

(b) if a stock insurer, not less than one-half of the shares are owned by ~~natural persons~~ *individuals* who are residents of this state and all of the directors and officers of the insurer are residents of this state.

(8) “State”, when used ~~relating in relation~~ to jurisdiction, means a state, the District of Columbia, or a territory, commonwealth, or possession of the United States.

(9) “Transact”, with respect to insurance, ~~includes any of the following means to:~~

- (a) ~~solicitation and inducement solicit;~~
- (b) ~~preliminary negotiations negotiate;~~
- (c) ~~effectuation of sell or effectuate~~ a contract of insurance; *or*
- (d) ~~transaction of transact~~ matters subsequent to effectuation of the contract of insurance and arising out of it.

(10) An ~~unauthorized~~ “*Unauthorized insurer*” is ~~one an insurer~~ not authorized by ~~subsisting a~~ certificate of authority issued by the commissioner to transact insurance in this state.”

Section 2. Section 33-1-311, MCA, is amended to read:

“33-1-311. General powers and duties. (1) The commissioner shall enforce the applicable provisions of the laws of this state and shall execute the duties imposed on the commissioner by the laws of this state.

(2) The commissioner has the powers and authority expressly conferred upon the commissioner by or reasonably implied from the provisions of the laws of this state.

(3) The commissioner shall administer the department to ensure that the interests of insurance consumers are protected.

(4) The commissioner may conduct examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as the commissioner considers proper, to determine whether any person has violated any provision of the laws of this state or to secure information useful in the lawful administration of any provision. The cost of additional examinations and investigations must be borne by the state.

(5) The commissioner shall maintain as confidential any information or document received from:

- (a) the national association of insurance commissioners; *or*
- (b) an insurance department from another state ~~or~~, a federal agency, *or a foreign government* that treats the same information or document as confidential. The commissioner may provide information or documents, including information or documents that are confidential, to the national association of insurance commissioners, a state or federal law enforcement agency, a federal agency, *a foreign government*, or an insurance department in another state, if the recipient agrees to maintain the confidentiality of the information or documents.

(6) The department is a criminal justice agency as defined in 44-5-103.”

Section 3. Section 33-4-312, MCA, is amended to read:

“33-4-312. Officers, insurance producers agents, and employees not licensed — exception for liability insurance. (1) Except as provided in subsection (2), ~~no insurance producer an agent~~ of an insurer is *not* required to obtain a license or authority from any public official to transact business for ~~such the insurer, nor is the.~~ The insurer or ~~any of its officers, insurance producers agents,~~ or employees *are not* required to pay any fee ~~or for a license~~ for the transaction of the business of the insurer, except as provided in this chapter.

(2) A farm mutual insurer that offers liability insurance is required to have an insurance producer licensed by the state of Montana to transact liability

insurance, ~~and no.~~ A person may offer *not sell*, solicit, *negotiate*, or take applications for, procure, or place for others liability insurance ~~by~~ *for* a farm mutual insurer unless ~~he or she~~ *that person* is licensed under Title 33, chapter 17.”

Section 4. 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 in a form approved 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;

(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 33-17-220.

(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 in a form approved by the commissioner. 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.

(3) A person acting as an insurance producer shall obtain a license. A person shall apply for a license in a form approved 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 to be responsible for the person's compliance 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, or other organizational documents; 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.

(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 the association's 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.

(5) An insurance producer using an assumed business name shall register the name with the commissioner before using the name."

Section 5. 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, revoked, or terminated or the license lapses.

(6) (a) A person shall inform the commissioner in writing of a change of address within 30 days of the change:

(i) a change of address;

(ii) the final disposition resulting in disciplinary action taken against or a conviction of the insurance producer in any state or federal jurisdiction or by another governmental agency in this state of:

(A) any administrative action related to transacting insurance;

(B) any action taken against any type of securities license; and

(C) any criminal action, excluding traffic violations.

(b) (i) As used in this subsection (6), "final disposition" includes but is not limited to a settlement agreement, consent order, plea agreement, sentence and judgment, or order.

(ii) The term does not include an action that is dismissed or that results in an acquittal, for which no report is necessary."

Section 6. Section 33-17-232, MCA, is amended to read:

"33-17-232. Rights of insurance producer following termination of appointment. (1) Following termination of any such an agency appointment as to for property, casualty, title, or surety insurance and subject to the terms of any an agreement between the insurance producer and the insurer, the insurance producer may continue to service and receive from the insurer commissions or other compensation relative to business written by him the insurance producer for the insurer during the existence of the appointment.

(2) This section does not apply as to:

(a) insurance producers of direct writing insurers; or

(b) insurance producers or insurers between whom the relationship of employer and employee exists."

Section 7. 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, a bond, an annuity, or a 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~~ *specifies or clearly defines services to be provided* and 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 8. Section 33-17-1103, MCA, is amended to read:

"33-17-1103. Accepting and paying commissions, fees, or consideration — restriction. (1) An insurer or insurance producer may not pay, directly or indirectly, a commission, service fee, brokerage fee, or other valuable consideration to a person for services as an insurance producer unless the person performing the service holds a valid license with regard to the kind or kinds of insurance for which the service was rendered at the time the service was performed. A person not properly licensed in accordance with this chapter at the time the person performs the service as an insurance producer may not accept a commission, service fee, brokerage fee, or other valuable consideration for the service. This section does not prevent payment or receipt of renewal or other deferred commissions to or by a person entitled to receive the payment under this section.

(2) An insurance producer may not directly or indirectly share the insurance producer's commissions or other compensation received or to be received by the insurance producer on account of a transaction under the insurance producer's license with any person not also licensed under this chapter as to the same kind or kinds of insurance involved in the transactions. This provision does not affect payment of the regular salaries due to employees of the licensee, the distribution in regular course of business of compensation and profits among members or stockholders if the licensee is a partnership or corporation, or use of funds for family or personal purposes.

(3) ~~This section does not apply to those transactions with surplus lines insurance producers that are lawful under~~ *Surplus lines producers may share commissions with a property and casualty insurance producer pursuant to 33-2-306."*

Section 9. Section 33-18-235, MCA, is amended to read:

"33-18-235. Rulemaking authority. The commissioner ~~shall make~~ *may adopt* rules, under the Montana Administrative Procedure Act, necessary to implement 33-18-231 through 33-18-234."

Section 10. Section 33-19-105, MCA, is amended to read:

"33-19-105. Exemption based on federal standards for privacy of individually identifiable health information — notice to commissioner required — rules. (1) The obligations imposed under this chapter do not apply to a licensee that is a covered entity under the provisions of federal regulations that are part of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR, parts 160 and 164, standards for privacy of individually identifiable health information or *security standards for the protection of electronic health information* as to any use or disclosure of personal

information that is covered under the HIPAA privacy *and security* regulations, except for the following provisions:

(a) A notice of insurance information practices described as a notice of privacy practices for protected health information under HIPAA privacy regulations must be delivered annually, as provided for in 33-19-202(1).

(b) To the extent that an insurer collects, discloses, or uses personal information that is not covered under the HIPAA notice of privacy practices, a separate Montana specific notice must be delivered pursuant to the provisions of 33-19-202.

(c) A disclosure authorization remains valid for a period that does not exceed 24 months, as provided for in 33-19-206(2).

(d) The reasons for an adverse underwriting decision must be specified, as provided for in 33-19-303.

(e) Disclosure of underwriting information is required, as provided for in 33-19-308.

(2) The commissioner may adopt rules regarding the exceptions from the exemption provisions described in subsection (1), including additional exceptions that embody substantive provisions of this chapter but would not be preempted by HIPAA privacy regulations.

(3) If a licensee considers itself exempt from a provision of this chapter for the reason provided in subsection (1), the licensee shall give written notice to the commissioner of that exemption and a brief statement describing why the licensee is a HIPAA-covered entity.

(4) A licensee may claim an exemption only for those lines of business that are subject to HIPAA privacy regulations. All other lines of business are subject to this chapter.

(5) A ~~third-party administrator~~ *business associate, as defined in the HIPAA privacy regulations, 45 CFR 160.103*, that is a party to a valid business associate agreement required by HIPAA privacy regulations is exempt from the provisions of this chapter, but only as to the scope of that particular agreement. Any activity of the ~~third-party administrator~~ *business associate* that falls outside of the scope of that agreement is subject to the provisions of this chapter.

(6) The commissioner retains the authority to conduct complete market conduct examinations of the licensee as to the privacy policies and practices that are subject to state privacy laws.

(7) Beginning July 1, ~~2007~~ *2009*:

(a) if a licensee is subject to and in compliance with a federal regulation that is part of the federal health insurance portability and accountability privacy *and security* regulations, 45 CFR, parts 160 and 164, and the federal regulation with which the licensee complies is inconsistent with a provision of this chapter and not less protective of consumer privacy, the licensee is exempt from compliance with the inconsistent provision of this chapter;

(b) if a licensee considers itself exempt from a provision of this chapter for the reason provided in subsection (7)(a), the licensee shall give written notice to the commissioner of that exemption; unless the requirements of this subsection (7) are preempted by HIPAA privacy regulations. The notice must include a statement of the reason for the claimed exemption.”

Section 11. Section 33-20-1303, MCA, is amended to read:

“33-20-1303. License requirements. (1) A person may not act as or purport to be a viatical settlement provider unless licensed as a viatical settlement provider under this part.

(2) (a) Except as provided in subsection (2)(b) and (2)(c), ~~a person~~ *an individual* may not broker, solicit, or negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or otherwise act on behalf of a viator without first having obtained a license as a viatical settlement broker from the commissioner. An applicant for a viatical settlement broker’s license shall:

(i) attend required viatical settlement broker training and pass a viatical settlement broker examination designated by the commissioner by rule; and

(ii) pay a fee for an original viatical settlement broker’s license pursuant to 33-2-708. The fees for license renewal and lapsed license reinstatement for a viatical settlement broker’s license are as provided in 33-2-708.

(b) A resident or nonresident insurance producer must be considered to meet the licensing requirements of a viatical settlement broker and must be permitted to operate as a viatical settlement broker if the insurance producer is licensed as an insurance producer with a life insurance line of authority in this state or in the insurance producer’s home state and has been licensed for at least 1 year. In addition:

(i) not later than 30 days from the first day of operating as a viatical settlement broker, the insurance producer shall notify the commissioner, on a form or in a manner prescribed by the commissioner, that the insurance producer is acting as a viatical settlement broker and shall pay a fee pursuant to 33-2-708(1)(b)(viii). The notification must include an acknowledgment by the insurance producer that the insurance producer will operate as a viatical settlement broker in accordance with this part.

(ii) regardless of the manner in which the insurance producer is compensated, the insurance producer must be considered to represent only the viator and owes a fiduciary duty to the viator to act according to the viator’s instructions and in the best interests of the viator.

(c) If requested by the commissioner, a life insurance producer acting as a viatical settlement broker under this subsection (2) who has previously complied with subsection (2)(b)(i) shall report to the commissioner when renewing a resident or nonresident life insurance producer’s license regarding the life insurance producer’s intent to continue to act as a viatical settlement broker. The statement regarding an intent to continue acting as a viatical settlement broker must be made on the life insurance producer’s license renewal form. ~~A person~~ *An individual* who makes a statement pursuant to this subsection (2)(c) may not be charged an additional fee.

(d) The provisions of subsections (2)(a) and (2)(b) do not prohibit ~~a person~~ *an individual* licensed as an attorney, certified public accountant, or certified financial planner who is accredited by a nationally recognized accreditation agency, who is retained to represent the viator, and whose compensation is not paid directly or indirectly by the viatical settlement provider from negotiating viatical settlement contracts without having to obtain a license as a viatical settlement broker.

(3) Regardless of the manner in which a viatical settlement broker or insurance producer is compensated, the viatical settlement broker or insurance producer must be considered to represent only the viator and the viatical

settlement broker or insurance producer owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator.

(4) (a) ~~In order to~~ To obtain a license to transact business as a viatical settlement provider or as a viatical settlement broker, if required to obtain a viatical settlement broker's license under the provisions of subsection (2)(a), an applicant shall apply for the license in a form approved by the commissioner and shall pay the fee required for the application.

(b) The commissioner may request biographical, organizational, locational, financial, employment, and other information on the application form that the commissioner determines to be relevant to the evaluation of applications and to the granting of the license. The commissioner may require a statement of the business plan or plan of operation of the applicant. The commissioner shall require an applicant for a viatical settlement provider license to file with the application for the commissioner's approval a copy of the viatical settlement contract that the applicant intends to use in business under the license.

(c) If an applicant is a corporation, the corporation must be:

- (i) incorporated or organized under the laws of this state; or
- (ii) a foreign corporation authorized to transact business in this state.

(d) If the applicant is a partnership, the partnership must be organized under the laws of this state.

(5) (a) An individual licensed as a viatical settlement broker must meet the continuing education requirements in 33-17-1203.

(b) The hours of continuing education required under subsection ~~(4)(a)~~ (5)(a) must be in the subjects of life insurance, viaticals, or ethics.

(c) For an individual licensed as a viatical settlement broker, the 24-month period for meeting the continuing education requirements must correlate with the broker's license renewal period.

(d) The viatical settlement broker's license of an individual who fails to comply with this continuing education requirement and who has not been granted an extension of time to comply in accordance with ~~33-17-1203(3)~~ 33-17-1203(2) must be terminated and promptly surrendered to the commissioner."

Section 12. 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~~ *individuals* 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. When the insured is not terminally ill or chronically ill, the commissioner may not establish standards for evaluating the reasonableness of payments, except that a viatical settlement

provider shall pay an amount greater than the greater of the cash surrender value or the accelerated death benefit then available.

(2) shall require a bond 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;

(b) fees that are commensurate with fees charged pursuant to 33-2-708; and

(c) the continuing education program provided for in ~~33-20-1303(4)~~ *33-20-1303(5)*.”

Section 13. Section 33-22-121, MCA, is amended to read:

“33-22-121. Notice required for cancellation or refusal to renew. (1)

An insurer may not cancel or refuse to renew a disability insurance policy *or certificate* until the insurer has mailed or delivered to the named insured and to the policyowner; *or certificate holder, as appropriate* if they are not the same *as the named insured*, at the last-known ~~post office~~ address shown in the records of the company, one written notice in addition to any billing statement, stating the date the cancellation ~~or refusal to renew~~ will become effective, which may not be *less earlier* than:

(a) ~~30 days after the date of mailing or delivery of the notice of cancellation for nonpayment of premiums or a material misrepresentation contained in the application~~ *the beginning of the period for which premiums have not been paid in full if the notice of cancellation for nonpayment of premiums is mailed or delivered within 15 days after the due date of the missed premiums for that period;*

(b) *the date of mailing or delivery of notice of cancellation for nonpayment of premiums if notice of cancellation for nonpayment of premiums is not mailed or delivered within 15 days after the premium due date for the applicable policy period; or*

~~(b)(c)~~ *90 days after the date of mailing or delivery of the notice of cancellation or refusal to renew for any reason other than nonpayment of premiums or a material misrepresentation contained in the application.*

(2) An insurer shall give notice of cancellation at least 30 days in advance of cancellation for nonpayment of premiums or 90 days in advance of cancellation or refusal to renew for any reason other than nonpayment of premiums or a material misrepresentation contained in the application.

(3) An insurer may not cancel a disability insurance policy or a certificate based upon nonpayment of premiums if the premiums are paid in full within the 30-day notice period.

~~(2)(4)~~ *The notice requirements in subsection subsections (1) and (2) run concurrently with any grace period required by 33-22-206.”*

Section 14. 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 must state:

(i) the amount of the premium, installment, or interest due on the policy *or certificate*;

(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:

(i) that, unless the premium or other sums are paid to the company or its insurance producer, the policy or *certificate* will lapse or be forfeited *will be canceled; and*

(ii) the date, determined in accordance with 33-22-121, on which cancellation will become effective.

(2) "Policyowner" or "certificate holder", as used in this section, means the owner of the policy or *certificate* 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~~ If any responsible officer, clerk, or insurance producer of the insurance company authorized to mail the notice *states in an affidavit* that it is the standard practice of the company to mail to policyowners or *certificate holders* the notice required by this section, *the affidavit* is prima facie evidence that the notice has been ~~duly~~ given.

(4) An action may not be maintained to recover under a lapsed or forfeited policy or *certificate* 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~~ *health plans*; or

(b) industrial life or industrial disability policies."

Section 15. Section 33-22-513, MCA, is amended to read:

"33-22-513. Limitation of eligibility on conversion. ~~A person~~ *An individual* who purchases a policy of insurance under 33-22-508 ceases to be eligible for a conversion policy if the ~~person~~ *individual* insured by the policy:

~~(1) becomes eligible for medicare part A and part B, pursuant to Title XVIII of the federal Social Security Act, 42 U.S.C. 1395;~~

~~(2)~~(1) fails to pay the premium on the policy purchased under 33-22-508; or

~~(3)~~(2) enrolls under another major medical disability insurance policy or plan, except that the ~~person~~ *individual* may maintain the conversion policy during any waiting period established under any new disability insurance policy or plan that the insured ~~person~~ *individual* purchases."

Section 16. Section 33-22-1517, MCA, is amended to read:

"33-22-1517. Limitations on eligibility. An individual who purchases a policy of insurance pursuant to 33-22-1516 is no longer eligible for insurance under an association plan or association portability plan and is subject to cancellation of enrollment if the individual:

(1) fails to pay the premium for the policy of insurance purchased pursuant to 33-22-1516;

(2) changes residence from Montana to another state;

(3) exceeds the lifetime maximum benefit provided in the plan; or

(4) enrolls under another disability insurance policy or plan for health service benefits *or because of the individual's age becomes eligible for medicare*

under Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395. However, the individual may maintain enrollment in the association plan or the association portability plan during a waiting period applicable to preexisting conditions under the other policy or plan. If the individual maintains the association plan or the association portability plan during the waiting period, the association plan or the association portability plan may coordinate the benefits with the individual's new policy or plan and the benefits of the association plan or the association portability plan are considered secondary to the benefits available under the individual's new policy or plan."

Section 17. Section 33-22-2001, MCA, is amended to read:

"33-22-2001. Establishment of small business health insurance pool — intent. (1) There is established a ~~nonprofit legal~~ *an* entity known as the small business health insurance pool, with participating membership consisting of all employer members of the purchasing pool.

(2) The small business health insurance pool is created as a voluntary purchasing pool pursuant to the provisions of 33-22-1815 through 33-22-1817.

(3) Subject to the conditions in 53-6-1201, the purchasing pool shall make group health plan coverage available effective January 1, 2006.

(4) It is the intent of the legislature that the board:

(a) establish criteria that will allow the greatest number of employees possible to be eligible for premium assistance payments by not permitting eligibility for premium assistance payments under this part to employees who continue ~~{to maintain enrollment in another}~~ *other* comprehensive health insurance coverage through a spouse, parent, or other person; and

(b) allow eligible small employers to determine the length of the waiting period that will apply to their employees as long as the waiting period:

(i) is not more than 12 months; and

(ii) applies to all ~~eligible~~ employees within that small group in the same manner.

(5) The legislative auditor shall conduct or have conducted, at least once each biennium covering the prior 2 fiscal years, a financial compliance audit of the board and the purchasing pool. The cost of the audit must be paid for by the purchasing pool as a direct cost not subject to the cap on administrative expenses."

Section 18. Section 33-22-2002, MCA, is amended to read:

"33-22-2002. Small business health insurance pool — definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of directors of the small business health insurance pool as provided for in 33-22-2003.

(2) "Dependent" has the meaning provided in 33-22-1803.

~~(3) "Eligible employee" has the meaning provided in 33-22-1803.~~

~~(4)~~(3) (a) "Eligible small employer" means an employer who is sponsoring or will sponsor a group health plan and who employed at least two but not more than nine employees during the preceding calendar year and who employs at least two but not more than nine employees on the first day of the plan year.

(b) The term includes small employers who obtain group health plan coverage through a qualified association health plan.

(4) “Employee” means an eligible employee as defined in 33-22-1803.

(5) “Group health plan” has the meaning provided in 33-22-140.

(6) “Premium” means the amount of money that a health insurance issuer charges to provide coverage under a group health plan.

(7) “Premium assistance payment” means a payment provided for in 33-22-2006 on behalf of eligible employees who qualify to be applied on a monthly basis to premiums paid for group health plan coverage through the purchasing pool or through qualified association health plans.

(8) “Premium incentive payment” means a payment provided for in 33-22-2007(1)(b) to eligible small employers who qualify under 33-22-2007 to be applied to premiums paid on a monthly basis for group health plan coverage obtained through the purchasing pool or through qualified association health plans.

(9) “Purchasing pool” means the small business health insurance pool.

(10) “Qualified association health plan” means a plan established by an association whose members consist of employers who sponsor group health plans for their employees and purchase that coverage through an association that qualifies as a bona fide association, as defined in 33-22-1803, or nonbona fide, as provided for in administrative rule. A qualified association health plan is subject to applicable employer group health insurance law and must receive approval from the commissioner to operate as a qualified association health plan for the purposes of this part.

(11) “Related employers” means persons having a relationship as described in section 267 of the Internal Revenue Code, 26 U.S.C. 267.

(12) “Tax credit” means a refundable tax credit as provided for in 33-22-2008.

(13) “Tax year” means the taxpayer’s tax year for federal income tax purposes.”

Section 19. Section 33-22-2004, MCA, is amended to read:

“33-22-2004. Powers and duties of board. (1) The board shall:

(a) establish an operating plan that includes but is not limited to administrative and accounting procedures for the operation of the purchasing pool and a schedule for premium incentive and premium assistance payments and that complies with the powers and duties provided for in this section;

(b) require employers and employees to reapply for premium incentive payments or premium assistance payments on an annual basis;

(c) upon reapplication, give priority to employers and their employees who are already receiving the premium incentive payments and premium assistance payments;

(d) upon reapplication, allow employers to retain eligibility to receive premium incentive payments and premium assistance payments on behalf of their eligible employees if the number of their employees goes over the maximum number, not to exceed nine employees, established by the commissioner in administrative rule;

(e) renew purchasing pool group health plan coverage for all employer groups, even if the employer group no longer receives or is eligible for a premium incentive payment;

(f) adopt a premium incentive payment amount that is the same for all registered eligible small employers who join the purchasing pool or obtain qualified association health plan coverage;

(g) adopt premium assistance payment amounts that, in combination with the premium incentive payments, are consistent with the amounts provided for in 33-22-2006 and 33-22-2008 or with the assistance of the department of public health and human services, adopt a premium assistance payment schedule that is equitably proportional to the income or wage level for eligible employees;

(h) establish criteria for determining which employees will be eligible for a premium assistance payment and the amount that the employees will receive from among those eligible small employer groups that have registered with the commissioner pursuant to 33-22-2008 and applied for coverage under the purchasing pool group health plan or qualified association health plan. However, to the extent that federal funds are used to make some premium assistance payments, criteria for those payments must be consistent with any waiver requirements determined by the department of public health and human services pursuant to 53-2-216. Eligibility for employees is not limited to the waiver eligibility groups.

(i) make appropriate changes to eligibility or other elements in the operating plan as needed to reach the goal of expending 90% of the funding dedicated to premium incentive payments and premium assistance payments during the current biennium;

(j) limit the total amount of premium incentive payments and premium assistance payments paid to the amount of available state, federal, and private funding;

(k) approve no more than six fully insured group health plans with different benefit levels that will be offered to employers participating in the purchasing pool;

(l) prepare appropriate specifications and bid forms and solicit bids from health insurance issuers authorized to do business in this state;

(m) contract with no more than three health insurance issuers to underwrite the group health plans that will be offered through the purchasing pool;

(n) request that the department of public health and human services seek a federal waiver for medicaid matching funds for premium assistance payments based on the department's analysis, as provided in 53-2-216, if it is in the best interests of the purchasing pool;

(o) comply with the participation requirements provided for in 33-22-1811;

(p) meet at least four times annually; and

(q) within 2 years after the purchasing pool is established and considered stable by the board, examine the possibility of offering an opportunity for individual sole proprietors without employees to purchase insurance from the purchasing pool without premium incentive payments, premium assistance payments, or tax credits.

(2) The board may:

(a) borrow money;

(b) enter into contracts with insurers, administrators, or other persons;

(c) hire employees to perform the administrative tasks of the purchasing pool;

(d) assess its members for costs associated with administration of the purchasing pool and request that the commissioner transfer funds or request that the department of public health and human services transfer funds from the special revenue account, as provided in 53-6-1201, for that purpose;

(e) set contribution levels for employers;

(f) request that funds be transferred from the funds appropriated for premium incentive payments and premium assistance payments to the general fund to offset tax credits if the number of eligible small employers seeking premium incentive payments and employees receiving premium assistance payments is insufficient to exhaust at least 90% of the appropriated funds for the premium incentive and assistance payments during a biennium;

(g) seek other federal, state, and private funding sources;

(h) accept all small employer groups who apply for coverage under the small business health insurance pool group health plan even if they are not eligible for any tax credit or premium incentive payment and have not been registered by the commissioner pursuant to 33-22-2008;

(i) receive from the commissioner's office or the department of public health and human services premium incentive payments on behalf of eligible small employers and premium assistance payments on behalf of eligible employees, collect the employer or employee premiums from the employer or employees, and make premium payments to insurers on behalf of the eligible small employers and employees;

(j) request the commissioner to direct more than 30% of the available funding for premium incentives and premium assistance payments to qualified association health plan coverage instead of purchasing pool coverage; and

(k) pay appropriate commissions to licensed insurance producers who market purchasing pool coverage."

Section 20. Section 33-25-212, MCA, is amended to read:

"33-25-212. Rates filed with commissioner. (1) ~~Every~~ A title insurer shall file with the commissioner a complete schedule of rates to be charged by it for title insurance as to property located in this state. The rates ~~shall~~ *must* be all-inclusive of the total charge for ~~such~~ insurance as specified in the policy and ~~shall~~ *must* be accompanied by supporting data.

(2) ~~No such~~ A rate ~~shall~~ *may not* be excessive, inadequate, or unreasonably discriminatory.

(3) ~~No~~ A title insurer ~~shall~~ *may not* quote or charge any rate for ~~such~~ title insurance other than the applicable rate previously filed by it with the commissioner."

Section 21. Section 33-25-214, MCA, is amended to read:

"33-25-214. Underwriting standards — record retention. (1) A title insurer may not issue a title insurance policy unless it, its title insurance producer, or an approved attorney has conducted a reasonable search and examination of the title and made a determination of insurability of title in accordance with sound underwriting practices. The title insurer or title insurance producer shall preserve and retain in its files evidence of the examination of title and determination of insurability. The title insurer or title insurance producer may keep original evidence or may establish in the regular course of business a system of recording, copying, or reproducing evidence by

any process that accurately and legibly reproduces, or forms a durable medium for reproducing, the contents of the original.

(2) Subsection (1) does not apply to:

(a) a title insurer assuming liability through a contract of reinsurance; or

(b) a title insurer acting as coinsurer if one of the other coinsuring title insurers has complied with subsection (1).

(3) Except as allowed by rules adopted by the commissioner, a title insurer or title insurance producer may not knowingly issue an owner's *any* title insurance *policy product* or commitment to insure unless all outstanding enforceable recorded liens or other interests against the property title to be insured are shown.

(4) An insurer issuing a policy in violation of this section is estopped, as a matter of law, to deny the validity of the policy as to any claim or demand of the insured arising under the policy."

Section 22. Section 33-30-1015, MCA, is amended to read:

"33-30-1015. Limitation of eligibility on conversion. A person who purchases a policy of insurance under 33-30-1007 ceases to be eligible for a conversion policy if the person insured by the policy:

~~(1) becomes eligible for medicare part A and part B, pursuant to Title XVIII of the federal Social Security Act, 42 U.S.C. 1395;~~

~~(2)(1) fails to pay the premium on the policy purchased under 33-30-1007; or~~

~~(3)(2) enrolls under another major medical disability insurance policy or plan, except that the person may maintain the conversion policy during any waiting period established under any new disability insurance policy or plan that the insured person purchases."~~

Section 23. Section 33-31-111, MCA, is amended to read:

"33-31-111. (Temporary) 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 33-22-262; or

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

(7) Except as provided in 33-22-262, Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-422, 33-3-431, 33-15-308, *Title 33, chapter 17*, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-141, 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. (Terminates June 30, 2009—sec. 14, Ch. 325, L. 2003.)

33-31-111. (Effective July 1, 2009) 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) Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-422, 33-3-431, 33-15-308, *Title 33, chapter 17*, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-141, 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 24. Section 33-31-311, MCA, is amended to read:

“33-31-311. Insurance producer license required —~~application, issuance, renewal, fees~~—~~penalty.~~ (1) An individual, partnership, or corporation may not act as or represent to the public that the individual, partnership, or corporation is an insurance producer ~~of~~ *for* a health maintenance organization unless the individual, partnership, or corporation is:

(a)(1) licensed as a disability insurance producer by the commissioner pursuant to *Title 33, chapter 17, parts 1, 2, and 4, and 10 through 12, of this title* or licensed as an insurance producer as provided in 33-30-311; and

(b)(2) appointed or authorized by the health maintenance organization *or other health insurance issuer* to *sell, solicit, or negotiate* health care service agreements on its behalf.

~~(2) Application, appointment, and qualification for a health maintenance organization insurance producer license, fees applicable to and the issuance of a health maintenance organization insurance producer license, and renewal of a health maintenance organization insurance producer license must be in accordance with the provisions of chapter 17 that apply to a disability insurance producer.~~

~~(3) An individual, partnership, or corporation that holds a disability insurance producer license on October 1, 1987, need not requalify by an examination to be licensed as a health maintenance organization insurance producer.~~

~~(4) The commissioner may, in accordance with 33-1-317, 33-17-411, and chapter 17, part 10, suspend, revoke, refuse to issue or renew a health maintenance organization insurance producer license or impose a fine upon the licensee.”~~

Section 25. Section 33-35-103, MCA, is amended to read:

“33-35-103. Definitions. As used in this chapter, unless a ~~contrary intent~~ appears *the context requires otherwise*, the following definitions apply:

(1) “Allowable benefit” means a benefit relating to medical, surgical, or hospital care in the event of sickness, accident, disability, or any combination of sickness, accident, or disability.

(2) (a) “Bona fide association” means an association of employers that has been in existence for a period of not less than 5 years prior to sponsoring a self-funded multiple employer welfare arrangement, during which time the association has engaged in substantial activities relating to the common interests of member employers, and that continues to engage in substantial activities in addition to sponsoring an arrangement.

(b) Notwithstanding subsection (2)(a), an association that was formed and began sponsoring an arrangement prior to October 1, 1995, is not subject to the requirement that the association be in existence for 5 years prior to sponsoring an arrangement.

(3) “Claims liability” means the total of all incurred and unpaid claims for allowable benefits under a self-funded multiple employer welfare arrangement that are not reimbursed or reimbursable by excess of loss insurance, subrogation, or other sources.

(4) (a) “Multiple employer welfare arrangement” means a multiple employer welfare arrangement as defined by 29 U.S.C. 1002.

(b) The term does not include an arrangement, plan, program, or interlocal agreement of or between political subdivisions of this state, including school districts, as provided in 33-1-102.

(5) “Reserves” means the excess of the assets of a self-funded multiple employer welfare arrangement minus the liabilities of the arrangement. The liabilities of a self-funded multiple employer welfare arrangement include the claims liability of the arrangement.

(6) “Self-funded multiple employer welfare arrangement” or “arrangement” means a multiple employer welfare arrangement that does not provide for payment of benefits under the arrangement solely through a policy or policies of insurance issued by one or more insurance companies licensed *with a certificate of authority* under this title.”

Section 26. Section 33-35-306, MCA, is amended to read:

“33-35-306. Application of insurance code to arrangements. (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions:

(a) 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;

(f) 33-22-107, 33-22-131, 33-22-134, and 33-22-135, 33-22-141, and 33-22-142; and

(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 27. Section 33-38-105, MCA, is amended to read:

“33-38-105. Sale of medical care discount card by unregistered supplier prohibited — requirements for registration — list of authorized enrollers required — exceptions. (1) A medical care discount card supplier may not market, promote, sell, or distribute a medical care discount card in this state unless the supplier holds a certificate of registration as a supplier issued by the commissioner.

(2) An application to the commissioner for a certificate of registration must be accompanied by a nonrefundable application fee of \$100. The commissioner shall issue the certificate unless the commissioner determines that the medical care discount card supplier or an officer or manager is not financially responsible, does not have adequate expertise or experience to operate a medical

care discount card business, or is not of good character or that the supplier or its affiliates or a business formerly owned or managed by the supplier or an officer or manager of the supplier has had a previous application for a certificate of registration denied, revoked, suspended, or terminated for cause or is under investigation for or has been found in violation of a statute or regulation in ~~another~~ *any* jurisdiction within the previous 5 years.

(3) A medical care discount card supplier shall renew its certificate of registration annually *by December 31*. The certificate is renewed upon payment by the supplier of a nonrefundable renewal fee of \$100 and expires on the anniversary of its issuance if the renewal fee is not paid before that date. Once issued or renewed, the certificate continues in effect for 1 year unless suspended, revoked, or terminated. The commissioner shall deposit the fees required by this section with the state treasurer, to be credited to the general fund.

(4) A certificate of registration may be suspended or revoked if, after notice and hearing, the commissioner finds that the medical care discount card supplier has violated a provision of this part, that the supplier is not financially responsible or competent, or that the supplier or an affiliate or business formerly owned or managed by the supplier has had a certificate of registration denied or suspended for cause or has been found in violation of a statute or regulation in another jurisdiction.

(5) A medical care discount card supplier that violates the provisions of subsection (1) is subject to a civil penalty of not less than \$5,000 or more than \$25,000 for each violation. Each day of violation is considered to be a separate violation.

(6) A medical care discount card supplier that is a health insurance issuer is not required to obtain a certificate of registration in accordance with this section, except that affiliates, as defined in 33-2-1101, that are selling medical care discount cards in Montana shall obtain a certificate of registration.

(7) An administrator that is authorized to do business in this state and that provides medical care discount cards to Montana residents who are members of self-funded group health plans administered by that administrator is not required to obtain a certificate of registration pursuant to this section.

~~(8) A person acting as a medical care discount card supplier on October 1, 2005, shall file a certificate of registration and a list of its authorized enrollers with the commissioner by that date. A person commencing business as a *medical care discount card* supplier after October 1, 2005, shall file a certificate of registration and its list of authorized enrollers with the commissioner at least 30 days before commencing business as a supplier. After the initial filing of a list of its enrollers with the commissioner, a supplier shall file an updated list annually *by December 31*.~~

(9) This section does not excuse a medical care discount card supplier that is also an insurer from full compliance with the Montana Insurance Code.”

Section 28. Section 50-4-703, MCA, is amended to read:

“50-4-703. Rulemaking authority. The commissioner and the attorney general shall *may* adopt rules to carry out this part, including rules that:

(1) specify the form and content of the written notice, required documents, and supplemental information;

(2) develop procedures under which proprietary business information and trade secrets are protected from public disclosure for the purposes of 50-4-708 to the extent allowed by law; and

(3) establish hearing and appeal procedures.”

Section 29. Repealer. Sections 33-17-506 and 33-17-507, MCA, are repealed.

Section 30. Effective date. [This act] is effective on passage and approval.

Section 31. Retroactive applicability. (1) [Section 18] applies retroactively, within the meaning of 1-2-109, to notices of registration issued on or after July 1, 2005.

(2) For purposes of receiving a tax credit, [this act] and Chapter 595, Laws of 2005, apply retroactively, within the meaning of 1-2-109, to eligible premiums paid after December 31, 2005, by eligible small employers registered under 33-22-208.

Approved May 3, 2007

CHAPTER NO. 400

[SB 158]

AN ACT ALLOWING THE DEPARTMENT OF TRANSPORTATION TO ENTER INTO AGREEMENTS WITH AGENCIES OF OTHER STATES TO ALLOW RECIPROCAL REGISTRATION OF INTRASTATE AND INTERSTATE MOTOR CARRIERS, PRIVATE MOTOR CARRIERS, AND FREIGHT FORWARDER AND BROKER INDUSTRIES; SPECIFYING USE OF CERTAIN FEES IMPOSED ON MOTOR CARRIERS; AND AMENDING SECTION 61-3-708, MCA.

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

Section 1. Section 61-3-708, MCA, is amended to read:

“61-3-708. Cooperative or reciprocal registration — filing of insurance — fee. (1) The department may enter into written agreements with agencies of other states to allow for the cooperative or reciprocal state registration of *intrastate*, interstate, or international motor carriers, *private motor carriers*, and *freight forwarder and broker industries* and may authorize the agency of a participating state to:

- (a) issue interstate motor carrier registrations, stamps, and permits;
- (b) accept filings of insurance, financial responsibility, and orders;
- (c) collect and disburse fees;
- (d) share and exchange information for audit, reporting, and enforcement purposes; and
- (e) perform any other function that the department determines is justified to facilitate the cooperative or reciprocal registration.

(2) (a) The department may impose a fee set by rule on ~~an interstate or international motor carrier for the administration of a motor carrier or freight forwarder or broker industry registered under an agreement entered into as provided in this section.~~ The fee must be paid on each motor vehicle, trailer, semitrailer, or pole trailer operated by the motor carrier on the public highways

of this state. At the time of initial registration and in each succeeding year at a time set by the department, the motor carrier shall pay the fee to the department.

(b) The department shall remit the fee to the state treasurer for deposit in the ~~general fund~~ *state special revenue fund for use by the department for motor carrier safety assistance.*"

Approved May 3, 2007

CHAPTER NO. 401

[SB 162]

AN ACT REVISING THE MONTANA GENETICS PROGRAM TO EXPAND THE GENETIC AND METABOLIC CONDITIONS FOR WHICH NEWBORNS ARE SCREENED AND TO ALLOW THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CONTRACT FOR FOLLOWUP SERVICES; AND AMENDING SECTIONS 50-19-203 AND 50-19-211, MCA.

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

Section 1. Section 50-19-203, MCA, is amended to read:

"50-19-203. ~~Metabolic tests~~ *Newborn screening and followup for metabolic and genetic disorders.* (1) A person in charge of a facility ~~wherein~~ *in which* a child is born or ~~wherein a facility in which~~ *a facility in which* a newborn infant is cared ~~for is provided care~~ or a person responsible for the registration of the birth of an ~~infant a newborn~~ shall ensure *that* each ~~infant newborn~~ is administered tests designed to detect inborn metabolic ~~errors and genetic disorders~~ as ~~shall be~~ required ~~to be administered~~ under rules adopted by the department.

(2) The tests ~~shall~~ *must* be done by an approved laboratory. An approved laboratory ~~shall~~ *must* be the laboratory of the department or a laboratory approved by the department.

(3) *The department shall contract with one or more providers qualified to provide followup services, including counseling and education, for children and parents of children identified with metabolic or genetic disorders to ensure the availability of followup services."*

Section 2. Section 50-19-211, MCA, is amended to read:

"50-19-211. ~~Statewide genetics program established.~~ (1) A combined, comprehensive statewide genetics program is established in the department to ~~offer testing, counseling, and education to parents and prospective parents. The program includes but is not limited to the following services~~ *ensure the availability of services that include but are not limited to:*

(a) ~~followup programs for newborn testing, with emphasis on the counseling and education of women at risk for maternal phenylketonuria;~~

(b) ~~(a) comprehensive clinical and self-supporting laboratory genetic services, including but not limited to cytogenetics, DNA, and special chemistry, to all areas of the state and all segments of the population;~~

(c) ~~(b) development of counseling and testing programs for the diagnosis and management of genetic conditions and metabolic disorders; and~~

(d) ~~(c) development and expansion of educational programs for physicians, allied health professionals, and the public with respect to:~~

- (i) the nature of genetic processes;
- (ii) the inheritance patterns of genetic conditions; and
- (iii) the means, methods, and facilities available to diagnose, counsel, and treat genetic conditions ~~and metabolic disorders~~.

(2) When the department contracts for genetics services under this section, it shall preferably contract with a single entity that is able to provide the combined, comprehensive program. The department and the contractor shall administer the contract in the most cost-effective means practicable.”

Approved May 3, 2007

CHAPTER NO. 402

[SB 172]

AN ACT REVISING THE LOBBYING LAWS TO CLARIFY THE APPLICATION OF THE LAWS TO THE LEGISLATURE AND LEGISLATORS; AND AMENDING SECTIONS 5-7-102 AND 5-7-209, MCA.

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

Section 1. Section 5-7-102, MCA, is amended to read:

“5-7-102. Definitions. The following definitions apply in this chapter:

- (1) “Appointed state official” means an individual who is appointed:
 - (a) to public office in state government by the governor or the chief justice of the Montana supreme court and who is subject to confirmation by the Montana senate;
 - (b) by the board of regents of higher education to serve either as the commissioner of higher education or as the chief executive officer of a campus of the Montana university system; or
 - (c) by the board of trustees of a community college to serve as president.
- (2) “Business” means:
 - (a) a holding or interest whose fair market value is greater than \$1,000 in a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, self-employed person, holding company, joint-stock company, receivership, trust, or other entity or property held in anticipation of profit, but does not include nonprofit organizations; and
 - (b) present or past employment from which benefits, including retirement allowances, are received.
- (3) “Commissioner” means the commissioner of political practices.
- (4) “Docket” means the register of lobbyists and principals maintained by the commissioner pursuant to 5-7-201.
- (5) “Elected federal official” means a person elected to a federal office, including but not limited to a member of the United States senate or house of representatives. The term includes an individual appointed to fill the unexpired term of an elected federal official and an individual who has been elected to a federal office but who has not yet been sworn in.
- (6) “Elected local official” means an elected officer of a county, a consolidated government, an incorporated city or town, a school district, or a special district.

The term includes an individual appointed to fill the unexpired term of an elected local official and an individual who has been elected to a local office but who has not yet been sworn in.

(7) (a) “Elected state official” means an individual holding a state office filled by a statewide vote of all the electors of Montana or a state district office, including but not limited to public service commissioners and district court judges ~~but not including legislators for the purposes of this chapter~~. The term includes an individual appointed to fill the unexpired term of an elected state official and an individual who has been elected to a statewide office but who has not yet been sworn in.

(b) *The term does not include a legislator.*

(8) “Elected tribal official” means an elected member of a tribal council or other elected office filled by a vote of tribal members. The term includes an individual appointed to fill the unexpired term of an elected tribal official and an individual who has been elected to a tribal office but who has not yet been sworn in.

(9) “Individual” means a human being.

(10) “Legislator” means an individual holding public office as a representative or a senator in the Montana legislature. The term includes an individual who has been elected to the legislature but who has not yet been sworn in.

(11) (a) “Lobbying” means:

(i) the practice of promoting or opposing the introduction or enactment of legislation before the legislature ~~or the members of the legislature~~ *legislators*; and

(ii) the practice of promoting or opposing official action ~~by~~ *of* any public official ~~or the legislature~~.

(b) The term does not include actions described in subsections (11)(a)(i) and (11)(a)(ii) when performed by ~~a legislator~~, a public official, an elected local official, an elected federal official, or an elected tribal official while acting in an official governmental capacity.

(12) (a) “Lobbyist” means a person who engages in the practice of lobbying.

(b) Lobbyist does not include:

(i) an individual acting solely on the individual’s own behalf;

(ii) an individual working for the same principal as a licensed lobbyist if the individual does not have personal contact involving lobbying with a public official ~~or the legislature~~ on behalf of the lobbyist’s principal; or

(iii) an individual who receives payments from one or more persons that total less than the amount specified under 5-7-112 in a calendar year.

(c) Nothing in this chapter deprives an individual who is not a lobbyist of the constitutional right to communicate with public officials ~~or the legislature~~.

(13) (a) “Payment” means distribution, transfer, loan, advance, deposit, gift, or other rendering made or to be made of money, property, or anything of value:

(i) to a lobbyist to influence legislation or official action by an elected local official, ~~or a public official, or the legislature~~;

(ii) directly or indirectly to a lobbyist by a principal, such as salary, fee, compensation, or reimbursement for lobbying expenses; or

(iii) in support of or for assistance to a lobbyist or a lobbying activity, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist.

(b) The term does not include payments or reimbursements for:

(i) personal and necessary living expenses; or

(ii) travel expenses, unless a principal is otherwise required to report expenses pursuant to 5-7-208.

(14) "Person" means an individual, corporation, association, firm, partnership, state or local government or subdivision of state or local government, or other organization or group of persons.

(15) "Principal" means a person who employs a lobbyist or a person required to report pursuant to 5-7-208.

(16) (a) "Public official" means an elected state official or an appointed state official acting in an official capacity for state government *or a legislator*.

(b) The term does not include those acting in a judicial or quasi-judicial capacity or performing ministerial acts.

(17) "Unprofessional conduct" means:

(a) violating any of the provisions of this chapter;

(b) instigating action by a public official *or the legislature* for the purpose of obtaining employment;

(c) attempting to influence the action of a public official *or the legislature* on a measure pending or to be proposed by:

(i) promising financial support; or

(ii) making public any unsubstantiated charges of improper conduct on the part of a lobbyist, a principal, or a legislator; or

(d) attempting to knowingly deceive a public official *or the legislature* with regard to the pertinent facts of an official matter or attempting to knowingly misrepresent pertinent facts of an official matter to a public official *or the legislature*."

Section 2. Section 5-7-209, MCA, is amended to read:

"5-7-209. Payments prohibited unless reported — penalty for late filing, failure to report, or false statement. A principal may not make payments to influence official action by any public official *or the legislature* unless that principal files the reports required under this chapter. A principal who fails to file a required report within the time required by this chapter is subject to the penalties provided in 5-7-305 and 5-7-306(1). A principal who knowingly files a false, erroneous, or incomplete statement commits the offense of unsworn falsification to authorities."

Approved May 3, 2007

CHAPTER NO. 403

[SB 184]

AN ACT REVISING THE LAW GOVERNING CONSTRUCTION PROJECTS BY THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION; CLARIFYING PROJECTS THAT DO NOT NEED

ARCHITECTURAL AND ENGINEERING REVIEW; INCREASING THE AMOUNT OF CONSTRUCTION PROJECTS THAT DO NOT REQUIRE LEGISLATIVE CONSENT; AMENDING SECTIONS 18-2-102 AND 22-3-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 18-2-102, MCA, is amended to read:

“18-2-102. Authority to construct buildings. (1) Except as provided in 22-3-1003 and subsection (2) of this section, a building costing more than \$150,000 may not be constructed without the consent of the legislature. Legislative approval of repair and maintenance costs as part of an agency’s operating budget constitutes the legislature’s consent. When a building costing more than \$150,000 is to be financed in a manner that does not require legislative appropriation of money, the consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building and is authorized to transfer funds and authority as necessary to accomplish the project. Transfers may not be made from the funds for an uncompleted capital project unless the project is under the supervision of the same agency.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in 20-25-302 if they are to be financed wholly from the revenue from the facility.

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money if the construction of the building will not result in any new programs.

(d) The department of military affairs, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money on federal land for the use or benefit of the state.”

Section 2. 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) The provisions of Title 18 may not be construed as prohibiting contracts under this section 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 *or projects at historic sites unless stated in specific state appropriations for construction permitted under the commission’s jurisdiction.*

(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~~ *\$300,000* 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. *Funding for these projects must pass through directly to the commission.*

(b) The commission may contract for the preservation, stabilization, or maintenance of existing structures or buildings for an amount that exceeds ~~\$200,000~~ *\$300,000* 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 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.

(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;
- (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) 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) 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 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) 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 3. Effective date. [This act] is effective on passage and approval.

Approved May 3, 2007

CHAPTER NO. 404

[SB 192]

AN ACT CREATING THE OFFENSE OF CRIMINAL INVASION OF PERSONAL PRIVACY.

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

Section 1. Criminal invasion of personal privacy. (1) Except as provided in subsection (2), a person commits the offense of invasion of personal privacy if the person knowingly or purposely obtains or attempts to obtain personal or confidential information about an individual while posing as the individual. A person convicted under this section shall be incarcerated for a term not to exceed 1 year or fined an amount not to exceed \$10,000, or both.

(2) Subsection (1) does not apply to a person who poses as another individual with the express consent of that other individual.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, and the provisions of Title 45 apply to [section 1].

Approved May 3, 2007

CHAPTER NO. 405

[SB 209]

AN ACT TRANSFERRING REGISTRATION AND OVERSIGHT OF PROCESS SERVERS AND LEVYING OFFICERS FROM THE CLERKS OF DISTRICT COURT TO THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; PROVIDING FOR A PROCESS SERVER TO BE ON THE BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS; REQUIRING REGISTRATION OF PROCESS SERVERS WITH EXCEPTIONS; AMENDING SECTIONS 2-15-1781, 25-1-1101, 25-1-1104, 25-1-1107, 25-1-1111, 25-1-1112, 25-3-105, 25-3-201, 25-3-203, 25-3-204, 25-3-302, 37-60-101, 37-60-103, 37-60-105, 37-60-202, 37-60-301, 37-60-303, 37-60-304, AND 37-60-405, MCA; REPEALING SECTIONS 25-1-1103, 25-1-1105, AND 25-1-1106, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 2-15-1781, MCA, is amended to read:

“2-15-1781. Board of private security patrol officers and investigators. (1) There is a board of private security patrol officers and investigators.

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

- (a) one contract security company, as defined by 37-60-101;
 - (b) one proprietary security organization, as defined by 37-60-101;
 - (c) one city police department;
 - (d) one county sheriff's office;
 - (e) one member of the public;
 - (f) one member of the peace officers' standards and training advisory council; and
 - (g) a licensed private investigator or a registered process server.
- (3) Members of the board must be at least 25 years of age and have been residents of this state for more than 5 years.

(4) The appointed members of the board shall serve for a term of 3 years. The terms of board members must be staggered.

(5) The governor may remove a member for misconduct, incompetency, neglect of duty, or unprofessional or dishonorable conduct.

(6) A vacancy on the board must be filled in the same manner as the original appointment and may only be for the unexpired portion of the term.

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

Section 2. Section 25-1-1101, MCA, is amended to read:

“25-1-1101. Registered process server — levying officer — use of title reserved. (1) ~~Any~~ *Except as provided in subsection (2), a person who makes more than 10 services of process, as defined in 25-3-101, within this state during 1 calendar year shall file a verified certificate of registration as a process server with the clerk of the district court of the county in which the person resides or in which the person’s principal place of business is located. A registered process server may make service of process in any county in this state must be registered under Title 37, chapter 60. A process server who holds a valid certificate of registration from a clerk of court in this state as of July 1, 2007, shall present the registration certificate to the board, and the board shall exchange that registration certificate for a new certificate that expires on March 31, 2009.*

(2) This part does not apply to:

(a) a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of employment; or

(b) a licensed attorney.

(3) A registered process server may act as a levying officer under Title 25, chapter 13.

(4) *A registered process server may make service of process in any county in this state.*

(5) *A person may not use the title of process server unless the person is registered as a process server under Title 37, chapter 60.”*

Section 3. Section 25-1-1104, MCA, is amended to read:

“25-1-1104. Handbook for process servers. (1) The department of labor and industry shall publish a handbook for process servers and levying officers.

(2) ~~Each person who applies to the clerk of the district court of any county for registration as a process server shall demonstrate that the person has passed The board of private security patrol officers and investigators, established in 2-15-1781, shall develop and administer an examination for applicants for registration as a process server based on the handbook and administered by the board of private security patrol officers and investigators provided for in 2-15-1781.~~

(3) The department of labor and industry may charge a reasonable examination fee to cover the costs of publishing the handbook and administering the examination provided for in this section.”

Section 4. Section 25-1-1107, MCA, is amended to read:

“25-1-1107. Proof of service — requirements. A proof of service of process signed by a registered process server must ~~indicate the county in which~~

he is registered and the *include the process server's registration number assigned to him under 25-1-1105.*"

Section 5. Section 25-1-1111, MCA, is amended to read:

"25-1-1111. Bond required — levy limited. (1) ~~The clerk of the district court may not accept a certificate of registration as a~~ *After completing the requirements in Title 37, chapter 60, for registration, a process server unless the certificate is accompanied by shall provide the board of private security patrol officers and investigators with proof of a surety bond of \$10,000 per for an individual or \$100,000 per for a firm, conditioned upon compliance with this part and, all laws governing service of process in this state, and the requirements of Title 37, chapter 60. A clerk of court holding a surety bond for a process server under this section as of June 30, 2007, shall transfer the original bond and any supporting documentation to the board on July 1, 2007.*

(2) *A levying officer may not levy on a judgment that exceeds the value of the bond."*

Section 6. Section 25-1-1112, MCA, is amended to read:

"25-1-1112. Action on bond. (1) Any person who recovers damages for an injury caused by a service of process, made by a registered process server, that did not comply with the law governing service of process in this state may recover the amount of damages from the bond required under 25-1-1111.

(2) ~~If there has been recovery against a registered process server's bond, the registrant must registered process server shall file a new bond within 30 days or reinstate the bond. If the bond has not been reinstated or filed within 30 days, the county attorney board of private security patrol officers and investigators must shall revoke the registrant's certificate process server's registration within a timeframe established by rule."~~

Section 7. Section 25-3-105, MCA, is amended to read:

"25-3-105. Person serving process — penalty for obstruction — exception. (1) ~~A process server registered under chapter 1, part 11 Title 37, chapter 60, a licensed attorney, or a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of the person's employment while serving process is a public servant for the purpose of determining the offense of obstructing a public servant as provided in 45-7-302.~~

(2) *A person who obstructs a person serving process is guilty of obstruction of a public servant and is punishable as provided in 45-7-302.*

(3) *An unregistered person who serves 10 or fewer services of process in a calendar year, as provided in 25-1-1101(1), is not acting as a public servant."*

Section 8. Section 25-3-201, MCA, is amended to read:

"25-3-201. Delivery of papers to officer. (1) ~~(a) It is the duty of the clerk of any district court, at the request of a party in any civil action pending in such a district court or his the party's agent or attorney, to forward by mail any process, summons, or other papers required in the cause; and it.~~

(b) *It is the duty of the sheriff, registered process server, or other officer to whom said the process, summons, or papers described in subsection (1)(a) may be directed to receive the same process, summons, or papers at the place where the same the documents are directed. When process in one county is intended for service in another, it is the duty of the clerk to forward the same in like manner.*

(2) If the papers are delivered for service away from the county seat, all necessary copies thereof must be furnished for service.

(3) If ~~any~~ a sheriff, registered process server, or other officer refuses to receive ~~any~~ a summons or other process at the point where ~~it was directed to him~~ or ~~refuses~~ to serve the ~~same summons or process~~, ~~he~~ *the sheriff, registered process server, or other officer* is guilty of a misdemeanor and upon conviction thereof ~~must shall~~ be fined ~~in any~~ a sum not exceeding \$100.”

Section 9. Section 25-3-203, MCA, is amended to read:

“25-3-203. Prepayment of cost of service. ~~In no case shall the~~ *An officer or registered process server receiving papers for service may not* be required to serve ~~the same papers for service~~ unless the person ~~in on~~ whose behalf the service is made or ~~his that person’s~~ agent or attorney first ~~pay~~ *pays* the cost of the service upon a demand ~~therefor~~ by the officer or registered process server.”

Section 10. Section 25-3-204, MCA, is amended to read:

“25-3-204. Officer to exhibit process. The officer or registered process server executing ~~such a service of process~~ ~~must shall~~ *display the service of process, all attached papers, and an identification card upon request by an interested party; then and at all times subsequent so long as he retains it, upon request, show the same with all papers attached to any person interested therein at any time during execution of the service of process.*”

Section 11. Section 25-3-302, MCA, is amended to read:

“25-3-302. Return prima facie evidence. The return of the sheriff or registered process server upon process or notices is prima facie evidence of the ~~facts in such return stated~~ *proof of the process or notices having been served as stated.*”

Section 12. Section 37-60-101, MCA, is amended to read:

“37-60-101. Definitions. As used in this chapter, the following definitions apply:

(1) “Alarm response runner” means any individual employed by a contract security company or a proprietary security organization to respond to security alarm system signals.

(2) “Armed carrier service” means any person who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

(3) “Armed private investigator” means a private investigator who at any time wears, carries, possesses, or has access to a firearm in the performance of the individual’s duties.

(4) “Armed private security guard” means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, carrier service guard, or alarm response runner and who at any time wears or carries a firearm in the performance of the individual’s duties.

(5) “Armored car service” means any person who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

(6) "Board" means the board of private security patrol officers and investigators provided for in 2-15-1781.

(7) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

(8) "Contract security company" means any person who installs or maintains a security alarm system, undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.

(9) "Department" means the department of labor and industry provided for in 2-15-1701.

(10) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration ~~whatsoever~~ conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes or wrongs committed or threatened against the United States or any state or territory of the United States.

(11) "Licensee" means a person licensed under this chapter.

(12) "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.

(13) "Person" includes any individual, firm, company, association, organization, partnership, and corporation.

(14) "Private investigator" means a person other than an insurance adjuster who for any consideration ~~whatsoever~~ makes or agrees to make any investigation with reference to:

(a) crimes or wrongs done or threatened against the United States or any state or territory of the United States;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for fires, libels, losses, accidents, or injury to persons or property; or

(e) securing evidence to be used before any court, board, officer, or investigating committee.

(15) "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property or the direction of the movements of the public in public areas.

(16) "Process server" means a person described in 25-1-1101(1).

(16)(17) "Proprietary security organization" means any person who employs a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

(17)(18) "Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable.

(18)(19) "Resident manager" means the person appointed to exercise direct supervision, control, charge, management, or operation of each branch office located in this state where the business of the licensee is conducted.

(19)(20) (a) "Security alarm system" means an assembly of equipment and devices or a single device, such as a solid state unit that plugs directly into a 110-volt AC line, designed to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a protected premises and to which signals police, private security guards, or alarm response runners are expected to respond.

(b) The term does not include alarm systems and alarm systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a premises.

(20)(21) "Street patrol service" means any contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares.

(21)(22) "Unarmed private investigator" means a private investigator who does not wear, carry, possess, or have access to a firearm in the performance of the individual's duties.

(22)(23) "Unarmed private security guard" means an individual who is employed by a contract security company or a proprietary security organization, whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, and who does not wear or carry a firearm in the performance of those duties."

Section 13. Section 37-60-103, MCA, is amended to read:

"37-60-103. Purpose. The purpose of this chapter is to increase the levels of integrity, competency, and performance of private security personnel and, private investigators, and *process servers* in order to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by private security personnel or, private investigators, or *process servers*."

Section 14. Section 37-60-105, MCA, is amended to read:

"37-60-105. Exemptions. This (1) Except as provided in subsection (2), this chapter does not apply to:

(1) (a) any one person employed singly and exclusively by any one employer in connection with the affairs of such that employer only and where when there exists an employer-employee relationship and the employee is unarmed, does

not wear a uniform, and is guarding inside a structure ~~which~~ *that* at the time is not open to the public;

(b) a person:

(i) employed singly and exclusively by a retail merchant;

(ii) performing at least some of his work for the retail merchant as a private security guard; and

(iii) who has received training as a private security guard from the employer or at the employer's direction;

~~(2)(c)~~ an officer or employee of the United States, of America or of this state, or of a political subdivision thereof of the United States or this state while ~~such~~ *the* officer or employee is engaged in the performance of his official duties;

~~(3)(d)~~ a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit;

~~(4)(a)(e)~~ an attorney at law ~~in~~ *while* performing his duties as an attorney at law;

~~(b)(f)~~ a legal intern, paralegal, or legal assistant employed by one or more lawyers, law offices, governmental agencies, or other entities; or

~~(e)(g)~~ a law student who is serving a legal internship;

~~(5)(h)~~ a collection agency or finance company licensed to do business under the laws of this state, or an employee thereof of a collection agency or finance company licensed in this state while acting within the scope of his employment, while making an investigation incidental to the business of the agency or company, including an investigation of the location of a debtor or his the debtor's property where when the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof;

~~(6)(i)~~ special agents employed by railroad companies, provided *that* the railroad company notifies the board that ~~such~~ *its* agents are operating in the state;

~~(7)(j)~~ insurers and insurance producers and insurance brokers licensed by the state; *while* performing duties in connection with insurance transacted by them;

~~(8)(k)~~ an insurance adjuster, as defined by ~~in~~ 37-60-101~~(10)~~; or

~~(9)(l)~~ an internal investigator or auditor; while making an investigation incidental to the business of the agency or company by which ~~he~~ *the investigator or auditor* is singularly and regularly employed.

(2) (a) *Except as provided in subsection (2)(b), persons listed as exempt in subsection (1) are not exempt for the purposes of acting as registered process servers.*

(b) *Subsection (2)(a) does not apply to attorneys or persons who make 10 or fewer services of process in a calendar year, as provided in 25-1-1101."*

Section 15. Section 37-60-202, MCA, is amended to read:

"37-60-202. Rulemaking power. The board shall adopt and enforce rules:

(1) fixing the qualifications of resident managers, qualifying agents, licensees, and holders of identification cards, *and process servers*, in addition to

those prescribed in *Title 25, chapter 1, part 11, and in this chapter*, necessary to promote and protect the public welfare;

(2) establishing, in accordance with 37-1-134, application fees for original or renewal licenses and identification cards, and providing for refunding of any fees;

(3) (a) prohibiting the establishment of branch offices of any licensee, except a proprietary security organization, without approval by the board; and

(b) establishing qualification requirements and license fees for branch offices identified in subsection (3)(a);

(4) for the certification of private investigator and private security guard training programs, including the certification of firearms training programs;

(5) for the licensure of firearms instructors;

(6) for the approval of weapons;

(7) requiring the maintenance of records;

(8) requiring licensees, *except process servers*, to file an insurance policy with the board; and

(9) providing for the issuance of probationary identification cards for private investigators who do not meet the requirements for age, employment experience, and written examination.”

Section 16. Section 37-60-301, MCA, is amended to read:

“37-60-301. License required — *process server registration required.*

(1) (a) Except as provided in 37-60-105 and 37-60-315, it is unlawful for any person to act as or perform the duties, as defined in 37-60-101, of a contract security company or proprietary security organization, a private investigator, or a private security guard without having first obtained a license from the board. ~~Those persons licensed on April 18, 1983, shall retain their current licensure status and shall renew their licenses on the renewal date as prescribed by the department.~~

(b) *Except as provided in 25-1-1101(2), it is unlawful for any person to act as or perform the duties of a process server for more than 10 services of process in a calendar year without being issued a certificate of registration by the board.*

(2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that the person is licensed as a private investigator, a contract security company, a proprietary security organization, or a private security guard.

(3) A person appointed by the court as a confidential intermediary under 42-6-104 is not required to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential intermediary, as defined in 42-1-103, without meeting the requirements of 42-6-104.

(4) A person who knowingly engages an unlicensed private investigator, private security guard, or contract security company is guilty of a misdemeanor punishable under 37-60-411.”

Section 17. Section 37-60-303, MCA, is amended to read:

“37-60-303. License or registration qualifications. (1) Except as provided in subsection (7)(a), an applicant for licensure under this chapter *or an applicant for registration as a process server 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 the equivalent;

(c) has not been dishonorably discharged from any branch of the United States military service; and

(d) has fulfilled any other requirements as the board may by rule prescribe.

(4) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.

(5) An applicant *for a license as a private security patrol officer or private investigator* who will wear or carry a firearm in performance of the applicant's duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as the board may by rule prescribe.

(6) Except for an applicant subject to the provisions of subsection (7)(a), the board shall require a background investigation of each applicant for licensure *or registration* under this chapter that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.

(7) (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 *or, if doing business as a process server, must be registered by the board.*

(b) Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (7)(a) who engage in duties

that are subject to the provisions of this part must be licensed pursuant to the requirements of this part *or, if doing business as a process server, must be registered by the board.*"

Section 18. Section 37-60-304, MCA, is amended to read:

"37-60-304. Licenses and registration — application form and content. (1) ~~Except as provided in 37-60-303(7), an~~ An application for a license ~~or for a certificate of registration as a process server~~ must be submitted to the department and accompanied by the application fee set by the board.

(2) An application must be made under oath and 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 *or registered as a process server*;

(e) one recent photograph of the applicant, of a type prescribed by the department, and one classifiable set of the applicant's fingerprints;

(f) a statement of the applicant's age and experience qualifications; and

(g) other information, evidence, statements, or documents as may be prescribed by the rules of the board.

(3) The board shall verify the statements in the application and the ~~applicant's~~ moral character *of each applicant other than an applicant under 37-60-303(7)(a).*

(4) The submittal of fingerprints is a prerequisite to the issuance of a license *or certificate of registration to an applicant, other than an applicant under 37-60-303(7)(a),* by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation."

Section 19. Section 37-60-405, MCA, is amended to read:

"37-60-405. Approval of weapons. The weapons to be carried by armed licensees or ~~identification card~~ holders *of identification cards as private security personnel or private investigators* must be approved by the board."

Section 20. Repealer. Sections 25-1-1103, 25-1-1105, and 25-1-1106, MCA, are repealed.

Section 21. Effective date. [This act] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 406

[SB 243]

AN ACT REVISING FISH AND GAME LAWS; PROVIDING FREE CLASS AAA RESIDENT COMBINATION SPORTS AND CLASS A RESIDENT FISHING LICENSES FOR CERTAIN MONTANA NATIONAL GUARD, FEDERAL RESERVE, AND ACTIVE DUTY PERSONNEL FOR UP TO 5 YEARS; ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO RECOUP THE COST OF ISSUING FREE LICENSES ON A

QUARTERLY BASIS; AMENDING SECTIONS 87-2-711 AND 87-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-2-711, MCA, is amended to read:

“87-2-711. Class AAA—combination sports license. (1) A resident, as defined by 87-2-102, who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued is entitled to:

(a) a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted to holders of Class A, A-1, A-3, and A-5 licenses and resident conservation licenses as prescribed in 87-2-202 upon payment of the sum of \$70, plus the resident hunting access enhancement fee provided for in 87-2-202(3)(c), or, if the resident is a service member eligible for a combination sports license pursuant to 87-2-803(12), upon payment of \$29, plus the resident hunting access enhancement fee provided for in 87-2-202(3)(c); or

(b) a combination sports license that permits a holder who is 12 years of age or older to exercise all rights granted in subsection (1)(a) and the additional rights granted to holders of a Class A-6 license upon payment of the sum of \$85, plus the resident hunting access enhancement fee provided for in 87-2-202(3)(c).

(2) The department may furnish each holder of a combination sports license an appropriate decal.”

Section 2. Section 87-2-803, MCA, is amended to read:

“87-2-803. Persons with disabilities — service members — definitions. (1) Persons with disabilities are entitled to fish and to hunt game birds, not including turkeys, with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule. A person who has purchased a conservation license and a resident fishing license or game bird license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the fishing license or game bird license previously purchased for that license year. A person who is certified as disabled pursuant to subsection (3) and who was issued a permit to hunt from a vehicle for license year 2000 or a subsequent license year is automatically entitled to a permit to hunt from a vehicle for subsequent license years if the criteria for obtaining a permit does not change.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase a Class A-3 deer A tag for \$6.50 and a Class A-5 elk tag for \$8. A person who has purchased a conservation license and a resident deer license or resident elk license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the deer license or elk license previously purchased and reissuance of the license for that license year at the rate established in this subsection.

(3) A person may be certified as disabled by the department and issued a permit to hunt from a vehicle, on a form prescribed by the department, if the person establishes one or more of the disabilities pursuant to subsection (9). The department shall adopt rules to establish a voluntary board or boards of review to resolve any disputes over whether a person meets the criteria established in subsection (9). Each board must have at least one Montana-licensed physician as a member.

(4) A person with a disability carrying a permit to hunt from a vehicle, referred to in this subsection as a permitholder, may hunt by shooting a firearm

from the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-101, except a state or federal highway, or may hunt by shooting a firearm from within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted. This subsection does not allow a permitholder to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner. A permitholder must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the permitholder by hunting a game animal that has been wounded by the permitholder when the permitholder is unable to pursue and kill the wounded game animal. Any vehicle from which a permitholder is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle, or as prescribed by the department.

(5) A veteran who meets the qualifications in subsection (9) as a result of a combat-connected injury may apply at a fish, wildlife, and parks office for a regular Class A-3 deer A tag, a Class A-4 deer B tag, a Class B-7 deer A tag, a Class B-8 deer B tag, and a special antelope license at one-half the license fee. Fifty licenses of each license type must be made available annually. Licenses issued to veterans under this part do not count against the number of special antelope licenses reserved for people with permanent disabilities, as provided in 87-2-706.

(6) (a) A resident of Montana who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of \$10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure.

(b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses, in the manner provided in subsection (2), and must be accompanied by a companion, as provided in subsection (4).

(7) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.

(8) As used in this section, "disabled person", "person with a disability", or "disabled" means or refers to a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.

(9) A person is entitled to a permit to hunt from a vehicle if the person:

(a) is certified by a licensed physician to be dependent on an oxygen device or dependent on a wheelchair, crutch, or cane for mobility;

(b) is an amputee above the wrist or ankle; or

(c) is certified by a licensed physician to be unable to walk, unassisted, 600 yards over rough and broken ground while carrying 15 pounds within 1 hour and to be unable to handle and maneuver up to 25 pounds.

(10) Certification by a licensed physician under subsection (9) must be on a form provided by the department.

(11) A person who disagrees with a determination of eligibility for a permit to hunt from a vehicle may request a review by a voluntary board of review pursuant to subsection (3).

(12) (a) A Montana resident who is a member of the Montana national guard or the federal reserve as provided in 10 U.S.C. 10101 or who was otherwise engaged in active duty and who participated in a contingency operation as provided in 10 U.S.C. 101(a)(13) that required the member to serve at least 6 2 months outside of the state, upon request and upon presentation of the documentation described in subsection (12)(b), must be issued a free resident wildlife conservation license or a Class AAA resident combination sports license, which may not include a bear license, ~~for \$29, plus~~ *upon payment of the resident hunting access enhancement fee provided for in 87-2-202(3)(c), in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in the license year any of the 4 years after the member's election.* A member who participated in a contingency operation ~~between~~ *after* September 11, 2001, ~~and February 28, 2006,~~ that required the member to serve at least 6 2 months outside of the state may make an election ~~in 2006 or 2007 or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election~~ and be entitled to a free resident wildlife conservation license or a ~~\$25~~ *free* Class AAA resident combination sports license in the year of election and ~~the license year in any of the 4 years after the member's election.~~

(b) To be eligible for the free resident wildlife conservation license or ~~reduced-rate~~ *free* Class AAA resident combination sports license provided for in subsection (12)(a), an applicant shall, in addition to the written application and proof of residency required in 87-2-202(1), provide to any regional department office or to the department headquarters in Helena, by mail or in person, the member's DD form 214 verifying the member's release or discharge from active duty. The applicant is responsible for providing documentation showing that the applicant participated in a contingency operation as provided in 10 U.S.C. 101(a)(13).

(c) *A Montana resident who meets the service qualifications of subsection (12)(a) and the documentation required in subsection (12)(b) is entitled to a free Class A resident fishing license in the license year that the member returns from military service or in the year following the member's return, based on the member's election, and in any of the 4 years after the member's election.*

(d) *The department's general license account must be reimbursed by a quarterly transfer of funds from the general fund to the general license account for costs associated with the free licenses granted pursuant to this subsection (12) during the preceding calendar quarter. Reimbursement costs must be designated as license revenue."*

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

Approved May 3, 2007

CHAPTER NO. 407

[SB 253]

AN ACT ALLOWING CERTAIN BROADCAST CAMPAIGN ADVERTISING MATERIAL AND AN AFFIDAVIT ABOUT THE TRUTH OF THE CONTENT

TO BE FILED WITH THE COMMISSIONER OF POLITICAL PRACTICES; AUTHORIZING THE COUNTY ATTORNEY TO INVESTIGATE AND PROSECUTE ALLEGED FALSE SWEARING IN REGARD TO CERTAIN CAMPAIGN ADVERTISING MATERIAL THAT IS SWORN TO BE TRUTHFUL AND VERIFIABLE; INCREASING THE POTENTIAL FINE FOR FALSE SWEARING ABOUT THE ADVERTISING CONTENT; AND AMENDING SECTIONS 13-37-111, 13-37-113, 13-37-124, AND 45-7-202, MCA.

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

Section 1. Voluntary filing of broadcast campaign materials — affidavit — penalty. (1) (a) A political committee not organized by or on behalf of a candidate may file with the commissioner of political practices a copy of a campaign script intended for broadcast advertising.

(b) The committee's authorized agent may sign an affidavit swearing that the content of the script is true and verifiable and may file supporting documentation.

(2) (a) Scripts and affidavits must be filed in the manner prescribed by the commissioner of political practices.

(b) The commissioner of political practices shall file the scripts, affidavits, and any documentation in a manner that allows for them to be readily inspected.

(3) (a) Any person who believes that the content of a script filed pursuant to this section is either untrue or unverifiable may bring the matter to the attention of the county attorney of the county in which the person is a resident.

(b) The county attorney may investigate the alleged falsification or unverifiability of the script and, if the county attorney determines that sufficient evidence exists to justify a criminal prosecution, shall file a cause of action.

(c) An allegation of violation of subsection (1) may not be filed with, investigated by, or prosecuted by the commissioner of political practices.

(4) A person filing an affidavit under this section is subject to the penalty for false swearing under 45-7-202, except that the fine may not exceed \$5,000.

Section 2. Section 13-37-111, MCA, is amended to read:

“13-37-111. Investigative powers and duties — recusal. (1) *The Except as provided in [section 1],* the commissioner is responsible for investigating all of the alleged violations of the election laws contained in chapter 35 of this title or this chapter and in conjunction with the county attorneys is responsible for enforcing these election laws.

(2) The commissioner may:

(a) investigate all statements filed pursuant to the provisions of chapter 35 of this title or this chapter and shall investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant to the provisions of chapter 35 of this title or this chapter. Upon the submission of a written complaint by any individual, the commissioner shall investigate any other alleged violation of the provisions of chapter 35 of this title, this chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter.

(b) inspect any records, accounts, or books that must be kept pursuant to the provisions of chapter 35 of this title or this chapter that are held by any political

committee or candidate, as long as the inspection is made during reasonable office hours; and

(c) administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, bank account statements of a political committee or candidate, or other records that are relevant or material for the purpose of conducting any investigation pursuant to the provisions of chapter 35 of this title or this chapter.

(3) If the commissioner determines that considering a matter would give rise to the appearance of impropriety or a conflict of interest, the commissioner is recused from participating in the matter.

(4) (a) If the commissioner is recused pursuant to this section, the commissioner shall appoint a deputy, subject to subsection (4)(b).

(b) The deputy:

(i) may not be an employee of the office of the commissioner;

(ii) must have the same qualifications as specified for the commissioner in 13-37-107;

(iii) with respect to only the specific matter from which the commissioner is recused, has the same authority, duties, and responsibilities as the commissioner would have absent the recusal; and

(iv) may not exercise any powers of the office that are not specifically related to the matter for which the deputy is appointed.

(5) The appointment of the deputy is effectuated by a contract between the commissioner and the deputy. The contract must specify the deputy's term of appointment, which must be temporary, the matter assigned to the deputy, the date on which the matter assigned must be concluded by the deputy, and any other items relevant to the deputy's appointment, powers, or duties."

Section 3. Section 13-37-113, MCA, is amended to read:

"13-37-113. Hiring of attorneys — prosecutions. The commissioner may hire or retain attorneys who are properly licensed to practice before the supreme court of the state of Montana to prosecute violations of chapter 35 of this title or this chapter. Any attorney retained or hired shall exercise the powers of a special attorney general, and the attorney may prosecute, subject to the control and supervision of the commissioner and the provisions of *section 1*, 13-37-124, and 13-37-125, any criminal or civil action arising out of a violation of any provision of chapter 35 of this title or this chapter. All prosecutions must be brought in the state district court for the county in which a violation has occurred or in the district court for Lewis and Clark County. The authority to prosecute as prescribed by this section includes the authority to:

(1) institute proceedings for the arrest of persons charged with or reasonably suspected of criminal violations of chapter 35 of this title or this chapter;

(2) attend and give advice to a grand jury when cases involving criminal violations of chapter 35 of this title or this chapter are presented;

(3) draw and file indictments, informations, and criminal complaints;

(4) prosecute all actions for the recovery of debts, fines, penalties, or forfeitures accruing to the state or county from persons convicted of violating chapter 35 of this title or this chapter; and

(5) do any other act necessary to successfully prosecute a violation of any provision of chapter 35 of this title or this chapter.”

Section 4. Section 13-37-124, MCA, is amended to read:

“13-37-124. Consultation and cooperation with county attorney. (1) ~~Whenever~~ *Except as provided in [section 1], whenever* the commissioner determines that there appears to be sufficient evidence to justify a civil or criminal prosecution under chapter 35 of this title or this chapter, the commissioner shall notify the county attorney of the county in which the alleged violation occurred and shall arrange to transmit to the county attorney all information relevant to the alleged violation. If the county attorney fails to initiate the appropriate civil or criminal action within 30 days after receiving notification of the alleged violation, the commissioner may then initiate the appropriate legal action.

(2) A county attorney may, at any time prior to the expiration of the 30-day time period specified in subsection (1), waive the right to prosecute, and the waiver authorizes the commissioner to initiate the appropriate civil or criminal action.

(3) The provisions of subsection (1) do not apply to a situation in which the alleged violation has been committed by the county attorney of a county. In this instance, the commissioner is authorized to directly prosecute any alleged violation of chapter 35 of this title or this chapter.

(4) If a prosecution is undertaken by the commissioner, all court costs associated with the prosecution must be paid by the state of Montana, and all fines and forfeitures imposed pursuant to a prosecution by the commissioner, except those paid to or imposed by a justice’s court, must be deposited in the state general fund.”

Section 5. Section 45-7-202, MCA, is amended to read:

“45-7-202. False swearing. (1) A person commits the offense of false swearing if ~~he~~ *the person* knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of ~~such~~ a statement previously made when ~~he~~ *the person* does not believe the statement to be true and:

- (a) the falsification occurs in an official proceeding;
- (b) the falsification is purposely made to mislead a public servant in performing ~~his~~ *an* official function; or
- (c) the statement is one ~~which~~ *that* is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(2) Subsections (4) through (7) of 45-7-201 apply to this section.

(3) *A Except as provided in [section 1], a person convicted of false swearing shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for any a term not to exceed 6 months, or both.”*

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 13, chapter 35, part 2, and the provisions of Title 13, chapter 35, part 2, apply to [section 1].

Approved May 3, 2007

CHAPTER NO. 408

[SB 261]

AN ACT INCREASING THE ANNUAL PAYMENT BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO COUNTIES FOR JUNK VEHICLE COLLECTIONS; AMENDING SECTION 75-10-534, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 75-10-534, MCA, is amended to read:

“75-10-534. Department to pay approved county budget. The department shall pay to a county the amount of the approved junk vehicle collection and graveyard budget of the county. The yearly payment may not exceed ~~\$1.25~~ *\$1.40* for each motor vehicle under 8,001 pounds gross vehicle weight that is licensed in that county. However, for those counties that have fewer than 5,000 motor vehicles under 8,001 pounds gross vehicle weight, the department may pay up to ~~\$6,250~~ *\$7,500* if the county can justify this payment. Counties realizing revenue from the sale of junk vehicles shall return to the state junk vehicle program revenue account money equal to the salvage value of each vehicle sold. The salvage value of a vehicle must be the average contract value of a crushed ton of junk vehicles as determined by the statewide salvage bids received by the department during the current fiscal year. Any additional revenue realized from the sale of junk vehicles may be retained by the county for use in the county’s junk vehicle program in addition to the approved junk vehicle collection and graveyard budget of the county.”

Section 2. Effective date. [This act] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 409

[SB 293]

AN ACT ESTABLISHING A STATE POLICY FOR MANAGEMENT OF PUBLIC FOREST LANDS; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO SUPPORT RESTORATION AND SUSTAINABLE FOREST MANAGEMENT PRACTICES; REQUIRING PROMOTION OF FOREST MANAGEMENT ACTIVITIES WITHIN AND ADJACENT TO THE WILDLAND URBAN INTERFACE; AND GRANTING AUTHORITY TO INTERVENE IN LITIGATION OR APPEALS OF FEDERAL FOREST MANAGEMENT PROJECTS.

WHEREAS, Montana’s public forests are important environmental, economic, and recreational resources; and

WHEREAS, fire suppression and lack of active management on some public forests has led to overstocked stands, unnatural distribution of tree species and age classes, and an increased susceptibility of forests to insect and disease epidemics and uncharacteristic wildfires that threaten Montana communities and watersheds; and

WHEREAS, two-thirds of the forests in Montana are managed by the federal government and include some of the most important environmental, economic, and recreational resources in the state; and

WHEREAS, innovative partnerships between traditional adversaries in federal forest management demonstrate that consensus-based solutions can be reached on landscape level projects on federal lands that integrate active forest management, restoration, and stewardship; and

WHEREAS, the Department of Natural Resources and Conservation is uniquely situated to provide expertise and guidance on the management of public forests in Montana.

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

Section 1. Findings and policy. (1) The legislature finds that the sustainable management of public forests in Montana is vital to conserving the state's natural resources and their economic and ecological potential for the benefit of all Montanans.

(2) The legislature finds that public forests in Montana should be sustainably managed to maintain biodiversity, productivity, regeneration capacity, vitality, and potential to fulfill relevant ecological, economic, and social functions.

(3) The legislature finds that sustainable forest stewardship and management of Montana's public forests requires a balanced approach that ensures a stable timber supply, active restoration, healthy watersheds and fish and wildlife habitat, areas for natural processes, and allowances for multiple uses.

(4) The legislature declares that it is the policy of this state to promote the sustainable use of all public forests within the state through sound management and collaboration with local, state, and federal entities.

Section 2. Duties — authority. To implement the policy of [section 1], the department of natural resources and conservation shall:

(1) support sustainable forest management practices, including forest restoration, on public forests in Montana consistent with all applicable laws and administrative requirements;

(2) provide technical information and educational assistance to nonindustrial, private forest landowners;

(3) promote forest management activities within and adjacent to the wildland urban interface and promote the implementation of community wildfire protection plans;

(4) promote a viable forest and wood products industry and other businesses and individual activities that rely on public forest lands;

(5) represent the state's interest in the federal forest management planning and policy process, including establishing cooperative agency status with federal agencies;

(6) promote the development of an independent, long-term sustained yield calculation on Montana's federal forests;

(7) have the authority to intervene in litigation or appeals on federal forest management projects that comply with the policy in [section 1] and in which local and state interests are clearly involved;

(8) have the authority to enter into agreements with federal agencies to participate in forest management activities on federal lands; and

(9) participate in and facilitate collaboration between traditional forest interests in reaching consensus-based solutions on federal land management issues.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 76, chapter 13, and the provisions of Title 76, chapter 13, apply to [sections 1 and 2].

Approved May 3, 2007

CHAPTER NO. 410

[SB 314]

AN ACT REVISING THE WARM WATER GAME FISH SURCHARGE AND STAMP TO REQUIRE THAT A PERSON WHO DESIRES TO FISH IN CERTAIN DESIGNATED WATERS IN WHICH FISH FROM THE FORT PECK MULTISPECIES FISH HATCHERY ARE PLANTED MUST PURCHASE A WARM WATER GAME FISH STAMP; AMENDING SECTION 87-3-236, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 87-3-236, MCA, is amended to read:

“87-3-236. Warm water game fish surcharge and stamp — warm water game fish defined — accounts established — dedication of revenue to Fort Peck multispecies fish hatchery. (1) A person who is required to be licensed in order to fish in Montana and who desires to fish ~~for warm water game fish~~ in waters listed pursuant to subsection (9) shall, upon purchase of a Class A, Class B, Class B-4, Class B-5, or Class A-8 fishing license, pay a warm water game fish surcharge of \$5. The surcharge is in addition to the license fee established for each class of license and entitles the holder to fish ~~for warm water game fish~~ *in the waters listed pursuant to subsection (9)* as authorized by the department. Payment of the surcharge must be indicated by placement of a warm water game fish stamp on the fishing license.

(2) A warm water game fish stamp is valid for the license year in which it is purchased.

(3) Revenue from the warm water game fish surcharge must be placed in the account created in subsection (5) and may be used only for the purposes set out in subsection (7).

(4) As used in this section, “warm water game fish” includes but is not limited to all species of the genera *Stizostedion*, *Esox*, *Micropterus*, and *Lota* and includes largemouth bass (*Micropterus salmoides*), smallmouth bass (*Micropterus dolomieu*), walleye (*Stizostedion vitreum*), sauger (*Stizostedion canadense*), black crappie (*Pomoxis nigromaculatus*), white crappie (*Pomoxis annularis*), channel catfish (*Ictalurus punctatus*), yellow perch (*Perca flavescens*), northern pike (*Esox lucius*), pallid sturgeon (*Scaphirhynchus albus*), paddlefish (*Polyodon spathula*), other warm water species classified as species of special concern, threatened, or endangered, chinook salmon (*Oncorhynchus tshawytscha*), and tiger muskellunge.

(5) There is an account into which must be deposited:

(a) all proceeds from the warm water game fish surcharge established in subsection (1); and

(b) money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the Fort Peck multispecies fish hatchery.

(6) The department shall administer the account within the state special revenue fund established in 17-2-102.

(7) Subject to the provisions of subsection (8), revenue collected under subsection (5) must be used by the department for the ~~construction~~, operation, maintenance, and personnel costs of the Fort Peck multispecies fish hatchery established in 87-3-235, which may include ~~a cost share agreement with the federal government for construction of the Fort Peck multispecies fish hatchery, and beginning October 1, 2005,~~ for the costs incurred in eradicating illegally introduced warm water species from Montana waters. No more than 15% of available revenue may be dedicated to eradication efforts.

(8) The department may not use any nonfederal funds for the hatchery authorized in 87-3-235 other than those in the account provided for in subsection (5). There is an account in the federal special revenue fund into which must be deposited all federal money received for purposes of the Fort Peck multispecies fish hatchery and from which the department may use funds for the hatchery authorized in 87-3-235.

(9) The department shall prepare a list of all waters into which fish from the Fort Peck multispecies fish hatchery will be planted. All waters listed in the ~~2005~~ Montana fishing regulations that require a warm water stamp and waters planted or waters that will be planted with fish from the Fort Peck multispecies fish hatchery must be permanently included on the list. The waters designated in the list are the only waters for which a warm water game fish stamp is required.”

Section 2. Effective date. [This act] is effective March 1, 2008.

Approved May 3, 2007

CHAPTER NO. 411

[SB 321]

AN ACT PROVIDING FOR THE CREATION AND FUNCTIONS OF BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATIONS.

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

Section 1. Short title. [Sections 1 through 56] may be cited as the “Business and Industrial Development Corporation Act”.

Section 2. Definitions. In [sections 1 through 56], unless the context requires otherwise, the following definitions apply:

(1) “Affiliate”, if used with respect to a nonnatural person, means a person who controls the nonnatural person, who is controlled by the nonnatural person, or who is controlled by a person who also controls the nonnatural person.

(2) “Associate”, if used with respect to a licensee, means:

(a) a controlling person, director, or officer of the licensee;

(b) a director, officer, or partner of a person referred to in subsection (2)(a);

(c) a person who controls, is controlled by, or is under common control with a person referred to in subsection (2)(a), directly or indirectly through an intermediary;

(d) a close relative of a person referred to in subsection (2)(a);

(e) a person of which a person referred to in subsections (2)(a) through (2)(d) is a director or officer; or

(f) a person in which a person referred to in subsections (2)(a) through (2)(d) or a combination of the persons acting in concert owns or controls, directly or indirectly, a 20% or greater equity interest.

(3) "BIDCO" means a corporation that is licensed under [sections 1 through 56] to provide financial and management assistance to businesses.

(4) "Business" means a person who transacts or proposes to transact business on a regular and continual basis.

(5) "Close relative" means a parent, child, sibling, or spouse or a relative of the same degree through marriage.

(6) (a) "Control", if used with respect to a specific person, means the power to direct or cause the direction of, directly or indirectly through an intermediary, the management and policies of the person, through the ownership of voting interests, by contract other than a commercial contract for goods or nonmanagement services or by other means.

(b) A natural person is not considered to control another person solely because the natural person is a director, officer, or employee of the other person;

(c) A person is rebuttably presumed to control a corporation if the person directly or indirectly owns of record, holds beneficially with power to vote, or holds proxies with discretionary authority to vote 20% or more of the then-outstanding voting securities issued by a corporation.

(7) "Controlling person", if used with respect to a specific person, means a person who controls the specific person, directly or indirectly, through an intermediary.

(8) "Corporate name" means the name of a corporation in its articles of incorporation.

(9) "Department" means the department of administration, provided for in 2-15-1001.

(10) "Hold control" means to directly or indirectly own, of record or beneficially, 50% or more of a business's outstanding voting equity interests.

(11) "Insolvent" means not paying debts in the ordinary course of business, not paying debts as they become due, or liabilities exceeding assets.

(12) "Interests of the licensee" includes the interests of the shareholders of the licensee.

(13) "License" means a license issued under [sections 1 through 56].

(14) "Licensee" means a corporation that is licensed under [sections 1 through 56].

(15) "Officer" means:

(a) with respect to a corporation:

(i) a person appointed or designated as an officer of the corporation by or under applicable law or the corporation's articles of incorporation or bylaws; or

(ii) a person who performs with respect to the corporation the functions usually performed by an officer of a corporation; or

(b) with respect to a specific person other than a natural person or a corporation, a person who performs for the specific person the functions usually performed by an officer of a corporation for a corporation.

(16) "Order" means an approval, consent, authorization, exemption, denial, prohibition, or requirement applicable to a specific case and issued by the department, including a license condition and an agreement made by a person with the department under [sections 1 through 56].

(17) (a) "Person" means an individual, partnership, corporation, association, limited partnership, limited liability company, governmental subdivision, agency, or public or private organization of any character.

(b) When used with respect to acquiring control of or controlling a specific person, the term includes a combination of two or more persons acting in concert.

(18) "Principal shareholder" means a person who owns, directly or indirectly, of record or beneficially, securities representing 10% or more of the outstanding voting securities of a corporation.

(19) "Subject person" means:

(a) a controlling person, subsidiary, or affiliate of a licensee;

(b) a director, officer, or employee of a licensee or of a controlling person, subsidiary, or affiliate of a licensee;

(c) another person who participates in the conduct of the business of a licensee; or

(d) if used with respect to a licensee, a company or business of which the licensee holds control under [sections 23 through 25].

Section 3. Purposes. The purposes of [sections 1 through 56] are to:

(1) promote economic development by encouraging the formation of one or more BIDCOs to help meet the financing assistance and management assistance needs of businesses in the state;

(2) establish a system of licensing, regulation, and enforcement to enable a BIDCO to satisfy the eligibility requirements for participating in programs that further the purposes of the BIDCO;

(3) encourage capital sources to invest in and lend money to BIDCOs by providing for BIDCOs a system of licensing, regulation, and enforcement designed to prevent fraud, conflict of interest, and mismanagement and to promote competent management, accurate recordkeeping, and appropriate communication with shareholders; and

(4) safeguard the general reputation of BIDCOs in order to increase the confidence of prospective equity investors in and prospective debt sources for BIDCOs.

Section 4. Administration — rules — orders — declaratory rulings — judicial review. (1) The department shall administer [sections 1 through 56]. The department may issue orders and may adopt rules that, in the opinion of the department, are necessary to execute, enforce, and achieve the purposes of [sections 1 through 56].

(2) When the department issues an order or license under [sections 1 through 56], the department may impose conditions that the department determines are necessary to carry out the purposes of [sections 1 through 56].

(3) The department may provide to an interested person a declaratory ruling on a provision of [sections 1 through 56].

(4) A final order, decision, license, or other official act of the department under [sections 1 through 56] is subject to judicial review by a district court.

Section 5. Application procedure. When applying for a license, an applicant shall provide the information required by the department in the form required by the department. The information must include:

(1) information on the directors, officers, and controlling persons of the applicant;

(2) the applicant's business plan, including at least 10 years of detailed financial projections, and other relevant information; and

(3) any additional information considered relevant by the department.

Section 6. Requisite net worth. (1) In order to receive a license, an applicant shall demonstrate to the satisfaction of the department that the applicant has raised sufficient capital so that:

(a) the net worth of the BIDCO is expected to be adequate, in the context of its business plan, to support the BIDCO's management team and to achieve an appropriate spreading of the risk involved in the BIDCO's provisions of financing assistance; and

(b) the BIDCO has a reasonable promise of being a viable, ongoing BIDCO, satisfying the basic objectives of its business plan and achieving long-term financial success.

(2) The department may not establish a minimum net worth for a BIDCO under this section of less than \$1.5 million.

Section 7. Criteria for directors, officers, and controlling persons.

(1) A license may be issued only if the department determines that each director, officer, and controlling person of the applicant is:

(a) of good character and sound financial standing;

(b) competent to perform the director's, officer's, or controlling person's functions for the applicant; and

(c) when considered collectively with the other directors, officers, and controlling persons, adequate to manage the business of the applicant as a BIDCO.

(2) The department may determine that a director, officer, or controlling person of an applicant is not of good character. Bases that the department may use to make that determination include proof that the director, officer, or controlling person or a director or officer of a controlling person has:

(a) had an administrative sanction imposed under the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 through 3812, for an offense under 15 U.S.C. 645; or

(b) been convicted of or plead guilty or nolo contendere to a crime involving fraud or dishonesty, including a conviction for an offense under 15 U.S.C. 645.

Section 8. Determination of likelihood of future noncompliance. The department may determine that it is not reasonable to believe that an

applicant would comply with [sections 1 through 56] if licensed. Bases that the department may use to make that determination include proof that the applicant has been convicted of any felony or a misdemeanor involving fraud or dishonesty, including a conviction based on a guilty plea or plea of nolo contendere.

Section 9. Denial of application. If the department denies a license, the department shall provide the applicant with a written statement explaining the reasons for the denial.

Section 10. License — display — transfer or assignment — surrender. (1) A licensee shall post the license in a conspicuous place in the licensee's principal office.

(2) A licensee may not transfer or assign its license.

(3) Upon approval by a two-thirds vote of its board of directors and after complying with subsections (4) and (5), a licensee may apply to the department to have the department accept the surrender of the licensee's license. If the department determines that the requirements of subsections (4) and (5) have been satisfied, the department shall approve the application unless the department determines that the purpose of the application is to evade a current or prospective action by the department under [sections 41 through 50].

(4) Not less than 60 days before filing an application under subsection (3), a licensee shall notify all of its shareholders and creditors of its intention to file the application. Each creditor must be notified of the right to comment to the department. Each shareholder must be notified of the right to file with the licensee an objection to the proposed surrender of the license within the 60-day period and must be advised that, if the shareholder files an objection, the shareholder may also send a copy of the objection to the department.

(5) If shareholders representing 20% of the outstanding voting securities of the licensee file an objection with the licensee, the licensee may not proceed with the application unless the application is approved by a vote of shareholders representing two-thirds of the outstanding voting securities of the licensee.

Section 11. Corporate name and representation of status. (1) The corporate name of a licensee must include the word "BIDCO" or "Bidco" and must be distinguishable on the records of the department from the name of any other organized entity and from a reserved or registered name. A licensee may not transact business under a name other than its corporate name.

(2) Before being issued a license, a corporation that proposes to apply for a license or that applies for a license may perform, under a name that indicates that the corporation is a corporation licensed under [sections 1 through 56], the acts necessary to apply for and obtain a license and otherwise prepare to begin business as a licensee. The corporation may not represent that it is a licensee until after the license has been obtained.

Section 12. Misrepresentation. (1) Except as otherwise provided in [section 11], a person transacting business in the state who is not a licensee may not knowingly use a name or title that indicates that the person is a BIDCO or otherwise represent that the person is a BIDCO or a licensee.

(2) A licensee may not knowingly misrepresent the meaning or effect of its license.

Section 13. Board of directors. (1) The board of directors of a licensee must have at least seven directors.

(2) The board of directors shall hold at least one meeting each calendar quarter.

Section 14. Notice of officer and director changes. Within 30 days after each of the following events, the licensee shall notify the department in writing of the event and provide any additional information that the department requires:

- (1) the death, resignation, or removal of a director or officer;
- (2) the election of a director; or
- (3) the appointment of an officer.

Section 15. Dividends. (1) A licensee may not pay or obligate itself to pay a cash dividend or dividend in kind to the licensee's shareholders unless the payment is consistent with a dividend policy that has been adopted by the licensee and approved by the department.

(2) When approving dividend policies under this section, the department shall consider the special characteristics of BIDCOs and the diverse range of dividend policies that are potentially appropriate for a BIDCO, without allowing the licensee to engage in unsafe or unsound acts that could threaten the viability of the licensee as an ongoing BIDCO by eroding its capital base.

(3) The department may at any time withdraw a previous approval of a dividend policy if the department determines that the withdrawal is necessary to prevent unsafe or unsound acts.

Section 16. Stock buyback. A licensee may not buy back or obligate itself to buy back a share of equity interest from a shareholder without the prior approval of the department.

Section 17. Offices. (1) A licensee shall maintain at least one office in this state.

(2) The location of each office of a licensee must be reasonably accessible to the public.

(3) A licensee shall post in a conspicuous place at each of the licensee's offices a sign that bears the corporate name of the licensee.

(4) If a licensee establishes, relocates, or closes an office, the licensee shall give the department written notice within 30 days of the event.

Section 18. Business of licensee — general powers. (1) A licensee may not engage in a business other than providing financing assistance and management assistance to businesses.

(2) In addition to the other powers provided by [sections 1 through 56] and the powers conferred on the licensee by the laws under which it is incorporated that are not inconsistent with [sections 1 through 56], a licensee may:

(a) borrow money and otherwise incur indebtedness for the licensee's purposes, including the issuing of corporate bonds, debentures, notes, and other evidence of indebtedness. A licensee's indebtedness may be secured or unsecured and may involve equity features, including provisions for conversion to stock and warrants to purchase stock.

(b) make contracts;

(c) incur and pay necessary and incidental operating expenses;

(d) purchase, receive, hold, lease, acquire, sell, convey, mortgage, pledge, or otherwise acquire or dispose of real or personal property and the rights and

privileges that are incidental and appurtenant to the transactions if the real or personal property is for the licensee's use in operating the licensee's business or if the real or personal property is acquired by the licensee from time to time in satisfaction of debts or the enforcement of obligations;

(e) make donations for charitable, educational, research, or similar purposes;

(f) provide financing assistance and management assistance to businesses and establish the terms and conditions of the assistance;

(g) implement a reasonable and prudent policy for conserving and investing the licensee's money before the money is used to provide financing assistance to businesses or to pay the expenses of the licensee; and

(h) exercise the incidental powers that are necessary, convenient, or reasonably related to providing financing assistance and management assistance to businesses.

Section 19. Financing assistance allowed — forms, terms, conditions. (1) The financing assistance that a licensee may provide includes:

(a) loans;

(b) purchase of debt instruments;

(c) straight equity investments including the purchase of common stock or preferred stock;

(d) debt with equity features, including warrants to purchase stock, convertible debentures, or receipt of a percentage of net income or sales;

(e) royalty-based financing;

(f) debt guarantees; and

(g) property leasing.

(2) A licensee may determine the form, terms, and conditions for the financing assistance that it will provide.

Section 20. Participation in government programs. (1) A licensee may participate in a federal, state, or local government program for which the licensee is eligible and that has as the program's function the provision or facilitation of financing assistance or management assistance to businesses.

(2) If a licensee participates in a program referred to in subsection (1), the licensee shall comply with the requirements of the program.

Section 21. Scope of management assistance. When providing management assistance, a licensee may provide management advice, management services, technical advice, and technical services.

Section 22. Limitation to purposes of business. Financing assistance and management assistance provided by a licensee to a business may be only for the business purposes of the business.

Section 23. Control of other businesses. (1) A licensee may not hold control of another business except as provided under [sections 24 and 25].

(2) In this section, "licensee" includes the licensee in concert with a director, officer, controlling person, or affiliate of the licensee.

Section 24. Control of assisted business. (1) A licensee that has provided financing assistance to a business may acquire and hold control of the

business to the extent that it becomes necessary to protect the licensee's interest as a creditor of or investor in the business.

(2) Unless the department approves a longer period, a licensee holding control of a business under this section shall divest itself of the control as soon as practicable or within 5 years after acquiring the interest, whichever is sooner.

(3) Within 30 days after a licensee exercises its authority to acquire and hold control of a business under this section, the licensee shall notify the department of the action. The notification must include the reasons why it is necessary for the licensee to acquire and hold control of the business and the length of time the licensee anticipates that it may be necessary to hold control of the business.

Section 25. Control of business providing financing assistance and management assistance or other businesses. (1) With the approval of the department, a licensee may acquire and hold control of another business that is engaged only in the business of providing financing assistance and management assistance to businesses.

(2) With the approval of the department, a licensee may acquire and hold control of a business not otherwise allowed under [sections 23 and 24] and this section.

(3) The department may not approve an application under subsection (2) unless the department determines that:

(a) the acquisition and control will not cause the amount of the licensee's investments in businesses covered by this section to exceed 15% of the assets of the licensee; and

(b) in the department's judgment the approval will promote the purposes of [sections 1 through 56].

(4) An approval under subsection (2) may not be for a period of more than 3 years unless the department determines that a longer period is necessary and consistent with the purposes of [sections 1 through 56].

Section 26. Business practice standards and reserve. (1) A licensee shall transact its business in a safe and sound manner and shall maintain itself in a safe and sound condition.

(2) Subject to subsection (3), in determining whether a licensee is transacting business in a safe and sound manner, the department may not consider the risk of providing financing assistance to a business, unless the department determines that the risk is great enough to demonstrate gross mismanagement when compared with the return that can be realistically expected.

(3) The department may:

(a) if the amount of the financing assistance is unduly large in relation to the total assets or the total shareholder equity of the licensee, determine that a licensee's financing assistance to a single business or group of affiliated businesses violates subsection (1) or constitutes an unsafe or unsound act;

(b) require that a licensee maintain a reserve in the amount of anticipated losses;

(c) require that a licensee have in effect a written financing assistance policy approved by the licensee's board of directors, including credit evaluation and other matters. The department may not require that a licensee adopt a financing assistance policy that contains standards that prevent the licensee

from exercising needed flexibility in evaluating and structuring financing assistance to businesses on an individual basis.

Section 27. Disclosure of potential conflict of interest — terms and conditions — examples. (1) A person shall disclose a potential conflict of interest that occurs in a transaction in the financing documents of the transaction or, if the transaction does not involve financing assistance, in another appropriate document if the person:

- (a) participates in a decision of a licensee relating to the transaction; and
- (b) knows of a potential conflict of interest involving the transaction.

(2) If a licensee provides financing assistance to a business or engages in another business transaction and if the assistance or transaction involves a potential conflict of interest, the terms and conditions under which the licensee provides the assistance or engages in the transaction may not be less favorable to the licensee than the terms and conditions that would be required by the licensee in the ordinary course of business if the assistance or transaction did not involve a potential conflict of interest.

(3) Licensee transactions that involve a potential conflict of interest include:

(a) providing financing assistance to a principal shareholder of the licensee, to a person controlled by a principal shareholder of the licensee, or to a director, officer, partner, relative, controlling person, or affiliate of a principal shareholder of the licensee;

(b) providing financing assistance to a business to which one or more of the following provides or plans to provide contemporaneous financing assistance:

(i) a principal shareholder of the licensee;

(ii) a director, officer, partner, relative, controlling person, or affiliate of a principal shareholder of a licensee;

(iii) an affiliate of a principal shareholder of a licensee; or

(iv) a person controlled by a principal shareholder of the licensee;

(c) providing financing assistance to a business that has or is expected to have a substantial business relationship with another business that has a director, officer, or controlling person who is also:

(i) a director, officer, or controlling person of the licensee; or

(ii) the spouse of a director, officer, or controlling person of the licensee;

(d) providing financing assistance to a business if the business or a director, officer, or controlling person of the business contemporaneously has lent or will lend money to an associate of the licensee;

(e) providing financing assistance for the purchase of property of an associate or principal shareholder of the licensee;

(f) selling or otherwise transferring an asset of the licensee to an associate or principal shareholder of the licensee.

(4) In this section, “relative” means a parent, child, sibling, spouse, grandparent, grandchild, nephew, niece, aunt, or uncle or a relative of the same degree through marriage.

Section 28. Acquiring control of licensee — application — determination. (1) A person may not acquire control of a licensee without the prior approval of the department.

(2) The department shall approve an application to acquire control of a licensee if the department determines that:

(a) the applicant and the directors and officers of the applicant are of good character and sound financial standing;

(b) it is reasonable to believe that the applicant will comply with [sections 1 through 56]; and

(c) the plans, if any, of the applicant to make a major change in the business, corporate structure, or management of the licensee are not detrimental to the safety and soundness of the licensee.

(3) If, after notice and a hearing, the department determines that the criteria for approval in subsection (2) have not been satisfied, the department shall deny the application.

(4) When the department is reviewing an application under this section, the department may determine that:

(a) an applicant or a director or officer of an applicant is not of good character if the person has been convicted of a crime involving fraud or dishonesty, including a conviction based on a guilty plea or plea of nolo contendere;

(b) an applicant's plan to make a major change in the management of a licensee is detrimental to the safety and soundness of the licensee if the plan provides for a person to become a director or officer of the licensee and the person has been convicted of a crime involving fraud or dishonesty, including a conviction based on a guilty plea or plea of nolo contendere.

(5) The conditions described in subsection (4) are not the only conditions upon which the department may determine that an applicant or a director or an officer of an applicant is not of good character or that an applicant's plan to make a major change in the management of a licensee is detrimental to the safety and soundness of the licensee.

Section 29. Merger — purchase — sale. (1) A licensee may not merge with another corporation unless the merger is approved by the department, and, if the licensee is not the surviving corporation, the surviving corporation is a licensee.

(2) A licensee may not purchase all or substantially all of the business of another person unless the purchase is approved by the department.

(3) A licensee may not sell all or substantially all of the licensee's business or of the business of an office of the licensee to another person unless the purchaser is a licensee and the sale is approved by the department.

(4) The department may not approve a merger, purchase, or sale under this section unless the department determines that:

(a) the merger, purchase, or sale will be safe and sound with respect to the acquiring licensee;

(b) upon consummation of the merger, purchase, or sale, it is reasonable to believe that the acquiring licensee will comply with [sections 1 through 56];

(c) the merger, purchase, or sale will not have a major detrimental effect on competition in the providing of financial assistance or management assistance to businesses or, if there will be a detrimental effect, the merger, purchase, or sale is necessary in the interests of the safety and soundness of a party to the merger, purchase, or sale or is otherwise, on balance, in the public interest.

Section 30. Investigations — powers — failure to comply or testify.

(1) The department may investigate any matter, upon complaint or otherwise, if it appears that a person has engaged or offered to engage in any act or practice that is in violation of any provision of [sections 1 through 56] or any rule adopted or order issued by the department pursuant to [sections 1 through 56].

(2) The department may issue subpoenas to compel the attendance of any witnesses and the production of books, accounts, records, documents, and other evidence in any matter over which the department has jurisdiction, control, or supervision under [sections 1 through 56]. The department may administer an oath or affirmation to any person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by the subpoena, a judge of the district court of Lewis and Clark County or the county in which the licensee's premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of court shall issue the subpoena requiring the person to whom it is directed to appear at the time and place designated in the subpoena.

(4) If a person served with a court-ordered subpoena refuses to obey the subpoena or to give testimony or produce evidence as required by the subpoena, the department may proceed under the contempt provisions of Title 3, chapter 1, part 5.

(5) Failure to comply with the requirements of a court-ordered subpoena is punishable under 45-7-309.

Section 31. Fees — special revenue account. (1) A fee for filing an application with the department must be paid at the time the application is filed with the department and is not refundable. A person shall pay the department:

(a) \$5,000 for filing an application for a license;

(b) \$1,250 for filing an application for approval to acquire control of a licensee;

(c) \$1,250 for filing an application for approval for a merger, purchase, or sale under [section 29]. If two or more applications relating to the same merger, purchase, or sale are filed, the fee for filing each application is the figure resulting from dividing \$1,250 by the number of the applications.

(2) A licensee shall pay \$2,500 each calendar year at a time established by the department.

(3) The department shall establish by rule a fee for the examination of a licensee or an affiliate or subsidiary of a licensee. The fee must be paid within 30 days after receiving a statement from the department. A fee established under this subsection must include:

(a) the proportionate part of the salaries and cost of employee benefits of the examiners while conducting the examination and while preparing the examination report; and

(b) the transportation costs and per diem costs of each examiner while away from the examiner's place of employment.

(4) Fees collected under this section must be deposited in the special revenue account established in subsection (5).

(5) There is a special revenue account to the credit of the department for use in administering [sections 1 through 56].

Section 32. Records and report requirements. (1) A licensee shall make and keep books, accounts, and other records in the form and manner, at the place, and for the period of time that the department establishes.

(2) A licensee, an affiliate of a licensee, and a subsidiary of a licensee shall file with the department the reports that the department requires. A report must be in the form and contain the information that the department requires.

(3) The department may require, by order, that a licensee include an asset on the licensee's books and records at a valuation that represents the current value of the asset.

(4) Not later than 90 days after the close of the calendar year, or a longer period if established by the department, a licensee shall file with the department an audit report containing:

(a) financial statements, including a balance sheet, statement of income or loss, statement of changes in capital accounts, and statement of changes in financial position for or as of the end of the calendar year, prepared with an audit by an independent certified public accountant in accordance with generally accepted accounting principles;

(b) a report, certificate, or opinion of the independent certified public accountant who performs the audit, stating that the financial statements were prepared in accordance with generally accepted accounting principles; and

(c) other information that the department may require.

Section 33. Records kept by others. (1) If a person other than a licensee makes or keeps all or part of the books, accounts, or other records of the licensee, [sections 1 through 56] apply to the person with respect to the books, accounts, and other records to the same extent as if the person were the licensee.

(2) If a person other than an affiliate or subsidiary of a licensee makes or keeps all or part of the books, accounts, or other records of the affiliate or subsidiary, [sections 1 through 56] apply to the person with respect to the books, accounts, and other records to the same extent as if the person were the affiliate or subsidiary.

(3) If the department considers it expedient, the department may require a licensee to obtain the approval of the department before permitting another person to make or keep all or part of the books, accounts, or other records of the licensee.

Section 34. Information on economic development effect. Each year, the department shall publish and provide to the legislature information on the effect of [sections 1 through 56] on promoting economic development in the state. The information must include aggregate statistics on:

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

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

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

Section 35. Examination of licensees and subsidiaries. (1) The department may at any time examine a licensee or an affiliate or subsidiary of a licensee. Licensure under [sections 1 through 56] constitutes implied consent to examination by the department.

(2) The department shall examine a licensee at least once during each calendar year.

(3) At the department's request, the following persons shall provide to the department the books, accounts, and records of a licensee or a licensee's affiliate or subsidiary and shall otherwise facilitate the department's examination of the licensee to the fullest extent possible:

(a) a director, officer, or employee of a licensee being examined by the department;

(b) a director, officer, or employee of an affiliate or subsidiary of a licensee being examined by the department;

(c) a person having custody of the books, accounts, or records of a licensee being examined by the department;

(d) a person having custody of the books, accounts, or records of an affiliate or subsidiary of a licensee being examined by the department.

(4) The department may retain a certified public accountant, attorney, appraiser, or other person to assist the department in the examination of a licensee or an affiliate or subsidiary of a licensee if the department determines that the assistance is necessary. Within 10 days after receipt of a statement from the department, the licensee being examined shall pay the fees of a person retained by the department under this subsection.

Section 36. Inspection or copying refusal. A person having custody of all or part of the books, accounts, or other records of a licensee may not knowingly refuse to allow the department, upon request, to inspect or make copies of the records.

Section 37. Restrictions on financing assistance. (1) A licensee may not directly or indirectly provide financing assistance to an associate of the licensee.

(2) A licensee may not directly or indirectly provide financing assistance to discharge or to free money for use in discharging part or all of an obligation to an associate of the licensee. This subsection does not apply to a transaction of an associate of a licensee in the normal course of the associate's business involving a line of credit or financing assistance with a term of not more than 5 years.

Section 38. Contemporaneous financing assistance. (1) If the terms on which a licensee provides financing assistance to a business are less favorable to the licensee than the terms on which an associate of the licensee provides financing assistance to the business, the licensee may not directly or indirectly provide the assistance to the business within 1 year before or after the associate provides assistance.

(2) If the financing assistance provided by the licensee's associate is of a different kind from the financing assistance provided by the licensee, the burden is on the licensee to prove that the terms on which the licensee provided the financing assistance were at least as favorable to the licensee as the terms on which the associate provided the assistance.

(3) This section does not apply:

(a) if the associate is a controlling person of the licensee and is also the only shareholder of the licensee;

(b) if the associate is an affiliate or subsidiary of the licensee; or

(c) to a transaction of an associate of a licensee in the normal course of the associate's business involving either a line of credit or financing assistance with a term of not more than 5 years.

Section 39. Compensation of associate. (1) An associate of a licensee may not directly or indirectly receive from a person to whom the licensee provides financing assistance:

(a) compensation in connection with the providing of the financing assistance; or

(b) other things of value for procuring, influencing, or attempting to procure or influence the licensee's action with respect to providing the financing assistance.

(2) This section does not apply to the receipt of fees by an associate of a licensee for bona fide services performed by the associate if:

(a) the associate, with the consent and knowledge of the person to whom the financing assistance is provided, is designated by the licensee to perform the services;

(b) the services are appropriate and necessary under the circumstances;

(c) the fees for the services are approved as reasonable by the licensee; and

(d) the fees for the services are collected by the licensee, and the licensee pays the associate.

Section 40. Exemptions. (1) If the department finds that the exemption is in the public interest and that the regulation of the person or transaction is not necessary for the purposes of [sections 1 through 56], the department may exempt a person or transaction from [sections 37 through 39] for the purposes of a particular transaction.

(2) The exemption may be unconditional or upon specified terms and conditions and for specified periods.

Section 41. Injunction — appointment of receiver. (1) If in the opinion of the department a person is using, has used, or is about to use any method, act, or practice that violates any provision of [sections 1 through 56] or any rule adopted or order issued by the department pursuant to [sections 1 through 56], the department, upon determining that proceeding would be in the public interest, may bring an action in the name of the state to restrain by temporary or permanent injunction or temporary restraining order the use of the unlawful method, act, or practice.

(2) The notice for an action pursuant to subsection (1) must state generally the relief sought and must be served at least 20 days before the hearing of the action in which the relief sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by 27-19-315.

(3) An action under this section may be brought in the district court of Lewis and Clark County.

(4) (a) A district court may issue a temporary or a permanent injunction or a temporary restraining order to restrain and prevent violations of [sections 1 through 56], and an injunction must be issued without bond to the department.

(b) If the department is successful in obtaining an injunction or a restraining order under this section, the department is entitled to reasonable attorney fees and costs.

(5) (a) In addition to all other means provided by law for the enforcement of a restraining order or an injunction, the district court of Lewis and Clark County may impound and appoint a receiver for the property and business of the defendant, including books, accounts, records, and documents 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 56].

(b) The receiver, when appointed and qualified, has the powers and duties conferred by the court that may include custody, collection, administration, winding up of business, and liquidation of the property and business.

Section 42. Cease and desist orders. (1) If it appears to the department that a person is engaged in or is about to engage in any act or practice constituting a violation of any provision of [sections 1 through 56] or any rule adopted or order issued by the department pursuant to [sections 1 through 56], the department may issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for hearing. The department may issue a temporary order pending the hearing that:

(a) remains in effect until 10 days after the hearings examiner issues proposed findings of fact and conclusions of law; or

(b) becomes final if the person to whom notice is addressed does not request a hearing within 10 days after receipt of the notice.

(2) A violation of an order issued pursuant to this section is subject to the penalty provisions of [sections 1 through 56].

Section 43. Penalties — license suspension and revocation — restitution. (1) If, after providing a 10-day written notice that includes a statement of alleged violations and a notice of an opportunity for a hearing as provided in Title 2, chapter 4, the department finds that any licensee or unlicensed person or any officer, director, partner, trustee, employee, or representative of the licensee or unlicensed person has violated any of the provisions of [sections 1 through 56], has failed to comply with the rules or orders adopted by the department, has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a license, the department may:

(a) impose a civil penalty not to exceed \$1,000 for each violation or, in the case of a continuing violation, \$1,000 a day;

(b) issue an order revoking or suspending the right of the licensee or person, directly or through an officer, director, partner, trustee, employee, or representative, to do business in this state as a licensee or to engage in the business of a BIDCO; or

(c) issue an order requiring restitution to borrowers and reimbursement of the department's cost in bringing the administrative action.

(2) All notices, hearing schedules, and orders must be mailed to the licensee or person by certified mail to the address for which the license was issued or, in the case of an unlicensed business, to the last-known address of record.

(3) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

(4) (a) The department may reinstate any suspended or revoked license if there is not a fact or condition existing at the time of reinstatement that would have justified the department refusing to originally issue the license.

(b) If a license has been revoked for cause, an application may not be made for issuance of a new license or the reinstatement of a revoked license for a period of 6 months from the date of revocation.

(5) All civil penalties collected under this section must be deposited in the general fund.

Section 44. Removal and suspension orders for certain acts. (1) The department may issue an order removing a subject person of a licensee from office with the licensee and prohibiting the subject person from further participation in any manner in the conduct of the business of the licensee if the department determines after notice and an opportunity for a hearing that:

(a) the person has violated [sections 1 through 56] or another applicable law, has engaged in an unsafe or unsound act with respect to the business of the licensee, or has engaged in an act that constitutes a breach of the person's fiduciary duty;

(b) the act, violation, or breach of fiduciary duty has caused or is likely to cause substantial financial loss or other damage to the licensee or has seriously prejudiced or is likely to seriously prejudice the interest of the licensee or the person has received financial gain by reason of the act, violation, or breach of fiduciary duty; and

(c) the act, violation, or breach of fiduciary duty involves dishonesty on the part of the person, demonstrates the person's gross negligence with respect to the business of the licensee, or demonstrates the person's willful disregard for the safety and soundness of the licensee.

(2) The department may issue an order removing a subject person of the licensee from office with the licensee and prohibiting the subject person from further participation in any manner in the conduct of the business of the licensee except with the prior consent of the department if, after notice and a hearing, the department determines that, by engaging or participating in an act with respect to a financial or other business institution that resulted in substantial financial loss or other damage, the subject person of a licensee demonstrated:

(a) dishonesty or a willful or continuing disregard for the safety and soundness of the financial or other business institution; and

(b) unfitness to continue as a subject person of the licensee or to participate in conducting the business of the licensee.

(3) The department may immediately issue an order suspending a subject person of a licensee from the person's office with the licensee and prohibiting the subject person from further participation in any manner in the conduct of the business of the licensee except with the consent of the department if the department determines that:

(a) the factors in subsection (1) or (2) are true with respect to the person; and

(b) an immediate order is necessary to protect the interests of the licensee or the public.

(4) In this section, when used with respect to a licensee, “office” means the position of director, officer, or employee of the licensee or of an affiliate or subsidiary of the licensee.

Section 45. Removal and suspension orders in cases of indictment or conviction. (1) If the department determines that a subject person of a licensee has been indicted by a grand jury or has been bound over for trial by a court for a crime involving dishonesty or breach of trust and that the continuation of the person as a subject person of the licensee may threaten the interests of the licensee or may threaten to impair public confidence in the licensee, the department may issue an order suspending the person from the person’s office with the licensee and prohibiting the person from further participation in any manner in the conduct of the business of the licensee until the person’s charge has been disposed of.

(2) If the department determines that a subject person or former subject person of a licensee to whom an order was issued under subsection (1) or another subject person of a licensee has been convicted of a crime involving dishonesty or breach of trust and that the continuation or resumption of the person as a subject person of the licensee may threaten the interests of the licensee, the department may issue an order suspending or removing the person from the person’s office with the licensee and prohibiting the person from further participation in any manner in the conduct of the business of the licensee except with the prior consent of the department.

(3) The failure to convict a subject person who is charged with a crime involving dishonesty or breach of trust does not prevent the department from issuing an order to the person under another provision of [sections 1 through 56].

(4) In this section, “office” has the meaning provided in [section 44].

Section 46. Hearings on orders — rescision and modification. (1) Within 30 days after an order is issued under [section 44(3) or 45], the licensee or subject person of a licensee to whom the order is directed may file with the department an application for a hearing on the order.

(2) After the hearing, the department shall affirm, modify, or rescind the order.

(3) A person to whom an order is issued under this section may apply to the department to modify or rescind the order. The department may not modify or rescind the order unless the department determines that it is in the public interest to do so and that it is reasonable to believe that the person will comply with [sections 1 through 56].

(4) The right of a licensee or subject person to whom an order is issued under [section 44(3) or 45] to an interlocutory review of the order is not affected by the failure of the licensee or subject person to apply to the department for a hearing on the order issued under this section.

Section 47. Disclosure to shareholders. If the department determines that the results of a department communication or order addressed to the licensee or to a subject person of the licensee should be disclosed to the licensee’s shareholders, the department may require the licensee to make the disclosure in the form and manner determined by the department.

Section 48. Meetings of directors and shareholders called by department. (1) If the department considers it expedient, the department may call a meeting of the board of directors or of the shareholders of a licensee.

(2) The department shall send notification of the time, place, and purpose of the meeting not less than 5 days before the meeting to each director for a directors' meeting or to each shareholder for a shareholders' meeting, either by personal service or by certified mail sent to the person's last-known address as shown in the records of the department.

(3) The licensee shall pay the notice and meeting expenses for a meeting of directors or shareholders called under this section.

Section 49. Orders restricting additional financial assistance. (1) The department may issue an order directing a licensee to refrain from providing additional financing assistance to businesses if, in the opinion of the department, the order is necessary to protect the interests of the licensee or the public and if, after notice and an opportunity for a hearing, the department determines that:

(a) the licensee or a controlling person, subsidiary affiliate of the licensee has violated [sections 1 through 56] or another applicable law;

(b) the licensee is conducting the licensee's business in an unsafe and unsound manner;

(c) the licensee is in a condition that makes it unsafe or unsound for the licensee to transact business;

(d) the licensee has ceased to transact business as a BIDCO;

(e) the licensee is insolvent;

(f) the licensee has suspended payment of the licensee's obligations, has made an assignment for the benefit of the licensee's creditors, or has admitted in writing the licensee's inability to pay the licensee's debts as the debts become due;

(g) the licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under a bankruptcy, reorganization, insolvency, or moratorium law, an involuntary petition in bankruptcy against the person has not been dismissed in 90 days, or a person has applied for the relief under the law against a licensee and the relief has been granted or the licensee has by an affirmative act approved of or consented to the action; or

(h) a fact or condition exists that would have been grounds for denying the licensee a license if the fact or condition had existed when the licensee applied for the license.

(2) If the department determines that a factor in subsection (1) is true with respect to a licensee and that it is necessary for the protection of the interests of the licensee or the public that the department immediately prevent the licensee from providing additional financing assistance to businesses, the department may issue the order without a hearing.

(3) If the department consents, a licensee that has been the subject of an order under subsection (1) or (2) may resume providing financing assistance to businesses under the conditions that the department prescribes.

(4) A person to whom an order is issued under subsection (1) or (2) may apply to the department to modify or rescind the order. The department may not grant

the application unless the department determines that it is in the interest of the public to do so and that it is reasonable to believe that the person will comply with [sections 1 through 56].

Section 50. Taking possession of licensee. (1) If the department finds that a factor in [section 49] is true with respect to a licensee and that it is necessary for the protection of the interests of the licensee or of the public, the department may take immediate possession of the property and business of the licensee and appoint a conservator for the licensee.

(2) The department may appoint as conservator a competent and disinterested person. The department must be reimbursed out of the assets of the conservatorship for all money expended by the department in connection with the conservatorship. The expenses of the conservatorship paid for by the department must be paid out of the assets of the licensee. Payment of the expenses of the department takes priority over other payments from the assets and must be fully paid before a final distribution is made.

(3) Under the direction of the department, the conservator shall take possession of the books, records, and assets of the licensee and shall take other action that is necessary to conserve the assets of the licensee or to ensure payment of obligations of the licensee pending further disposition of the licensee's business.

(4) At an appropriate time, the department may terminate the conservatorship and permit the licensee to resume the transaction of the licensee's business subject to the terms, conditions, restrictions, and limitations that the department prescribes.

Section 51. Appeals. A final order of an administrative proceeding under [sections 42 through 45, 49, or 50] may be appealed to the district court.

Section 52. Application of law under which licensee incorporated. Except as otherwise provided in this section, the provisions of the law under which a licensee is incorporated apply to the licensee. If a provision of the licensee's incorporating law conflicts with a provision of [sections 1 through 56], [sections 1 through 56] control.

Section 53. Associates. (1) For purposes of [sections 27 and 37 through 39], a person who is an associate within 6 months before or after a licensee provides financing assistance must be considered to be an associate as of the date the licensee provides the assistance.

(2) If a licensee, in order to protect the licensee's interests, designates a person to serve as a director of, officer of, or in a management capacity of a business to which the licensee provides financial assistance, the person may not, on that account, be considered to be an associate under [sections 27 and 37 through 39]. This subsection does not apply if the person has, directly or indirectly, another financial interest in the business or if the person, at any time before the licensee provides the financing assistance, served as a director of, officer of, or in another capacity in the management of the business for a period of 30 days or more.

Section 54. Other licenses. A corporation that is licensed under [sections 1 through 56] may apply for and be issued a license under another law of the state, the federal government, or another state unless the transaction of business by the corporation as a licensee under the other license would violate [sections 1 through 56] or would be contrary to the purposes of [sections 1 through 56].

Section 55. Authority of department. The provisions of [sections 1 through 56] relating to conflicts of interest do not limit the authority of the department to determine that an act involves a conflict of interest and is therefore an unsafe or unsound act.

Section 56. Confidentiality. (1) The director and other employees of the department may not disclose information acquired by them in the discharge of their duties under [sections 1 through 56] except to the extent that disclosure of the information is required by law, other than the public records provisions of Title 2, chapter 6, or is required by court order.

(2) Notwithstanding subsection (1), the department may disclose information that is confidential under subsection (1) if the department determines that disclosure of the information is necessary to promote the public interest. This subsection does not authorize the disclosure of information acquired by the department in the course of an examination of a licensee.

(3) A BIDCO may provide to a current or prospective creditor or shareholder of the BIDCO a copy of an examination report on the BIDCO made by the department under [sections 1 through 56].

Section 57. Codification instruction. [Sections 1 through 56] are intended to be codified as an integral part of Title 32, and the provisions of Title 32 apply to [sections 1 through 56].

Approved May 3, 2007

CHAPTER NO. 412

[SB 324]

AN ACT REQUIRING AN AGENCY THAT REQUIRES AN AQUIFER TEST TO FORWARD COPIES OF THE TEST RESULTS TO THE BUREAU OF MINES AND GEOLOGY; REQUIRING A WELL DRILLER TO DESIGNATE THE LOCATION OF THE WELL BEING DRILLED USING TWO METHODS; DEFINING "AQUIFER TEST"; AND AMENDING SECTIONS 85-2-501 AND 85-2-516, MCA.

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

Section 1. Section 85-2-501, MCA, is amended to read:

"85-2-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Aquifer" means any underground geological structure or formation ~~which~~ *that* is capable of yielding water or is capable of recharge.

(2) "*Aquifer test*" means *stressing an aquifer by removing or adding water at a known rate or changing the pressure by a known quantity and measuring the resultant change in hydraulic head for the purpose of determining the aquifer's hydraulic properties near the tested well.*

~~(2)(3)~~ "Bureau" means the Montana state bureau of mines and geology provided for in 20-25-211.

~~(3)(4)~~ "Ground water" means any water that is beneath the ground surface.

~~(4)(5)~~ "Ground water area" means an area ~~which~~ *that*, as nearly as known facts permit, may be designated so as to enclose a single and distinct body of ground water, which ~~shall~~ *must* be described horizontally by surface description

in all cases and which may be limited vertically by describing known geological formations ~~should~~ *if* conditions dictate ~~this~~ *vertical limits* to be desirable.”

Section 2. Section 85-2-516, MCA, is amended to read:

“**85-2-516. Well logs.** (1) Within 60 days after any well is completed, the driller shall file with the bureau a well log report.

(2) Except as provided in subsection (3), the well log report must be filed on a form specified by the department in consultation with the board of water well contractors provided for in 2-15-3307 and the bureau. *The driller shall provide a location for the well using at least two methods as specified on the form.*

(3) The bureau may allow submission of the well log report in an electronic format that is in accordance with the form specified as provided in subsection (2).

(4) The bureau may return the report for refileing if it is incomplete or incorrect.”

Section 3. Aquifer tests. (1) Aquifer tests required by a state agency must be forwarded by the agency to the bureau.

(2) Except as provided in subsection (3), the aquifer test report must be filed on a form specified by the department in consultation with the department of environmental quality and the bureau.

(3) The bureau may allow submission of an aquifer test report in an electronic format if it meets the requirements for the form provided for in subsection (2).

Section 4. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 85, chapter 2, part 5, and the provisions of Title 85, chapter 2, part 5, apply to [section 3].

Approved May 3, 2007

CHAPTER NO. 413

[SB 350]

AN ACT CREATING THE OFFENSE OF CRIMINAL DESTRUCTION OF OR TAMPERING WITH A COMMUNICATION DEVICE; AND PROVIDING PENALTIES.

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

Section 1. Criminal destruction of or tampering with communication device. (1) A person commits the offense of criminal destruction of or tampering with a communication device if the person purposely or knowingly destroys or tampers with a telephone or other communication device to obstruct, prevent, or interfere with:

- (a) the report to any law enforcement agency of any actual criminal offense;
- (b) the report to any law enforcement agency of any actual bodily injury or property damage; or
- (c) a request made to any governmental agency or to any hospital, doctor, or other medical provider for necessary ambulance or emergency medical assistance.

(2) A person destroys or tampers with a communication device by making the communication device unusable or inoperable, by interrupting its use, or by making it inaccessible.

(3) A person convicted of the offense of criminal destruction of or tampering with a communication device shall be fined an amount not to exceed \$1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 6, part 1, and the provisions of Title 45, chapter 6, part 1, apply to [section 1].

Approved May 3, 2007

CHAPTER NO. 414

[SB 354]

AN ACT DEFINING AND CLARIFYING THE OPERATION OF THE MEDICAID REIMBURSEMENT CONVERSION FACTOR FOR PHYSICIANS; AND ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT POLICY ADJUSTERS.

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

Section 1. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) “Conversion factor” means the average of the conversion factors used by the top five insurers or third-party administrators providing disability insurance to the most beneficiaries within the state in January 2007 who use the resource-based relative value scale to determine fees for covered services. This January 2007 conversion factor is applicable for state fiscal years 2008, 2009, 2010, 2011, 2012, and 2013. In state fiscal year 2014 and for each state fiscal year thereafter, the conversion factor is the average of the conversion factors used by the top five insurers or third-party administrators providing disability insurance to the most beneficiaries within the state who use the resource-based relative value scale to determine fees for covered services.

(2) “Department” means the department of public health and human services.

(3) “Medicaid” means the Montana medical assistance program established under Title 53, chapter 6.

(4) “Physician” has the meaning provided in 37-3-102.

(5) “Policy adjuster” means a factor by which the fee determined under [section 2] is multiplied to increase the fee paid by medicaid for certain categories of services.

(6) “Relative value unit” means a numerical value assigned in the resource-based relative value scale to each procedure code used to bill for services provided by a physician.

(7) “Resource-based relative value scale” means the medicare resource-based relative value scale contained in the physician’s medicare fee schedule adopted by the centers for medicare and medicaid services of the U.S. department of health and human services.

Section 2. Physician services reimbursement. (1) The fee for a covered service provided by a physician under the medicaid program is determined by multiplying a percentage of the conversion factor times the relative value unit for that service times any applicable policy adjusters.

(2) (a) For state fiscal years 2008 and 2009, the percentage of the conversion factor will be determined by the appropriation of the 2007 legislature for physician reimbursement.

(b) For state fiscal year 2010, the 2009 percentage of the conversion factor will be increased by a minimum of 6%.

(c) For state fiscal year 2011, the 2010 percentage of the conversion factor will be increased by a minimum of 6%.

(d) For state fiscal year 2012, the 2011 percentage of the conversion factor will be increased by a minimum of 6%.

(e) For state fiscal year 2013, the 2012 percentage of the conversion factor will be increased by a minimum of 6%.

(f) For state fiscal year 2014 and for each state fiscal year thereafter, the percentage of the conversion factor will be equivalent, at a minimum, to state fiscal year 2013.

Section 3. Providing conversion factors to department. The top five insurers or third-party administrators shall provide their standard conversion factors to the department, which may be used only for the purpose of determining average conversion rates and which must remain confidential.

Section 4. Rulemaking — policy adjusters. The department may by rule adopt policy adjusters for certain categories of service. A policy adjuster may not be less than 1.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [sections 1 through 4].

Approved May 3, 2007

CHAPTER NO. 415

[SB 372]

AN ACT CREATING A RESIDENT WOLF LICENSE AND A NONRESIDENT WOLF LICENSE; PROVIDING FOR THE ANNUAL AUCTION OR LOTTERY OF A WOLF LICENSE AND A GRIZZLY BEAR LICENSE; ESTABLISHING RESTITUTION FOR THE ILLEGAL TAKING, KILLING, OR POSSESSION OF A WOLF; PROVIDING THAT A PERSON WHO IS RESPONSIBLE FOR THE DEATH OF A WOLF MAY NOT WASTE THE ANIMAL BY ABANDONING THE HEAD OR HIDE IN THE FIELD, EXCEPT A WOLF THAT IS KILLED WHILE ATTACKING, KILLING, OR THREATENING TO KILL A PERSON OR LIVESTOCK; AMENDING SECTIONS 87-1-111 AND 87-3-102, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Class E-1—resident wolf license. Except as otherwise provided in this chapter, a person who is a resident, as defined in 87-2-102, and who is 12 years of age or older or who will turn 12 years old before or during the

season for which the license is issued, upon payment of a fee of \$19, may receive a Class E-1 license that entitles a holder who is 12 years of age or older to hunt a wolf and possess the carcass of the wolf as authorized by commission rules.

Section 2. Class E-2—nonresident wolf license. Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older or who will turn 12 years old before or during the season for which the license is issued, upon payment of a fee of \$350, may receive a Class E-2 license that entitles a holder who is 12 years of age or older to hunt a wolf and possess the carcass of the wolf as authorized by commission rules.

Section 3. Auction or lottery of wolf license. (1) The commission may issue one wolf 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 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 management of wolves.

Section 4. Auction or lottery of grizzly bear license. (1) The commission may issue one grizzly bear 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 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 management of grizzly bears.

Section 5. Section 87-1-111, MCA, is amended to read:

“87-1-111. Restitution for illegal killing or possession of certain wildlife. (1) Except as provided in 87-1-115 and in addition to other penalties provided by law, a person convicted or forfeiting bond or bail upon a charge of the illegal taking, killing, or possession of a wild bird, mammal, or fish listed in this section shall reimburse the state for each bird, mammal, or fish according to the following schedule:

- (a) bighorn sheep and endangered species, \$2,000;
- (b) elk, caribou, bald eagle, black bear, *wolf*, and moose, \$1,000;
- (c) mountain lion, lynx, wolverine, buffalo, golden eagle, osprey, falcon, antlered deer as defined by commission regulation, bull trout longer than 18 inches, and adult buck antelope as defined by commission regulation, \$500;
- (d) deer not included in subsection (1)(c), antelope not included in subsection (1)(c), fisher, raptor not included in subsection (1)(c), swan, bobcat, white sturgeon, river-dwelling grayling, and paddlefish, \$300;
- (e) fur-bearing animals, as defined in 87-2-101 and not listed in subsection (1)(c) or (1)(d), \$100;
- (f) game bird (except swan), \$25;

(g) game fish, \$10.

(2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-512, is not required for an order of restitution under this section.”

Section 6. Section 87-3-102, MCA, is amended to read:

“87-3-102. Waste of fish or game. (1) A person who is responsible for the death of a mountain lion *or wolf*, *except as provided in 87-3-130*, commits the offense of waste of game if the person abandons the head or hide in the field.

(2) A person who is responsible for the death of a grizzly bear commits the offense of waste of game if the person abandons the head or hide or any parts required by department or commission regulation for scientific purposes. All parts of a grizzly bear required by department or commission regulation for scientific purposes must be delivered to an officer or employee of the department for inspection as soon as possible after removal, and the department shall return to the licensee any bone structure and skull within 1 year upon written request. The hide must be returned immediately.

(3) A person responsible for the death of any game animal, except a mountain lion *or wolf*, commits the offense of waste of game if the person purposely or knowingly:

(a) detaches or removes from the carcass only the head, hide, antlers, tusks, or teeth or any or all of these parts;

(b) wastes any part of any game animal, game bird, or game fish suitable for food by transporting, hanging, or storing the carcass in a manner that renders it unfit for human consumption; or

(c) abandons in the field the carcass of any game animal or any portion of the carcass suitable for food.

(4) A person in possession of a game animal or game animal parts, a game bird, or a game fish suitable for food commits the offense of waste of game if the person purposely or knowingly:

(a) transports, stores, or hangs the animal, bird, or fish in a manner that renders it unfit for human consumption; or

(b) disposes of or abandons any portion of a game animal, game bird, or game fish that is suitable for food.

(5) For the purposes of this section, the meat of a grizzly *bear* or a black bear that is found to be infected with trichinosis is not considered to be suitable for food.

(6) A person convicted of waste of game may be fined not less than \$50 or more than \$1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. If the court imposes forfeiture of the person’s license and privilege to hunt, fish, or trap, the department shall notify the person of the forfeiture and loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days of notification.”

Section 7. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 87, chapter 2, part 5, and the provisions of Title 87, chapter 2, part 5, apply to [sections 1 and 2].

(2) [Sections 3 and 4] 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 3 and 4].

Section 8. Effective dates — contingencies. (1) Except as provided in subsections (2) and (3), [this act] is effective on passage and approval.

(2) [Sections 1 through 3, 5, and 6] are effective upon notification by the U.S. fish and wildlife service to the department of fish, wildlife, and parks that the wolf has been formally removed from the federal threatened or endangered species list and upon removal of the wolf from the state endangered species list by the department of fish, wildlife, and parks.

(3) [Section 4] is effective upon notification by the U.S. fish and wildlife service to the department of fish, wildlife, and parks that the grizzly bear has been formally removed from the federal threatened or endangered species list.

Approved May 3, 2007

CHAPTER NO. 416

[SB 376]

AN ACT PROVIDING THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MAY ENTER INTO A CONTRACT WITH THE UNITED STATES FOR WATER HELD IN FEDERAL RESERVOIRS AS A MEANS OF PROTECTING THE STATE'S INTEREST IN THOSE WATERS; PROVIDING THAT THE STATE MAY CONTRACT FOR WATER FROM EXISTING FEDERAL RESERVOIRS IF WHEN THE WATER IS PUT TO BENEFICIAL USE, IT IS USED WITHIN THE BASIN IN WHICH THE RESERVOIR IS LOCATED; LIMITING THE AMOUNT OF WATER THAT CAN BE LEASED FROM THE STATE AS THE RESULT OF CONTRACTS FOR WATER FROM FEDERAL RESERVOIRS WHEN THE WATER WILL BE PUT TO BENEFICIAL USE IN A BASIN OTHER THAN THE BASIN WHERE THE FEDERAL RESERVOIR IS LOCATED; PROVIDING THAT THERE IS A LIMIT TO THE AMOUNT OF WATER FOR WHICH THE DEPARTMENT MAY CONTRACT FROM ANY FEDERAL RESERVOIR; AMENDING SECTION 85-2-141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 85-2-141, MCA, is amended to read:

“85-2-141. Water leasing program. (1) There is a water leasing program administered by the department on behalf of the state of Montana.

(2) The department may acquire rights to water needed for leasing under this program:

(a) through appropriation of water in its own name; or

(b) by agreement with or purchase from another holder of water rights; or

(c) by contract with the United States for water held in federal reservoirs as a means of protecting the state's interest in those waters.

(3) Water for leasing under the water leasing program must be obtained from the following sources:

(a) any existing or future reservoir in a basin concerning which a temporary preliminary decree, a preliminary decree under 85-2-231, or a final decree under 85-2-234 has been entered;

(b) Fort Peck, *Tiber, Canyon Ferry, Hungry Horse, Koocanusa, or Yellowtail* reservoir, if ~~an agreement a contract~~ between the department and the federal government concerning the acquisition of water ~~and the sharing of revenue with the state~~ is in effect; *and*

(c) ~~Tiber, Canyon Ferry, Hungry Horse, or Yellowtail~~ reservoir if ~~and as long as there is an agreement between the department and the federal government concerning the acquisition of water and sharing of revenue with the state from one or more of these reservoirs; and~~

(d) any other existing or future federal reservoir:

(i) located in a basin concerning which a temporary preliminary decree, a preliminary decree under 85-2-231, or a final decree under 85-2-234 has been entered; and

(ii) for which and for so long as there is ~~an agreement a contract~~ between the department and the federal government concerning the acquisition of water ~~and the sharing of revenue with the state.~~

~~(4) Water may be leased for any beneficial use. The amount of water that can be leased under this program for all beneficial uses may not exceed 50,000 acre-feet.~~

(4) (a) Subject to subsections (4)(b) and (4)(c), the department may lease up to 1 million acre-feet of water from the reservoirs identified in subsection (3)(b) to water users for beneficial uses in Montana.

(b) The department may lease up to 50,000 acre-feet of water from the reservoirs identified in subsection (3)(b) to water users for beneficial uses outside Montana.

(c) The total amount of water leased under this subsection (4) may not exceed 1 million acre-feet.

~~(5)(5)~~ The term of any lease may not exceed 50 years. A term may be extended up to another 50 years if the department again determines the desirability of leasing by applying the considerations in subsection ~~(7) (7)~~. In making a redetermination, the department may require the completion of an environmental impact statement in accordance with subsection ~~(6) (6)~~.

~~(6)(6)~~ The department shall require the completion of an environmental impact statement under the provisions of Title 75, chapter 1, for lease applications that would result in the consumption of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more of water and for any other application for which an environmental impact statement is required by law. The department shall require the completion of an environmental impact statement whenever the cumulative effect of more than one application for a lease would constitute a probable significant environmental impact.

~~(7)(7)~~ Upon application by a person to lease water, the department shall make an initial determination of whether it is desirable for the department to lease water to the applicant. The determination of desirability must be made solely on the following considerations:

- (a) the content of the environmental impact statement, if required;
- (b) whether there is sufficient water available under the water leasing program; and
- (c) whether the criteria, except as to legislative approval, set forth in 85-2-311 have been satisfied.

(8)(8) The department shall for any *lease* agreement require commercially reasonable terms and conditions, which may include the requirement that up to 25% of the water to be leased be made available to a potential user for any beneficial use upon payment by the user of the costs of tapping into and removing water from the applicant's project. The department may differentiate in pricing, depending on the proposed beneficial use of the water.

(9)(9) The lease of water or the use of water under a lease does not constitute a permit, as provided in 85-2-102, and does not establish a right to appropriate water within the meaning of Title 85, chapter 2, part 3.

(10)(10) For purposes of the water leasing program established in this section, it is the intent of the legislature that the state act as a proprietor."

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

Approved May 3, 2007

CHAPTER NO. 417

[SB 379]

AN ACT CLARIFYING WHEN THE OFFICE OF STATE PUBLIC DEFENDER MAY BE APPOINTED AS COUNSEL IN POSTCONVICTION PROCEEDINGS; AMENDING SECTION 46-8-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 46-8-104, MCA, is amended to read:

"46-8-104. Assignment of counsel after trial — definition. (1) Any court of record may order the office of state public defender, provided for in 47-1-201, to assign counsel, subject to the provisions of the Montana Public Defender Act, Title 47, chapter 1, to ~~defend~~ *represent* any ~~defendant~~, petitioner, or appellant in any postconviction ~~criminal~~ action or proceeding *brought under Title 46, chapter 21*, if the ~~defendant~~, petitioner, or appellant ~~desires~~ *is eligible for the appointment of counsel and is unable to employ counsel*:

(a) *the district court determines that a hearing on the petition is required pursuant to 46-21-201;*

(b) *the state public defender's office requests appointment of a public defender and demonstrates good cause for the appointment;*

(c) *a statute specifically mandates the appointment of counsel;*

(d) *the petitioner or appellant is clearly entitled to counsel under either the United States or Montana constitution; or*

(e) *extraordinary circumstances exist that require the appointment of counsel to prevent a miscarriage of justice.*

(2) *An appointment of counsel made in the interests of justice, as provided in 46-21-201(2), may be made only when extraordinary circumstances exist.*

(3) *As used in this section, "extraordinary circumstances" includes those in which the petitioner or appellant does not have access to legal materials or has a physical or mental condition or limitation that prevents the petitioner or appellant from reading or writing English.*"

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

Approved May 3, 2007

CHAPTER NO. 418

[SB 403]

AN ACT INCREASING THE AMOUNT OF LAND INCLUDED IN THE DISABLED OR DECEASED VETERANS' RESIDENTIAL PROPERTY TAX EXEMPTION TO LAND NOT TO EXCEED 5 ACRES FROM A LOT; AMENDING SECTION 15-6-211, 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 15-6-211, MCA, is amended to read:

"15-6-211. Certain disabled or deceased veterans' residences exempt. (1) A residence, ~~including the lot and appurtenant land,~~ *not to exceed 5 acres,* 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) 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.

(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:

Income Single Person	Income Married Couple	Percentage Multiplier
\$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%

(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) is unmarried; and

(c) has obtained from the U.S. department of veterans affairs a letter indicating that the veteran was rated 100% disabled or was paid at the 100%

disabled rate by the U.S. department of veterans affairs for a service-connected disability at the time of death or that the veteran died while on active duty or as a result of a service-connected disability.

(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:

Income Surviving Spouse	Percentage Multiplier
\$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 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 property tax years beginning after December 31, 2006.

Approved May 3, 2007

CHAPTER NO. 419

[SB 412]

AN ACT EXEMPTING CERTAIN UNIVERSITY PROJECTS THAT DO NOT INVOLVE STATE APPROPRIATIONS FROM CERTAIN STATE CONSTRUCTION AND CONTRACTING LAWS; AMENDING SECTIONS 18-2-102 AND 20-25-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Exemption from state construction and contract laws for certain university projects. (1) The board of regents may lease land or land and facilities to a private nonprofit foundation organized to solicit, manage, and administer nonstate funds, gifts, grants, donations, in-kind contributions, and revenue on behalf of a unit of the Montana university system for the purpose of

constructing or renovating athletic facilities. The terms, guaranties, and agreements relating to a facility subject to this subsection must be negotiated in the best interests of the state and must include guaranties that a commitment of state appropriations for design, construction, operations, or maintenance is not expressed or implied. The terms, guaranties, and agreements are subject to review and approval by the board of regents. After approval, the board of regents shall submit a report to the budget director certifying that the conditions of this subsection have been satisfied.

(2) The design and construction of projects pursuant to subsection (1) are not subject to the requirements of Title 18, chapters 2 and 8, except that:

(a) the department of administration shall execute the provisions of 18-2-103(1)(a) and (1)(e); and

(b) the provisions of Title 18, chapter 2, part 4, apply to all labor other than donated labor.

Section 2. Section 18-2-102, MCA, is amended to read:

“18-2-102. Authority to construct buildings. (1) Except as provided in subsection (2), a building costing more than \$150,000 may not be constructed without the consent of the legislature. Legislative approval of repair and maintenance costs as part of an agency’s operating budget constitutes the legislature’s consent. When a building costing more than \$150,000 is to be financed in a manner that does not require legislative appropriation of money, the consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building and is authorized to transfer funds and authority as necessary to accomplish the project. Transfers may not be made from the funds for an uncompleted capital project unless the project is under the supervision of the same agency.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in 20-25-302 if they are to be financed wholly from the revenue from the facility.

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money if the construction of the building will not result in any new programs.

(d) *The regents of the Montana university system may authorize the construction of facilities as provided in [section 1].*

(d)(e) The department of military affairs, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money on federal land for the use or benefit of the state.”

Section 3. Section 20-25-308, MCA, is amended to read:

“20-25-308. Prohibition on transfer to foundation. In order to implement the provisions of Article VIII, section 12, of the Montana constitution, ownership of the following may not be transferred to a nonprofit corporation or foundation established for the benefit of a unit of the university system unless full market value is received for the transfer and laws applicable to the disposition of property are followed:

(1) money in the higher education funds provided for in 17-2-102;

(2) excess proceeds of money borrowed pursuant to 20-25-402; and

(3) *except as provided in [section 1], real or personal property acquired with money listed in subsection (1) or proceeds listed in subsection (2)."*

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 25, and the provisions of Title 20, chapter 25, apply to [section 1].

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

Approved May 3, 2007

CHAPTER NO. 420

[SB 413]

AN ACT CLARIFYING REQUIREMENTS FOR THE DEPOSIT OF MONEY RECEIVED BY STATE AGENCIES; PROVIDING A PROCESS FOR A STATE AGENCY TO PROPOSE AND RECEIVE APPROVAL FOR A SPECIAL DEPOSIT SCHEDULE FOR MONEY COLLECTED BY THE AGENCY; AND AMENDING SECTIONS 15-1-232, 17-6-105, 23-1-105, 81-3-107, AND 87-1-601, MCA.

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

Section 1. Section 15-1-232, MCA, is amended to read:

"15-1-232. Deposit of money. Money received by the department from the collection of taxes, fees, and debts is ~~not~~ subject to the timely deposit requirements of 17-6-105(6). ~~The department shall deposit all money within a reasonable time after receipt unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8)."~~

Section 2. Section 17-6-105, MCA, is amended to read:

"17-6-105. State treasurer as treasurer of state agencies — deposits of money. (1) The state treasurer is designated the treasurer of every state agency and institution.

(2) All state agencies ~~and institutions~~ shall deposit all money, credits, evidences of indebtedness, and securities either:

(a) in banks, building and loan associations, savings and loan associations, or credit unions located in the city or town in which the agencies ~~and institutions~~ are situated, if there is a qualified bank, building and loan association, savings and loan association, or credit union in the city or town as designated by the state treasurer with the approval of the board of investments; or

(b) with the state treasurer.

(3) Each bank, building and loan association, savings and loan association, or credit union shall pledge securities sufficient to cover 50% of the deposits at all times.

(4) The deposits must be made in the name of the state treasurer, must be subject to withdrawal at ~~his~~ *the treasurer's* option, and must draw interest as other state money, in accordance with the provisions of this part.

(5) ~~Nothing in this~~ *This chapter shall does not* impair or otherwise affect any covenant entered into pursuant to law by any agency ~~or institution~~ respecting the segregation, deposit, and investment of any ~~revenues~~ *revenue* or funds pledged for the payment and security of bonds or other obligations authorized to

be issued by the agency, and all the funds must be deposited and invested in accordance with the covenants notwithstanding any provision of this chapter.

(6) Except as otherwise provided by law *and subject to subsection (8)*, all money, credits, evidences of indebtedness, and securities received by a state agency ~~or institution~~ must be deposited ~~either~~ with the state treasurer or in a depository approved by the state treasurer each day when the accumulated amount of coin and currency requiring deposit exceeds ~~\$100~~ \$200 or total collections exceed ~~\$500~~ \$750. All money, credits, evidences of indebtedness, and securities collected must be deposited at least weekly.

(7) ~~Notwithstanding any other provision of state law, when~~ *Whenever the department determines that it is determined to be in the best financial interest of the state, the department may require any money received or collected by any agency of the state to be immediately deposited to the credit of the state treasurer.*

(8) (a) *An agency may propose a modified deposit schedule, including proposed internal controls, to the department that is different from the deposit schedule requirements of subsection (6). Upon receiving a proposal, the department shall transmit a copy of the proposal to the board of investments. The department shall review the proposal to ensure that deposits are made at least weekly, unless the requesting agency shows hardship due to peak processing times.*

(b) (i) *The department shall review the proposal to ensure adequate internal controls over amounts to be deposited.*

(ii) *The board of investments shall review the proposal to ensure that state assets and earnings on the assets are maximized.*

(c) (i) *If the department and the board of investments each approves of the proposal, the department shall notify the agency that the proposal is approved and the department and the agency may proceed to implement the proposal.*

(ii) *If the department or the board of investments disapproves the proposal, the department shall notify the agency that the proposal is disapproved.*

(9) *On or before September 15 immediately preceding a regular legislative session, the department shall submit to the legislative fiscal analyst and the legislative auditor a report detailing all active accounts for which a modified deposit schedule has been approved under subsection (8).*

(10) *For the purposes of this section, "agency" has the meaning provided in 17-1-104 and includes a contractor of an agency if the contractor collects at least \$50,000 annually on behalf of the state from all sources."*

Section 3. 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 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(6). ~~The department shall deposit money collected under this section within a reasonable time after receipt unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).~~

(5) There is a fund of the enterprise fund type, as defined in 17-2-102(2)(a), 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) In recognition of the fact that individuals support state parks through the payment of certain motor vehicle registration fees, persons who pay the fee provided for in 61-3-321(18)(a) may not be required to pay a day-use fee for access to state parks. Other fees for the use of state parks and fishing access sites, such as overnight camping fees, are still chargeable and may be collected by the department.”

Section 4. Section 81-3-107, MCA, is amended to read:

“81-3-107. Fees for department — deposit requirements. (1) The department shall establish, charge, and collect a fee for recording a new mark or brand, for recording a mark or brand transfer, or for rerecording a mark or brand. The department shall establish and charge a fee for providing a certified copy of a record and a duplicate certificate. The department may upon request research mark or brand histories and may charge a fee of up to \$50 for each mark or brand, based on time involved in research. All fees collected must be paid into the state special revenue fund for the use of the department. However, not more than 10% of the net rerecording fees after all expenses of rerecording are paid may be expended in any 1 year except in case of an emergency declared by the governor or the board.

(2) Money collected as fees under subsection (1) is ~~not~~ subject to the deposit requirements of 17-6-105(6) ~~but must be deposited by the department within a reasonable time after receipt unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).”~~

Section 5. Section 87-1-601, MCA, is amended to read:

“87-1-601. Use of fish and game money. (1) (a) Except as provided in 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, 87-2-411, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) 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 Title 87 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) Except as provided in section 2(3), Chapter 560, Laws of 2005, 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(6). ~~The department shall deposit license drawing application money within a reasonable time after receipt unless~~

the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(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 10-3-801.

(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 10-3-801 to reimburse counties for the costs of those missions as provided in 10-3-801.

(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) Any money deposited in the special revenue account in a fiscal year is available for reimbursement of search and rescue missions and to provide matching funds during the fiscal year when the money is deposited and during the following fiscal year. After this period, 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."

Approved May 3, 2007

CHAPTER NO. 421

[SB 424]

AN ACT ADOPTING THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT; PROVIDING GUIDANCE AND AUTHORITY TO CHARITABLE ORGANIZATIONS CONCERNING THE MANAGEMENT AND INVESTMENT OF FUNDS HELD BY THOSE ORGANIZATIONS; IMPOSING DUTIES ON THOSE WHO MANAGE AND INVEST CHARITABLE FUNDS; PROVIDING ADDITIONAL PROTECTIONS FOR CHARITIES AND THE INTERESTS OF DONORS; AMENDING SECTIONS 72-30-101, 72-30-102, 72-30-103, AND 72-30-207, MCA; AND REPEALING SECTIONS 72-30-201, 72-30-202, 72-30-203, 72-30-204, 72-30-205, AND 72-30-206, MCA.

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

Section 1. Section 72-30-101, MCA, is amended to read:

"72-30-101. Short title. This chapter may be cited as the "Uniform Prudent Management of Institutional Funds Act"."

Section 2. Section 72-30-102, MCA, is amended to read:

“72-30-102. Definitions. In this chapter, the following definitions apply:

(1) *“Charitable purpose” means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.*

~~(1)(2)~~ (a) *“Endowment fund” means an institutional fund or any part thereof of the fund that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.*

(b) *The term does not include assets that an institution designates as an endowment fund for its own use.*

~~(2)(3)~~ *“Gift instrument” means a will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document (record or records, including the terms of any an institutional solicitations solicitation, from which an institutional fund resulted) under which property is granted to, transferred to, or held by an institution as an institutional fund.*

~~(3)~~ *“Governing board” means the body responsible for the management of an institution or of an institutional fund.*

~~(4)~~ *“Historic dollar value” means the aggregate fair value in dollars of:*

(a) *an endowment fund at the time it became an endowment fund;*

~~(b)~~ *each subsequent donation to the fund at the time it is made; and*

~~(c)~~ *each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund.*

~~(5)(4)~~ *“Institution” means:*

~~(a)~~ *an incorporated or unincorporated organization a person, other than an individual, organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes;*

~~(b)~~ *or a government or governmental organization subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for any of these purposes a charitable purpose; and*

~~(c)~~ *a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.*

~~(6)(5)~~ (a) *“Institutional fund” means a fund held by an institution for its exclusive use, benefit, or exclusively for charitable purposes.*

(b) ~~but~~ *The term does not include:*

(i) *program-related assets;*

~~(a)~~(ii) *a fund held for an institution by a trustee that is not an institution; or*

~~(b)~~(iii) *a fund in which a beneficiary that is not an institution has an interest, other than possible rights an interest that could arise upon violation or failure of the purposes of the fund.*

(6) *“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.*

(7) *“Program-related asset” means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.*

(8) *“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.”*

Section 3. Section 72-30-103, MCA, is amended to read:

“72-30-103. Uniformity of application and construction. ~~This In applying and construing this chapter, shall be so applied and construed as to effectuate its general purpose to make uniform consideration must be given to the need to promote uniformity of the law with respect to the its subject of this chapter matter among those states which that enact it.”~~

Section 4. Section 72-30-207, MCA, is amended to read:

“72-30-207. Release or modification of restrictions in gift instrument on management, investment, or purpose. (1) ~~With the written consent of If the donor consents in a record, the governing board an institution may release or modify, in whole or in part, a restriction imposed by the applicable contained in a gift instrument on the use or management, investment, or purpose of an institutional fund.~~

(2) ~~If written consent of the donor cannot be obtained by reason of his death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the appropriate court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.~~

(3) ~~A release or modification under this section may not allow a fund to be used for purposes a purpose other than the educational, religious, a charitable, or other eleemosynary purposes purpose of the institution affected.~~

(4) ~~This section does not limit the application of the doctrine of cy-pres.~~

(2) *The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor’s probable intention.*

(3) *If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard.*

(4) *If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after notification to the attorney general, may release or modify the restriction, in whole or part, if:*

(a) the institutional fund subject to the restriction has a total value of less than \$25,000; or

(b) more than 20 years have elapsed since the fund was established; and

(c) the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.”

Section 5. Standard of conduct in managing and investing institutional fund. (1) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(2) In addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(3) In managing and investing an institutional fund, an institution:

(a) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(b) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(4) An institution may pool two or more institutional funds for purposes of management and investment.

(5) Except as otherwise provided by a gift instrument, the following rules apply:

(a) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(i) general economic conditions;

(ii) the possible effect of inflation or deflation;

(iii) the expected tax consequences, if any, of investment decisions or strategies;

(iv) the role that each investment or course of action plays within the overall investment portfolio of the fund;

(v) the expected total return from income and the appreciation of investments;

(vi) other resources of the institution;

(vii) the needs of the institution and the fund to make distributions and to preserve capital; and

(viii) an asset's special relationship or special value, if any, to the charitable purposes of the institution.

(b) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(c) Except as otherwise provided by law other than this chapter, an institution may invest in any kind of property or type of investment consistent with this section.

(d) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(e) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this chapter.

(f) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

Section 6. Appropriation for expenditure or accumulation of endowment fund — rules of construction. (1) Subject to the intent of a donor expressed in the gift instrument and to subsection (4), an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (a) the duration and preservation of the endowment fund;
- (b) the purposes of the institution and the endowment fund;
- (c) general economic conditions;
- (d) the possible effect of inflation or deflation;
- (e) the expected total return from income and the appreciation of investments;
- (f) other resources of the institution; and
- (g) the investment policy of the institution.

(2) To limit the authority to appropriate for expenditure or accumulate under subsection (1), a gift instrument must specifically state the limitation.

(3) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income", "interest", "dividends", or "rents, issues, or profits", or "to preserve the principal intact", or words of similar import:

(a) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(b) do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (1).

(4) The appropriation for expenditure in any year of an amount greater than 7% of the fair market value of an endowment fund, calculated on the basis of market values determined at least quarterly and averaged over a period of not less than 3 years immediately preceding the year in which the appropriation for expenditure was made, creates a rebuttable presumption of imprudence. For an endowment fund in existence for fewer than 3 years, the fair market value of the endowment fund must be calculated for the period the endowment fund has been in existence. This subsection does not:

(a) apply to an appropriation for expenditure permitted under law other than this chapter or by the gift instrument; or

(b) create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to 7% of the fair market value of the endowment fund.

Section 7. Delegation of management and investment functions. (1)

Subject to any specific limitation set forth in a gift instrument or in law other than this chapter, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(a) selecting an agent;

(b) establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(c) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(2) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(3) An institution that complies with subsection (1) is not liable for the decisions or actions of an agent to which the function was delegated.

(4) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(5) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this state other than this chapter.

Section 8. Reviewing compliance. Compliance with this chapter is determined in light of the facts and circumstances existing at the time a decision is made or action is taken and not by hindsight.

Section 9. Application to existing institutional funds. This chapter applies to institutional funds existing on or established after [the effective date of this act]. As applied to institutional funds existing on [the effective date of this

act], this chapter governs only decisions made or actions taken on or after that date.

Section 10. Relation to Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101 of that act, 15 U.S.C. 7001(a), or authorize electronic delivery of any of the notices described in section 103 of that act, 15 U.S.C. 7003(b).

Section 11. Repealer. Sections 72-30-201, 72-30-202, 72-30-203, 72-30-204, 72-30-205, and 72-30-206, MCA, are repealed.

Section 12. Codification instruction. [Sections 5 through 10] are intended to be codified as an integral part of Title 72, chapter 30, and the provisions of Title 72, chapter 30, apply to [sections 5 through 10].

Approved May 3, 2007

CHAPTER NO. 422

[SB 431]

AN ACT REVISING THE REQUIREMENTS FOR FLOW-THROUGH HOT SPRINGS POOLS; AND AMENDING SECTION 50-53-115, MCA.

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

Section 1. Section 50-53-115, MCA, is amended to read:

“50-53-115. Special requirements for flow-through hot springs pools. In addition to the other requirements of this chapter and rules promulgated under this chapter, flow-through hot springs pools must meet the following requirements:

- (1) The temperature of the pool water must be 106 degrees F or less.
- (2) The water must have sufficient clarity at all times so that a black disc, 6 inches in diameter, is readily visible when placed on a white field at the deepest point of the pool.
- (3) The pool water must be maintained at a pH of no less than 7.2 and not greater than 8.5 9.4.
- (4) The pool must provide sufficient water volume exchange to produce an 8-hour turnover of the entire volume of pool water to waste. In addition:
 - (a) the pool, and all surfaces that flow into the pool, must be drained, cleaned, and sanitized every 72 hours; or
 - (b) the pool must be disinfected, and a chlorine residual of 1 to 3 parts per million or a bromine residual of 3 to 6 parts per million must be maintained in the pool at all times.
- (5) Signs must be prominently posted that specify pool rules and special health hazards associated with swimming or bathing in flow-through hot springs pools. The contents of the signs must be determined by department rule. The department, in developing rules under this section, shall consult with flow-through hot springs pool owners.”

Approved May 3, 2007

CHAPTER NO. 423

[SB 446]

AN ACT GENERALLY REVISING THE LAWS RELATING TO REVIEW OF PUBLIC WATER AND SEWAGE SYSTEMS BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY; REMOVING INDUSTRIAL WASTE DISCHARGE SYSTEMS FROM DEPARTMENT REVIEW; REMOVING THE EXEMPTION FROM DEPARTMENT REVIEW OF PUBLIC SEWAGE SYSTEMS THAT HAVE WATER QUALITY DISCHARGE PERMITS; EXPRESSLY AUTHORIZING ADOPTION OF MANAGERIAL AND TECHNICAL CAPACITY RULES; AUTHORIZING THE ADOPTION OF SOURCE WATER PROTECTION REQUIREMENTS; ELIMINATING PROVISIONS THAT DUPLICATE PROVISIONS CONTAINED IN THE WATER QUALITY STATUTES; AND AMENDING SECTIONS 37-42-102, 75-6-102, 75-6-103, 75-6-104, 75-6-112, AND 75-6-120, MCA.

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

Section 1. Section 37-42-102, MCA, is amended to read:

“37-42-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Board” means the board of environmental review provided for in 2-15-3502.

(2) “Certificate” means a certificate of competency issued by the department, stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(3) “Community water system” means a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.

(4) “Council” means the water and wastewater operators’ advisory council provided for in 2-15-2105.

(5) “Department” means the department of environmental quality provided for in 2-15-3501.

(6) “*Industrial waste*” means any waste substance from the processes of business or industry or from the development of a natural resource, together with any sewage that may be present.

(7) “*Industrial waste discharge system*” means a system that discharges industrial waste into state waters.

(6)(8) “Nontransient noncommunity water system” means a public water system, as defined in 75-6-202, that is not a community system and that regularly serves at least 25 of the same persons for at least 6 months a year.

(7)(9) “Operator” means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or wastewater treatment plant.

(8)(10) “State waters” means the term as defined in 75-6-102.

(9)(11) “Wastewater treatment plant” means a facility that:

(a) is designed to remove solids, bacteria, or other harmful constituents of sewage, industrial wastes *waste*, or other wastes; and

(b) is part of either an industrial waste discharge system or a public sewage system as defined in 75-6-102.

~~(10)~~(12) “Water distribution system” means that portion of the water supply system that conveys water from the water treatment plant or other supply source to the premises of the consumer and that is part of a community water system or a nontransient noncommunity water system.

~~(11)~~(13) “Water supply system” means a system of pipes, structures, and facilities through which water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and that is part of a community water system or a nontransient noncommunity water system.

~~(12)~~(14) “Water treatment plant” means that portion of the water supply system that alters either the physical, chemical, or bacteriological quality of the water and renders it safe and palatable for human use.”

Section 2. Section 75-6-102, MCA, is amended to read:

“75-6-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Board” means the board of environmental review provided for in 2-15-3502.

(2) “Certified wellhead source water protection area” means an area certified by the department that ~~protects~~ *identifies* the surface and subsurface area surrounding a source of ground water for a public water supply system through which contaminants may move toward and reach the source of supply.

(3) “Community water system” means a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.

(4) “Contamination” means impairment of the quality of state waters by sewage, industrial ~~wastes~~ *waste*, or other ~~wastes~~ *waste* creating a hazard to human health.

(5) “Cross-connection” means a connection between a public water supply system and another water supply system, either public or private, or a wastewater or sewerline or other potential source of contamination so that a flow of water into or contamination of the public water supply system from the other source of water or contamination is possible.

(6) “Department” means the department of environmental quality provided for in 2-15-3501.

(7) “Drainage” means rainfall, surface, and subsoil water.

(8) “Industrial waste” means any waste substance from the processes of business or industry or from the development of a natural resource, together with any sewage that may be present.

~~(9) “Industrial waste discharge system” means a system that discharges industrial waste into state waters.~~

~~(10)~~(9) “Maximum contaminant level” means the maximum permissible level of a contaminant in water that is delivered to a user of a public water supply system.

~~(11) “Montana wellhead protection program” means a program administered by the department to certify wellhead protection areas and review wellhead protection ordinances.~~

(12)(10) “Other waste” means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(13)(11) “Person” means an individual, firm, partnership, company, association, corporation, city, town, local government entity, federal agency, or any other governmental or private entity, whether organized for profit or not.

(14)(12) (a) “Pollution” means contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that which is permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of a liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) A discharge that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

(15)(13) “Public sewage system” means a system of collection, transportation, treatment, or disposal of sewage that serves 15 or more families or 25 or more persons daily for any 60 or more days in a calendar year.

(16)(14) “Public water supply system” means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year.

(17)(15) “Safe Drinking Water Act” means 42 U.S.C. 300f and regulations set forth in 40 CFR, parts 141 and 142.

(18)(16) “Sewage” means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with ground water infiltration and surface water present.

(19) “Source water protection program” means a program administered by the department to certify source water protection delineation and assessment reports and source water protection plans and to review source water protection ordinances.

(20)(18) “State waters” means a body of water, irrigation system, or drainage system, either surface or underground.

(21)(19) “Transient noncommunity water system” means a public water supply system that is not a community water system and that does not regularly serve at least 25 of the same persons for at least 6 months a year.”

Section 3. Section 75-6-103, MCA, is amended to read:

“75-6-103. Duties of board. (1) The board has general supervision over all state waters that are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.

(2) The board shall, subject to the provisions of 75-6-116, adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees, as described in 75-6-108, for services rendered by the department;

(c) monitoring, recordkeeping, and reporting by persons who own or operate public water supply systems;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the siting, construction, operation, and modification of a public water supply system or public sewage system;

(f) the review of *the technical, managerial, and financial viability capacity* of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

(g) the collection and analysis of samples of water used for drinking or domestic purposes;

(h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part;

(i) administrative enforcement procedures and administrative penalties authorized under this part;

(j) standards and requirements for the review and approval of programs that may be voluntarily submitted by suppliers of public water supply systems to prevent water supply contamination from a cross-connection, including provisions to exempt cross-connections from the standards and requirements if all connected systems are department-approved public water supply systems; and

(k) any other requirement necessary for the protection of public health as described in this part.

(3) Board rules must provide for the following:

(a) a water supply or water distribution facility reviewed and approved by the department is not subject to changes in department design and construction criteria for a period of 36 months after written approval of the facility is issued by the department;

(b) except for facilities subject to permit requirements under Title 75, chapter 5, part 4, a system of water supply, drainage, wastewater, or sewage reviewed and approved under this section is not subject to changes in department design or construction criteria for a period of 36 months after written approval is issued by the department;

(c) plans and specifications for a portion of a facility or system subject to a 36-month limit on criteria changes pursuant to subsections (3)(a) and (3)(b), but not constructed within the 36-month timeframe, must be resubmitted for department review and approval before construction of that portion of the facility;

(d) the provisions of this subsection (3) may not limit an applicant's ability to alter a proposed project that is otherwise in conformance with applicable laws, rules, standards, and criteria.

(4) The board may issue orders necessary to fully implement the provisions of this part."

Section 4. Section 75-6-104, MCA, is amended to read:

"75-6-104. Duties of department. The department shall:

(1) upon its own initiative or complaint to the department, to the mayor or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2) have waters examined to determine their quality and the possibility that they may endanger public health;

(3) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the best method of ~~assuring~~ *ensuring* its quality;

(4) advise persons as to the best method of treating and disposing of their drainage, sewage, or wastewater with reference to the existing and future needs of other persons and to prevent pollution;

(5) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

(6) collect fees, as described in 75-6-108, for services and deposit the fees collected in the public drinking water special revenue fund established in 75-6-115;

(7) establish and maintain experiment stations and conduct experiments to study the best methods of treating water, drainage, wastewater, *and* sewage; ~~and industrial waste~~ to prevent pollution, including investigation of methods used in other states;

(8) enter on premises at reasonable times to determine sources of pollution or danger to water supply systems and whether rules and standards of the board are being obeyed;

(9) enforce and administer the provisions of this part;

(10) establish a plan for the provision of safe drinking water under emergency circumstances;

(11) maintain an inventory of public water supply systems and establish a program for conducting sanitary surveys; and

(12) enter into agreements with local boards of health ~~wherever~~ *whenever* appropriate for the performance of surveys and inspections under the provisions of this part."

Section 5. Section 75-6-112, MCA, is amended to read:

"75-6-112. Prohibited acts. A person may not:

(1) ~~discharge sewage, drainage, industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;~~

~~(2) discharge sewage, drainage, industrial waste, or other waste into state waters or on the banks of state waters or into an abandoned or operating water well unless the sewage, drainage, industrial waste, or other waste is treated as prescribed by the board;~~

~~(3)(1) commence or continue construction, alteration, extension, or operation of a system of water supply or water distribution that is designed intended to be used as a public water supply system or a system of sewer, drainage, waste, or sewage disposal that is designed intended to be used as a public sewage system or industrial waste discharge system before the person submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications; However, any facility reviewed by the department under Title 75, chapter 5, is not subject to the provisions of this section.~~

~~(4)(2) operate or maintain a public water supply system that exceeds a maximum contaminant level established by the board unless the person has been granted or has an application pending for a variance or exemption pursuant to this part;~~

~~(5)(3) violate any provision of this part or a rule adopted under this part; or~~

~~(6)(4) violate any condition or requirement of an approval issued pursuant to this part.”~~

Section 6. Section 75-6-120, MCA, is amended to read:

“75-6-120. Montana wellhead Wellhead and source water protection program programs — voluntary petitions. (1) The federal Safe Drinking Water Act, including 42 U.S.C. 300h-7 and 300j-13, enables the department to administer a wellhead protection program and source water assessment programs that involves involve delineation of the boundaries of the assessment areas from which a public water system receives supplies of drinking water, certification of local wellhead source water protection areas, assessment of source water susceptibility to regulated contaminants, and review of wellhead source water protection area ordinances. In administering this program these programs, the department may perform only those functions provided for by the federal Safe Drinking Water Act and this section.

(2) A supplier of a public water supply system may voluntarily submit for department review and approval a petition to establish a wellhead source water protection program for the system.

(3) The department may certify a wellhead source water protection area upon:

(a) receipt of a petition by a supplier for a public water supply system; and
 (b) making a determination that the wellhead source water protection area meets criteria and thresholds for certification established by the Montana wellhead source water protection program.

(4) (a) The governing body of the county in which a wellhead source water protection area or areas exist may adopt an ordinance to regulate, control, and prohibit conditions that threaten the quality of water used within the wellhead source water protection area or areas.

(b) Prior to adopting a wellhead source water protection area ordinance, the governing body shall confer with the supplier of the public water supply system and shall then submit the ordinance to the department for review and

verification that the ordinance is consistent with the requirements of this chapter.

(c) A **wellhead source water** protection area ordinance must be adopted using the procedures described in 7-5-103 through 7-5-107.

(5) (a) An ordinance adopted under subsection (4) is limited in applicability to the certified **wellhead source water** protection area or areas within the county.

(b) For a **wellhead source water** protection area that is located in two or more counties, the proposed **wellhead source water** protection area ordinance must be adopted by each county in order for the ordinance to be effective.

(6) A **wellhead source water** protection area ordinance adopted under this section may not conflict with and may not duplicate any other federal, state, or local law or regulation, including but not limited to zoning, fire codes, hazardous waste regulation under Title 75, chapter 10, part 4, or pesticide regulation under Title 80, chapter 8.”

Approved May 3, 2007

CHAPTER NO. 424

[SB 447]

AN ACT REVISING VICTIMS' RIGHTS LAWS AS THEY RELATE TO ADULT OFFENDERS; PROVIDING THAT VICTIMS OF CRIMINAL OFFENSES MUST BE PROVIDED, UPON REQUEST, ONE FREE COPY OF CERTAIN DOCUMENTS FILED IN A CRIMINAL CASE; PROVIDING THAT A VICTIM HAS A RIGHT TO BE ACCOMPANIED BY A VICTIM ADVOCATE DURING INTERVIEWS; AND AMENDING SECTIONS 46-24-106 AND 46-24-201, MCA.

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

Section 1. Section 46-24-106, MCA, is amended to read:

“46-24-106. Crime victims — family members — right to attend proceedings — exceptions — right to receive documents — rights during interview. (1) Except as provided in subsection (2), a victim of a criminal offense has the right to be present during any trial or hearing conducted by a court that pertains to the offense, including a court proceeding conducted under Title 41, chapter 5. A victim of a criminal offense may not be excluded from any trial or hearing based solely on the fact that the victim has been subpoenaed or required to testify as a witness in the trial or hearing.

(2) A judge may exclude a victim of a criminal offense from:

(a) a trial or hearing upon the finding of specific facts supporting exclusion or for disruptive behavior; or

(b) a portion of a proceeding under Title 41, chapter 5, that deals with sensitive personal matters of a youth or a youth's family and that does not directly relate to the act or alleged act committed against the victim.

(3) If a victim is excluded from a trial or hearing upon the finding of specific facts supporting exclusion, the victim must be allowed to address the court on the issue of exclusion prior to the findings.

(4) A family member of a victim may not be excluded from a trial or hearing based solely on the fact that the family member is subpoenaed or required to

testify as a witness in the trial or hearing unless there is a showing that the family member can give relevant testimony as to the guilt or innocence of the defendant or that the defendant's right to a fair trial would be jeopardized if the family member is not excluded.

(5) As used in this section, "victim" means:

(a) a person who suffers loss of property, bodily injury, or reasonable apprehension of bodily injury as a result of:

- (i) the commission of an offense;
 - (ii) the good faith effort to prevent the commission of an offense; or
 - (iii) the good faith effort to apprehend a person reasonably suspected of committing an offense; or
- (b) a member of the immediate family of a homicide victim.

(6) (a) *Except as provided in subsection (6)(c), a victim of a criminal offense has the right to receive, upon request and at no cost to the victim, one copy of all public documents filed in the court file.*

(b) *If the victim is under 18 years of age, copies provided under subsection (6)(a) must be provided to the victim's parent or guardian instead of to the minor victim.*

(c) *Subsection (6)(a) does not apply to:*

- (i) *trial transcripts;*
- (ii) *trial exhibits;*
- (iii) *court proceedings conducted under Title 41, chapter 5; or*
- (iv) *documents the prosecutor determines would adversely affect the prosecution if released.*

(7) *A victim of a criminal offense has the right, upon request, to have a victim advocate present when the victim is interviewed about the offense."*

Section 2. Section 46-24-201, MCA, is amended to read:

"46-24-201. Services to victims of crime. (1) Law enforcement personnel shall ensure that a victim of a crime receives emergency social and medical services as soon as possible and that the victim is given written notice, in the form supplied by the attorney general, of the following:

- (a) the availability of crime victim compensation;
- (b) access by the victim and the defendant to information about the case, *including the right to receive documents under 46-24-106;*
- (c) the role of the victim in the criminal justice process, including what the victim can expect from the system, as well as what the system expects from the victim, *and including the right to be accompanied during interviews as provided in 46-24-106;* and
- (d) stages in the criminal justice process of significance to a crime victim and the manner in which information about the stages may be obtained.

(2) In addition to the information supplied under subsection (1), law enforcement personnel shall provide the victim with written information on community-based victim treatment programs, including medical, housing, counseling, and emergency services available in the community.

(3) As soon as possible, law enforcement personnel shall give to the victim the following information:

(a) the name, office address, and telephone number of a law enforcement officer assigned to investigate the case; and

(b) the prosecuting attorney's name, office address, and telephone number."

Approved May 3, 2007

CHAPTER NO. 425

[SB 461]

AN ACT REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO RELEASE ALL OR A PORTION OF A BOND IF THE DEPARTMENT IS SATISFIED THAT RECLAMATION OF COAL AND URANIUM OPERATIONS HAS BEEN COMPLETED; CLARIFYING WRITTEN FINDINGS AND RECOMMENDATIONS; AND AMENDING SECTION 82-4-232, MCA.

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

Section 1. Section 82-4-232, MCA, is amended to read:

"82-4-232. Area mining required — bond — alternative plan. (1) (a) Area strip mining, a method of operation that does not produce a bench or fill bench, is required where strip mining is proposed. The area of land affected must be backfilled and graded to the approximate original contour of the land. However:

(i) consistent with the adjacent unmined landscape elements, the operator may propose and the department may approve regraded topography gentler than premining topography in order to enhance the postmining land use and develop a postmining landscape that will provide greater moisture retention, greater stability, and reduced soil losses from runoff and erosion;

(ii) postmining slopes may not exceed the angle of repose or lesser slope as is necessary to achieve a long-term static safety factor of 1.3 or greater and to prevent slides;

(iii) permanent impoundments may be approved if they are suitable for the postmining land use and otherwise meet the requirements of this part, as provided by board rules; and

(iv) reclaimed topography must be suitable for the approved postmining land use.

(b) Spoil from the first cut is not required to be transported to the last cut if highwalls are eliminated, box cut spoils are graded to blend in with the surrounding terrain, and the approximate original contour of the land is achieved.

(c) When directed by the department, the operator shall construct in the final grading diversion ditches, depressions, or terraces that will accumulate or control the water runoff.

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure to accomplish the purpose of this part.

(3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil removal, storage, replacement, and reconstruction, and the operator must as a minimum be required to:

(a) (i) segregate the A horizon of the natural soil, except ~~where~~ *when* it can be shown that other available soil materials will create a final soil having a greater productive capacity; and

(ii) if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(b) (i) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of ~~such~~ *the* horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that ~~which~~ *that* existed in the natural soil; and

(ii) if not used immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by acid or toxic material;

(c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

(4) All available topsoil must be removed in a separate layer, guarded from erosion and pollution, and kept in ~~such~~ a condition *so* that it can sustain vegetation of at least the quality and variety it sustained prior to removal. ~~provided that~~ *However*, the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material that is best able to support vegetation must be returned as the top layer.

(5) As determined by rules of the board, time limits must be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling must be completed before necessary equipment is moved from the operation.

(6) (a) The permittee may file an application with the department for the release of all or part of a performance bond. The application must contain a proposed public notice of the precise location of the land affected, the number of acres for which bond release is sought, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that the permittee has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality of the operation, notifying them of the permittee's intention to seek release from the bond.

(b) The department shall determine whether the application is administratively complete. An application is administratively complete if it includes:

- (i) the location and acreage of the land for which bond release is sought;
- (ii) the amount of bond release sought;
- (iii) a description of the completed reclamation, including the date of performance;
- (iv) a discussion of how the results of the completed reclamation satisfy the requirements of the approved reclamation plan; and
- (v) information required by rules implementing this part.

(c) The department shall notify the applicant in writing of its determination no later than 60 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items that the application must address. After an application for bond release has been determined to be administratively complete by the department, the permittee shall publish a public notice that has been approved as to form and content by the department at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the mining operation.

(d) Any person with a valid legal interest that might be adversely affected by the release of a bond or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to the operation may file written objections to the proposed release of bond to the department within 30 days after the last publication of the notice. If written objections are filed and a hearing is requested, the department shall hold a public hearing in the locality of the operation proposed for bond release or in Helena, at the option of the objector, within 30 days of the request for hearing. The department shall inform the interested parties of the time and place of the hearing. The date, time, and location of the public hearing must be advertised by the department in a newspaper of general circulation in the locality for 2 consecutive weeks. Within 30 days after the hearing, the department shall notify the permittee and the objector of its final decision.

(e) Without prejudice to the rights of the objector or the permittee or the responsibilities of the department pursuant to this section, the department may establish an informal conference to resolve written objections.

(f) For the purpose of the hearing under subsection (6)(d), the department may administer oaths, subpoena witnesses or written or printed materials, compel the attendance of witnesses or the production of materials, and take evidence, including but not limited to conducting inspections of the land affected and other operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the department.

(g) If the applicant significantly modifies the application after the application has been determined to be administratively complete, the department shall conduct a new review, including an administrative completeness determination. A significant modification includes but is not limited to:

(i) the notification of an additional property owner, local governmental body, planning agency, or sewage and water treatment authority of the permittee's intention to seek a bond release;

(ii) a material increase in the acreage for which a bond release is sought or in the amount of bond release sought; or

(iii) a material change in the reclamation for which a bond release is sought or the information used to evaluate the results of that reclamation.

(h) The department shall, within 30 days of determining that the application is administratively complete or as soon as weather permits, conduct an inspection and evaluation of the reclamation work involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of the pollution, and the estimated cost of abating the pollution.

(i) The department shall review each administratively complete application to determine the acceptability of the application. A complete application is acceptable if the application is in compliance with all of the applicable requirements of this part, the rules adopted under this part, and the permit.

(j) (i) The department shall notify the applicant in writing regarding the acceptability of the application no later than 60 days from the date of the inspection.

(ii) If the department determines that the application is not acceptable, it shall specify in the notice those items that the application must address.

(iii) If the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 60 days of the date of receipt as to whether the revised application is acceptable.

(iv) If the revision constitutes a significant modification, the department shall conduct a new review, beginning with an administrative completeness determination.

(v) A significant modification includes but is not limited to:

(A) the notification of an additional property owner, local governmental body, planning agency, or sewage and water treatment authority of the permittee's intention to seek a bond release;

(B) a material increase in the acreage for which a bond release is sought or the amount of bond release sought; or

(C) a material change in the reclamation for which a bond release is sought or the information used to evaluate the results of that reclamation.

(k) The department ~~may~~ *shall* release the bond in whole or in part if it is satisfied the reclamation covered by the bond or portion of the bond has been accomplished as required by this part according to the following schedule:

(i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded area in accordance with the approved reclamation plan, the department shall release 60% of the bond or collateral for the applicable permit area.

(ii) After revegetation has been established on the regraded lands in accordance with the approved reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing revegetation,

retain that amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent impoundment, the portion of bond may be released under this subsection (6)(k)(ii) if provisions for sound future maintenance by the operator or the landowner have been made with the department. Any part of the bond may not be released under this subsection (6)(k)(ii):

(A) as long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

(B) before soil productivity for prime farm lands to which the release would be applicable has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey.

(iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities, the department shall release the remaining portion of the bond, but not before the expiration of the period specified for responsibility and not until all reclamation requirements of this part are fully met.

(l) If the department disapproves the application for release of the bond or a portion of the bond, it shall ~~notify~~:

~~(i) provide to the permittee, in writing, stating the reasons for disapproval and recommending detailed written findings demonstrating that the reclamation covered by the bond or a portion of the bond has not been accomplished as required by this part; and~~

~~(ii) recommend corrective actions necessary to secure the release and allowing opportunity for a public hearing.~~

(m) When an application for total or partial bond release is filed with the department, it shall notify the municipality or county in which a prospecting or mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(7) All disturbed areas must be reclaimed in a timely manner to conditions that are capable of supporting the land uses that they were capable of supporting prior to any mining or to higher or better uses as approved pursuant to subsection (8).

(8) (a) An operator may propose a higher or better use as an alternative postmining land use. If the landowner is not the operator, the operator shall submit written documentation of the concurrence of the landowner or the land management agency with jurisdiction over the land. The department may approve the proposed alternative postmining land use only if it meets all of the following criteria:

(i) There is a reasonable likelihood for achievement of the alternative land use.

(ii) The alternative land use does not present any actual or probable hazard to the public health or safety or any threat of water diminution or pollution.

(iii) The alternative land use will not:

(A) be impractical or unreasonable;

(B) be inconsistent with applicable land use policies or plans;

(C) involve unreasonable delay in implementation; or

(D) cause or contribute to violation of federal, state, or local law.

(b) As used in this section, the term "landowner" includes a person who has sold the surface estate to the operator with an option to repurchase the surface estate after mining and reclamation are complete.

(9) The reclamation plan must incorporate appropriate wildlife habitat enhancement features that are integrated with cropland, grazing land, pastureland, land occasionally cut for hay, or other uses in order to enhance habitat diversity, with emphasis on big game animals, game birds, and threatened and endangered species that have been documented to live in the area of land affected, and to enhance wetlands and riparian areas along rivers and streams and bordering ponds and lakes. Incorporation of wildlife habitat enhancement features does not constitute a change in land use to fish and wildlife habitat and may not interfere with the designated land use.

(10) Facilities existing prior to mining, including but not limited to public roads, utility lines, railroads, or pipelines, may be replaced as part of the reclamation plan."

Section 2. Contingent voidness. (1) If the provisions of [this act] are disapproved by the United States secretary of the interior pursuant to 30 CFR 732.17, then [this act] is void.

(2) Within 15 days of the effective date of a disapproval pursuant to subsection (1), the department of environmental quality shall notify the code commissioner certifying that the disapproval has occurred.

Approved May 3, 2007

CHAPTER NO. 426

[SB 491]

AN ACT CHANGING THE NAME OF THE AFFORDABLE HOUSING REVOLVING LOAN ACCOUNT TO THE HOUSING MONTANA FUND; PROVIDING THAT MONEY IN THE HOUSING MONTANA FUND MAY BE USED FOR ACQUISITION OF LAND FOR HOUSING DEVELOPMENTS, LAND BANKING AND LAND TRUSTS, AND SHORT-TERM SITE-BASED HOUSING VOUCHERS FOR NEEDY INDIVIDUALS; ADDING STATE GOVERNMENT OR STATE AGENCIES AND PROGRAMS TO THE LIST OF ORGANIZATIONS ELIGIBLE FOR LOANS; AND AMENDING SECTIONS 90-6-107, 90-6-131, 90-6-132, 90-6-133, AND 90-6-134, MCA.

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

Section 1. Section 90-6-107, MCA, is amended to read:

"90-6-107. Deposit and expenditure of funds. (1) There is a housing authority enterprise fund in the proprietary fund type as provided for in 17-2-102(2). All funds from the proceeds of bonds issued under this part, fees, and other money received by the board, money appropriated by the legislature for the use of the board in carrying out this part, and money made available from any other source for the use of the board must be deposited in the housing authority enterprise fund ~~except as otherwise provided by law~~. All funds deposited in the housing authority enterprise fund, except funds appropriated by the legislature for use of the board in payment of expenses incurred in

carrying out this part, are continuously appropriated to and may be expended by the board for the purposes authorized in this part.

(2) There is a capital reserve account in the housing authority enterprise fund provided for in subsection (1). The capital reserve account consists of the aggregate money retained by the board under existing agreements with bondholders as the minimum capital reserve requirement described in 90-6-119 for each bond issue sold by the board.

(3) Funds appropriated by the legislature for use of the board in payment of expenses incurred in carrying out this part must be deposited in the housing authority enterprise fund. Funds expended by the board under this subsection must be repaid by the board from the fees and charges collected under this part and from any other money available for repayment in accordance with this part.”

Section 2. Section 90-6-131, MCA, is amended to read:

“90-6-131. Legislative declaration. (1) The legislature finds that *escalating land costs*, 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, *accessible*, 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 account~~ *the housing Montana fund* to assist low- and moderate-income citizens in meeting their basic housing needs. *Long-term affordability is the goal.*”

Section 3. Section 90-6-132, MCA, is amended to read:

“90-6-132. Definitions. (1) As used in 90-6-131 through 90-6-136, the following definitions apply:

(1) “Board” means the board of housing created in 2-15-1814.

(2) “Fund” means the housing Montana fund created in 90-6-133.

(2)(3) “Housing development” means the same as in 90-6-103.

(3) ~~“Loan account” means the affordable housing revolving loan account created in 90-6-133.~~

(4) “Low-income” means households whose incomes do not exceed 80% of the median income in the area, as determined by the United States department of housing and urban development, with adjustments for smaller or larger families.

(5) “Moderate-income” means households whose incomes are between 81% and 95% of the median income for the area, as determined by the United States department of housing and urban development, with adjustments for smaller and larger families.”

Section 4. Section 90-6-133, MCA, is amended to read:

“90-6-133. Revolving loan account Housing Montana fund — administration. (1) (a) There is ~~an affordable housing revolving loan account~~ *a housing Montana fund* in the housing authority enterprise fund provided for in

90-6-107. The money in the ~~loan account~~ *fund* is allocated to the board for the purpose of providing loans to eligible applicants.

(b) *Money in the housing Montana fund must be disbursed as loans. Twenty percent of the money in the fund must be disbursed to rural areas based on population and 50% must be disbursed to assist people living on incomes of not more than 50% of the local median family income.*

(2) (a) Except as provided in subsection (2)(b), ~~funds~~ money deposited in the ~~loan account~~ *fund* 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~~ *fund*. 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 account~~ *fund* may be paid from the ~~loan account~~ *fund*.

(6) Interest and principal on loans from the ~~loan account~~ *fund* must be repaid to the ~~loan account~~ *fund*.

(7) Interest income generated by investment of the principal of the ~~loan account~~ *fund* is retained in the ~~loan account~~ *fund*.”

Section 5. Section 90-6-134, MCA, is amended to read:

“90-6-134. Housing ~~loan program~~ Montana fund — loan capital restricted to interest on principal — eligible applicants. (1) The money in the ~~loan account~~ *housing Montana fund* 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 account~~ *fund*.

(3) Money from the ~~loan account~~ *fund* 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; *or*

(e) *acquisition of land for housing developments, land banking and land trusts, and short-term site-based housing vouchers for needy individuals.*

(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 account~~ *fund* may not be used to replace existing or available sources of funding for eligible activities.

(6) Organizations eligible for loans from the ~~loan account~~ *fund* are *state government or state agencies or programs*, 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.”

Approved May 3, 2007

CHAPTER NO. 427

[SB 492]

AN ACT PROVIDING AN ALTERNATIVE APPRAISAL METHOD FOR CERTAIN PURCHASES OF REAL PROPERTY OR CONSERVATION EASEMENTS BY A COUNTY; AMENDING SECTION 7-8-2202, 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. (1) Unless otherwise provided by law, a county may not purchase real property ~~in an amount in excess of \$10,000~~ *in an amount in excess of \$20,000* or a conservation easement using public funds ~~in an amount in excess of \$40,000~~ *in an amount in excess of \$80,000* unless the value of the ~~property or conservation easement has been previously estimated by the value of the property or conservation easement has been previously estimated by:~~

(a) a disinterested certified general real estate appraiser selected by the county commission, county attorney, and landowner; or

(b) *three disinterested citizens of the county appointed by the district judge.*

(2) A county may not pay more than the ~~appraised~~ *appraised* value for the real property or conservation easement.”

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

Approved May 3, 2007

CHAPTER NO. 428

[SB 523]

AN ACT PROVIDING THAT THE WORKERS' COMPENSATION COURT IS A COURT OF RECORD; AND AMENDING SECTION 3-1-102, MCA.

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

Section 1. Section 3-1-102, MCA, is amended to read:

“3-1-102. Courts of record. The court of impeachment, the supreme court, the district courts, *the workers' compensation court*, the municipal courts, and the justices' courts of record are courts of record.”

Approved May 3, 2007

CHAPTER NO. 429

[SB 540]

AN ACT ALLOWING POSSESSION OF AN ANTIQUE ILLEGAL GAMBLING DEVICE BY A LICENSED RETAIL BUSINESS ESTABLISHMENT FOR PURPOSES OF RESALE AND NOT FOR OPERATION; AMENDING SECTIONS 23-5-112, 23-5-152, AND 23-5-153, 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 23-5-112, MCA, is amended to read:

“23-5-112. Definitions. Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter:

(1) “Applicant” means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter.

(2) “Application” means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) “Authorized equipment” means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) “Bingo” means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. More than 75 numbers may not be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover one or more previously designated arrangements of numbers on the bingo card.

(5) “Bingo caller” means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(6) “Card game table” or “table” means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

(7) “Card game tournament” means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

(8) “Dealer” means a person with a dealer’s license issued under part 3 of this chapter.

(9) “Department” means the department of justice.

(10) “Distributor” means a person who:

(a) purchases or obtains from a licensed manufacturer, distributor, or route operator equipment of any kind for use in gambling activities; and

(b) sells the equipment to a licensed distributor, route operator, or operator.

(11) (a) “Gambling” or “gambling activity” means risking any money, credit, deposit, check, property, or other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise.

(b) The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(12) “Gambling device” means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

(13) “Gambling enterprise” means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(14) (a) “Gift enterprise” means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services.

(b) The term does not mean:

(i) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

(ii) a promotional game of chance; or

(iii) an amusement game regulated under Title 23, chapter 6.

(15) “Gross proceeds” means gross revenue received less prizes paid out.

(16) “Illegal gambling device” means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under Title 23, chapter 7, or under part 5 of this chapter or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise,

including a faro box, faro layout, roulette wheel, roulette table, or craps table, or a slot machine, except as provided in 23-5-153.

(17) "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, including craps, hazard, or chuck-a-luck, but not including activities authorized by 23-5-160;

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in Title 23, chapter 4, and parts 2, 5, and 8 of this chapter;

(d) credit gambling; and

(e) internet gambling.

(18) (a) "Internet gambling", by whatever name known, includes but is not limited to the conduct of any legal or illegal gambling enterprise through the use of communications technology that allows a person using money, paper checks, electronic checks, electronic transfers of money, credit cards, debit cards, or any other instrumentality to transmit to a computer information to assist in the placing of a bet or wager and corresponding information related to the display of the game, game outcomes, or other similar information.

(b) The term does not include the operation of a simulcast facility allowed by Title 23, chapter 4, or the state lottery provided for in Title 23, chapter 7. If all aspects of the gaming are conducted on Indian lands in conformity with federal statutes and with administrative regulations of the national Indian gaming commission, the term does not include class II gaming or class III gaming as defined by 25 U.S.C. 2703.

(19) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

(20) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

(21) "License" means a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab game seller, manufacturer of electronic live bingo or keno equipment, other manufacturer, distributor, or route operator that is issued to a person by the department.

(22) "Licensee" means a person who has received a license from the department.

(23) "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

(24) (a) "Lottery" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have paid or promised to pay

valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance.

(b) The term does not mean lotteries authorized under Title 23, chapter 7.

(25) "Manufacturer" means a person who:

(a) assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device and who sells the equipment directly to a licensed distributor, route operator, or operator; or

(b) possesses gambling devices or components of gambling devices for the purpose of testing them.

(26) "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established for purposes other than to conduct a gambling activity.

(27) "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public a gambling device or gambling enterprise authorized under parts 1 through 8 of this chapter.

(28) "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter.

(29) "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

(30) "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

(31) "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it. The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by the department that was manufactured or intended for use for purposes other than gambling.

(32) "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

(33) "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

(34) “Route operator” means a person who:

- (a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in a gambling activity;
- (b) leases the equipment to a licensed operator for use by the public; and
- (c) may sell to a licensed operator equipment that had previously been authorized to be operated on a premises.

(35) “Senior citizen center” means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of public health and human services.

(36) (a) “Slot machine” means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner.

(b) This definition does not apply to video gambling machines authorized under part 6 of this chapter.

(37) “Video gambling machine” is a gambling device specifically authorized by part 6 of this chapter and the rules of the department.”

Section 2. Section 23-5-152, MCA, is amended to read:

“23-5-152. Possession of illegal gambling device or conducting illegal gambling enterprise prohibited — exceptions. (1) Except as provided in 23-5-153 and subsections (2) through ~~(5)~~ (6) of this section, it is a misdemeanor punishable under 23-5-161 for a person to purposely or knowingly:

(a) have in the person’s possession or under the person’s control or permit to be placed, maintained, or kept in any room, space, enclosure, or building owned, leased, or occupied by or under the person’s management or control an illegal gambling device; or

(b) operate an illegal gambling enterprise.

(2) Subsection (1) does not apply to a public officer or to a person coming into possession of an illegal gambling device in or by reason of the performance of an official duty and holding it to be disposed of according to law.

(3) (a) The department may adopt rules to license persons to manufacture gambling devices that are not legal for public play in the state.

(b) A person may not manufacture an illegal gambling device without having obtained a license from the department. The department may charge an administrative fee for the license that is commensurate with the cost of issuing the license.

(4) (a) A person licensed under subsection (3) may conduct only those activities authorized under this subsection (4).

(b) A licensee may bring an illegal gambling device, including an illegal video gambling machine, into the state if:

(i) the illegal gambling device contains a component that will be used by the licensee to manufacture an illegal gambling device for export from the state; or

(ii) the illegal gambling device will be reconditioned, refurbished, repaired, tested, or otherwise substantially modified in preparation for export from the state; and

(iii) the illegal gambling device will be exported from the state; and

(iv) the licensee has notified the department and received authorization from the department to bring the illegal gambling device into the state. The licensee is subject to reporting requirements provided for in rules adopted under subsection (3)(a).

(c) A licensee may also bring an illegal video gambling machine into the state if:

(i) the illegal video gambling machine will be reconditioned, refurbished, repaired, or otherwise substantially modified for conversion to an authorized video gambling machine; and

(ii) the licensee has notified the department and has received authorization from the department to bring the illegal video gambling machine into the state. The licensee is subject to reporting requirements provided for in rules adopted under subsection (3)(a).

(5) An illegal gambling device may be possessed or located for display purposes only and not for operation:

(a) in a public or private museum; or

(b) in any other public place if the device has been made permanently inoperable for purposes of conducting a gambling activity.

(6) *An antique illegal gambling device may be possessed by a licensed retail business establishment for purposes of resale and not for operation as provided in 23-5-153."*

Section 3. Section 23-5-153, MCA, is amended to read:

"23-5-153. Possession and sale of antique slot machines illegal gambling devices. (1) For the purposes of this section, an antique slot machine is a mechanically or electronically operated slot machine that at any present time is more than 25 years old. *illegal gambling device is an illegal gambling device that at any present time is more than 25 years old.*

(2) Except as provided in 23-5-152(6) and subsection (3) of this section, an antique slot machine illegal gambling device may be possessed, located, and operated only in a private residential dwelling.

(3) (a) An antique slot machine illegal gambling device may be possessed or located for purposes of display only and not for operation:

(i) in a retail business establishment or public or private museum; or

(ii) in any other public place if the machine device has been made permanently inoperable for purposes of conducting a gambling activity.

(b) A licensed manufacturer-distributor or a person licensed under subsection (4) may possess antique slot machines illegal gambling devices for purposes of commercially selling or otherwise supplying the machines devices.

(4) A person other than a licensed manufacturer-distributor may not sell more than three antique ~~slot machines~~ *illegal gambling devices* in a 12-month period without first obtaining from the department ~~an annual~~ a license for selling the ~~machines~~ *antique illegal gambling devices*. The fee for the license is \$50 ~~a year~~, and the license is valid for 3 years from the date that the license is issued. The fee must be retained by the department for administrative purposes. The department may not issue a license under this subsection to a licensed operator.

(5) A person or entity legally possessing ~~a an antique slot machine~~ *illegal gambling device* under subsection (2) or (3) may sell or otherwise supply a ~~machine device~~ to another person or entity who may legally possess ~~a slot machine~~ *an illegal gambling device*.

(6) An antique ~~slot machine~~ *illegal gambling device* may not be operated for any commercial or charitable purpose.”

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 illegal gambling devices possessed by a licensed retail business establishment for purposes of resale and not for operation on or after December 31, 2006.

Approved May 3, 2007

CHAPTER NO. 430

[SB 542]

AN ACT REVISING PAYMENT OPTIONS FOR GROUP LIFE INSURANCE COVERAGE; AND AMENDING SECTIONS 33-20-1101, 33-20-1111, AND 33-20-1209, MCA.

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

Section 1. Section 33-20-1101, MCA, is amended to read:

“33-20-1101. Employee groups. (1) Subject to the requirements in subsections (2) through (5), the lives of a group of individuals may be insured under a policy issued to an employer or to the trustees of a fund established by an employer to insure employees of the employer for the benefit of persons other than the employer. The employer or trustees must be considered the policyholder.

(2) (a) The employees eligible for insurance under the policy must be all of the employees of the employer or all of any class or classes of the employer determined by conditions pertaining to their employment. The policy may provide that the term “employees” includes:

(i) the employees of one or more subsidiary corporations and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors, or partnerships if the business of the employer and of the employer’s affiliated corporations, proprietors, or partnerships is under common control;

(ii) the individual proprietor or partners if the employer is an individual proprietor or a partnership; or

(iii) retired employees.

(b) A director of a corporate employer is not eligible for insurance under the policy unless the director is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director.

(c) An individual proprietor or partner is not eligible for insurance under the policy unless the individual proprietor or partner is actively engaged in and devotes a substantial part of working hours to the conduct of the business of the proprietor or partnership.

~~(3) (a) The premium for the policy must be paid by the policyholder, either wholly from the employer's funds or funds contributed by the employer or partly from the employer's funds and from funds contributed by the insured employees. A policy may not be issued if the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 75% of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contribution. Payment of the premium for the insurance must be made by the policyholder from:~~

~~(i) the employer's funds or funds contributed by the employer;~~

~~(ii) funds contributed by the insured employees or members; or~~

~~(iii) funds contributed by a combination of payors in subsections (3)(a)(i) and (3)(a)(ii).~~

(b) A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(4) The policy must cover at least two employees at date of issue.

(5) The amount of insurance under the policy must be based upon a plan precluding individual selection either by the employees or by the employer or trustees."

Section 2. Section 33-20-1111, MCA, is amended to read:

"33-20-1111. Dependents of employee and labor union groups — coverage. Any group life policy issued under 33-20-1101, 33-20-1102, or 33-20-1103 may be extended to insure the employees or members against loss due to the death of their spouses and minor children, or any class or classes thereof of employees, members, spouses, or minor children, subject to the following requirements:

(1) (a) The premium for the insurance ~~shall~~ *must* be paid by the policyholder, either from:

~~(i) the employer's or union's funds or funds contributed by the employer or union; or from~~

~~(ii) funds contributed by the insured employees or members; or from both~~

~~(iii) a combination of payors in subsections (1)(a)(i) and (1)(a)(ii). If any part of the premium is to be derived from funds contributed by the insured employees or members, the insurance with respect to spouses and children may be placed in force only if at least 75% of the then eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, elect to make the required contribution.~~

(b) If no part of the premium is to be derived ~~paid~~ from funds contributed by the employees or members, all eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, must be insured with respect to their spouses and children.

(2) The amounts of insurance must be based upon some plan precluding individual selection either by the employees or members or by the policyholder, employer, or union.

(3) (a) Upon termination of the insurance with respect to the members of the family of any employee or member by reason of the employee's or member's termination of employment, termination of membership in the class or classes eligible for coverage under the policy, or death, the spouse is entitled to have issued by the insurer, without evidence of insurability, an individual policy of life insurance, without disability or other supplementary benefits, providing application for the individual policy ~~shall be~~ *is* made; and the first premium *is* paid to the insurer; within 31 days after ~~such the~~ termination, subject to the requirements of ~~subsections (1)(a), (1)(b), and (1)(c) of 33-20-1209(1)(a) through (1)(c).~~

(b) (i) If the group policy terminates or is amended ~~so as~~ to terminate the insurance of any class of employees or members and the employee or member is entitled to have issued an individual policy under 33-20-1210, the spouse is also entitled to have issued by the insurer an individual policy, subject to the conditions and limitations provided above.

(ii) If the spouse dies within the period during which ~~he~~ *the spouse* would have been entitled to have an individual policy issued in accordance with this provision, the amount of life insurance ~~which he~~ *that the spouse* would have been entitled to have issued under ~~such the~~ individual policy ~~shall~~ *must* be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium ~~therefor~~ *for the individual policy* has been made.

(4) Notwithstanding *the provisions in* 33-20-1208, only one certificate ~~need~~ *must* be issued for delivery to an insured person if a statement concerning any dependent's coverage is included in ~~such the~~ certificate."

Section 3. 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.

(3) (a) (i) 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 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.

(ii) The person's coverage under the group ~~will cease~~ ceases if the person subsequently becomes eligible for coverage under another group policy because of employment elsewhere.

(b) *A group life insurance policy on which the payment of premiums is provided under 33-20-1101(3)(a)(ii) or (3)(a)(iii) may continue in effect for a person whose regular work schedule has been reduced 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, and the provisions of subsection (3)(a)(ii) of this section apply."*

Approved May 3, 2007

CHAPTER NO. 431

[HB 6]

AN ACT REVISING AND IMPLEMENTING THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; MAKING PERMANENT REVISIONS TO THE USE OF THE RENEWABLE RESOURCE GRANT AND LOAN STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTION 85-1-604, MCA; REPEALING SECTION 11, CHAPTER 307, LAWS OF 2005; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Appropriations from renewable resource grant and loan program state special revenue account. (1) There is appropriated from the

renewable resource grant and loan program state special revenue account established in 85-1-604 to the department of natural resources and conservation up to:

- (a) \$100,000 to be used for emergency projects;
- (b) \$400,000 to be used for planning grants to be awarded by the department over the course of the biennium;
- (c) \$300,000 to be used for irrigation development grants to be awarded by the department over the course of the biennium; and
- (d) \$100,000 to be used for the development of a comprehensive irrigation report by the department.

(2) There is appropriated from the renewable resource grant and loan program state special revenue account established in 85-1-604 to the department of natural resources and conservation \$5 million that is available in the renewable resource state special revenue account for grants to political subdivisions and local governments during the 2009 biennium. The funds in this section must be awarded by the department to the named entities for the described purposes and in the described grant amounts set out in subsection (3), subject to the conditions set forth in [sections 1 through 4] and the contingencies described in the renewable resource grant and loan program January 2007 report to the 60th legislature. The legislature, pursuant to 85-1-605, approves the grants listed in subsection (3), with grants to be made in the order indicated in the prioritized list of projects and activities. Funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted or used by higher-ranked projects must be provided for projects farther down the priority list that would not otherwise receive funding. Any projects that are funded by the reclamation and development grants program may not be funded under [sections 1 through 4].

(3) The following are the prioritized grant projects:

RENEWABLE RESOURCE GRANT AND LOAN PROGRAM

Applicant/Project	Grant Amount
Green Mountain Conservation District	
(Crow Creek Restoration Project)	\$70,559
Twin Bridges, Town of	
(Twin Bridges Wastewater System Improvements)	\$100,000
Fort Peck Tribes	
(Fort Peck D-4 Drain Water Conservation Improvements)	\$100,000
North Powell Conservation District	
(Blackfoot Drought and Water Conservation Project)	\$84,347
Bainville, Town of	
(Bainville Wastewater System Improvements)	\$100,000
Petrolia Irrigation District	
(Petrolia Irrigation Rehabilitation Project)	\$100,000
Montana Department of Natural Resources and Conservation	
(Ackley Lake Dam Rehabilitation)	\$100,000

Cut Bank, City of (Cut Bank Water System Improvements)	\$100,000
Whitehall, Town of (Whitehall Wastewater System Improvements)	\$100,000
Montana Department of Natural Resources and Conservation (East Fork Siphon Replacement and Main Canal Lining Project)	\$100,000
Loma County Water and Sewer District (Loma Water System Improvements)	\$100,000
Panoramic Mountain River Heights County Water District (Panoramic Mountain River Heights Water System Improvements)	\$100,000
Montana Department of Natural Resources and Conservation (Smith Creek Canal Seepage Abatement and Rehabilitation Project)	\$100,000
Goodan-Keil County Water District (Goodan-Keil Water Improvement Project)	\$100,000
Montana Department of Natural Resources and Conservation (Middle Creek Dam Automated Instrumentation)	\$100,000
Polson, City of (Polson Water System Improvements)	\$100,000
Hill County (Beaver Creek Dam Seepage Control Berm)	\$100,000
Gallatin County, Hebgen Lake Estates RID 322 (Hebgen Lake Wastewater System Improvements)	\$100,000
Three Forks, City of (Three Forks Wastewater System Improvements)	\$100,000
Mineral County Saltese Water and Sewer District (Saltese Wastewater System Improvements)	\$100,000
Carbon Conservation District (Phase I Hydrogeology and Water Balance of the East/West Bench Aquifers)	\$100,000
Fergus County Conservation District (Upper and Lower Carter Pond Dam Reconstruction)	\$100,000
Brady County Water and Sewer District (Brady Wastewater System Improvements)	\$100,000
Beaverhead Conservation District (Big Hole Ditch Improvement Project)	\$100,000
Superior, Town of (Superior Water System Improvements)	\$100,000

1885	MONTANA SESSION LAWS 2007	Ch. 431
Sunny Meadows Missoula County Water and Sewer District	(Sunny Meadows Water System Improvements)	\$100,000
Tri County Water and Sewer District	(Tri County Water System Improvements)	\$100,000
Philipsburg, Town of	(Philipsburg Wastewater System Improvements)	\$100,000
Fort Peck Tribes	(58 Main Structure Replacement for Water Management)	\$100,000
Sanders County	(Eliminating Failed Septic Systems in Sanders County)	\$100,000
Malta Irrigation District	(Dodson North Canal Regulating Reservoir)	\$100,000
Red Lodge, City of	(Red Lodge Water System Improvements)	\$100,000
Elk Meadows Ranchettes County Water District	(Elk Meadows Water System Improvements)	\$100,000
RAE Water and Sewer District	(RAE Water System Improvements)	\$100,000
Stillwater Conservation District	(Stillwater-Rosebud Watershed, Surface Water/Groundwater Interaction)	\$100,000
East Bench Irrigation District	(East Bench Irrigation District Canal Lining)	\$100,000
Dayton Lake County Water and Sewer District	(Dayton Wastewater System Improvements)	\$100,000
Milk River Irrigation Project Joint Board of Control	(Saint Mary Canal, Drop 3, Plunge Pool Concrete Repair)	\$100,000
Yellowstone Conservation District	(Modeling Aquifer Response to Urban Sprawl, West Billings Area)	\$59,991
Ravalli County	(Improved Resource Protection, Floodplain Hazard Mapping)	\$100,000
North Valley County Water and Sewer District	(North Valley County Water System Improvements)	\$100,000
Sheridan, Town of	(Sheridan Wastewater System Improvements)	\$100,000
Neihart, Town of	(Neihart Water System Improvements)	\$100,000
Greenfields Irrigation District	(Muddy Creek Wastewater and Erosion Reduction Project)	\$100,000

Ch. 431	MONTANA SESSION LAWS 2007	1886
Bynum Teton County Water and Sewer District		
(A New Source of Drinking Water for Bynum, Phase 1)		\$100,000
Whitefish, City of		
(Whitefish Wastewater System Improvements)		\$100,000
Power Teton County Water and Sewer District		
(Power Teton Water System Improvements)		\$100,000
Sidney Water Users Irrigation District		
(Sidney Water Users Increasing Irrigation Efficiency Phase 2)		\$100,000
Jordan, Town of		
(Jordan Wastewater System Improvements)		\$100,000
Beaverhead County		
(Blacktail Deer Creek Flood Mitigation Project)		\$100,000
Seeley Lake Missoula County Water District		
(Seeley Lake Water System Improvements)		\$100,000
Manhattan, Town of		
(Manhattan Water System Improvements)		\$100,000
Lewis and Clark County		
(Lewis and Clark Fairgrounds, Dunbar Area Water System Improvements)		\$100,000
Columbia Falls, City of		
(Columbia Falls Wastewater System Improvements)		\$100,000
Hamilton, City of		
(Hamilton Wastewater System Improvements)		\$100,000
Hysham Irrigation District		
(Hysham Irrigation District Infrastructure Improvement)		\$100,000
Shelby, City of		
(Shelby Water System Improvements)		\$100,000
Montana Department of Natural Resources and Conservation		
(Community Tree Planting Grants)		\$100,000
Ronan, City of		
(Ronan Wastewater System Improvements)		\$100,000
Pondera County Conservation District		
(Marias River Watershed Baseline Assessment)		\$100,000
Sheridan County		
(Raymond Dam Rehabilitation)		\$100,000
Montana Department of Environmental Quality		
(Geothermal Assessment and Outreach Partnership)		\$99,963
Thompson Falls, City of		
(Thompson Falls Water System Improvements)		\$100,000

Missoula County Lolo RSID 901	
(Lolo Wastewater System Improvements, Phase 2)	\$100,000
Chester Irrigation District	
(Chester Irrigation Project: Phase 2, Water Service Contract Application)	\$100,000
Pinesdale, Town of	
(Pinesdale Water System Improvements)	\$100,000
Ekalaka, Town of	
(Ekalaka Water and Wastewater System Improvements)	\$100,000
Sweet Grass Conservation District	
(West Boulder Point of Diversion Rehabilitation Project)	\$44,500
Livingston, City of	
(Glass Pulverizer for the City of Livingston)	\$100,000
Montana State University	
(Channel Response Assessment for the Upper Blackfoot)	\$100,000
Darby, Town of	
(Darby Water System Improvements)	\$100,000
Sunburst, Town of	
(Sunburst Backup Water Supply Wells)	\$99,236
Sunset Irrigation District	
(Gravity Flow Group Irrigation Pipelines)	\$100,000
Geyser Judith Basin County Water and Sewer District	
(Geyser Water System Improvements)	\$100,000
Black Eagle Water and Sewer District	
(Black Eagle Water System Improvements)	\$100,000
Glacier County Conservation District	
(Marias River Bridge Road Stabilization)	\$100,000
Buffalo Rapids Project, District 2	
(Open Lateral Conversion to Pipeline)	\$100,000
Buffalo Rapids Project, District 1	
(Open Lateral 34.5 Conversion to Pipeline)	\$100,000

(4) For grant projects for which the department of natural resources and conservation also has recommended a loan, the authorization for the loan is contained in [LC 125].

(5) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2009 biennium pursuant to 17-7-302.

Section 2. Conditions of grants. Disbursement of funds under [sections 1 through 4] for grants is subject to the following conditions that must be met by project sponsors:

(1) approval of a scope of work and budget for the project by the department of natural resources and conservation. Changes in the project scope of work or budget that reduce the public or natural resource benefits as presented in department reports and applicant testimony to the 60th legislature will result in the proportional reduction in grant amount.

(2) documented commitment of other funds required for project completion;

(3) satisfactory completion of conditions described in the recommendation section of the project narrative in the renewable resource grant and loan program project recommendations and biennium report submitted to the 60th legislature for the 2009 biennium or, in the case of emergency applications, conditions specified at the time of written notification of approved grant authority;

(4) execution of a grant agreement with the department; and

(5) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the grant as evidenced from the application to the department or from the proposal to the legislature.

Section 3. Conditions for grants. Notwithstanding the conditions described in [section 2], grant funds are disbursed in the order of priority listed in [section 1] as resource indemnity trust account interest income revenue is received. A project approved by [section 1] is not entitled to receive grant funds that are not collected and allocated to the renewable resource grant and loan program state special revenue account.

Section 4. Appropriations established. (1) For any entity of state government that receives a grant under [sections 1 through 3], an appropriation is established for the amount of the grant listed in [section 1(3)]. Grants to state entities from prior bienniums are reauthorized for completion of contract work.

(2) Any funds in excess of the amount appropriated for grants under [sections 1 through 3] are available for appropriation for authorized purposes from the renewable resource grant and loan program state special revenue account.

Section 5. Review of previously authorized grants. Recipients of renewable resource grants authorized by previous legislatures that have not completed startup conditions must be notified by the department of natural resources and conservation that the legislature, at the next regular session, will review renewable resource grants to determine if the commitment of the renewable resource grant should be withdrawn.

Section 6. Section 85-1-604, MCA, is amended to read:

“85-1-604. Renewable resource grant and loan program state special revenue account created — revenue allocated — limitations on appropriations from account. (1) There is a renewable resource grant and loan program state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent that they are required to be credited to the renewable resource loan debt service fund pursuant to 85-1-603, there must be paid into the renewable resource grant and loan program state special revenue account:

(a) the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(b) the excess of the coal severance tax proceeds allocated by 85-1-603 to the renewable resource loan debt service fund above debt service requirements as provided in and subject to the conditions of 85-1-619; and

(c) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests.

(3) Appropriations may be made from the renewable resource grant and loan program state special revenue account for:

(a) grants for designated projects and the activities authorized in 85-1-602(1)(a); and

(b) administrative expenses, including salaries and expenses for personnel and equipment, office space, and other expenses necessarily incurred in the administration of the grant and loan program. The expenses under this subsection (3)(b) may be funded before funding of projects.

(4) ~~For the biennium beginning July 1, 2005, appropriations~~ *Appropriations* may be made from the renewable resource grant and loan program state special revenue account for administrative expenses, including salaries and expenses for personnel and equipment, office space, and other expenses necessarily incurred in natural resource-related programs. ~~(Subsection (4) terminates June 30, 2007—see. 11, Ch. 307, L. 2005.)~~”

Section 7. Repealer. Section 11, Chapter 307, Laws of 2005, is repealed.

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. 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 10. Coordination instruction. If House Bill No. 116 is passed and approved, then the appropriations in [section 1 of this act] are appropriated from the natural resources projects state special revenue account established in [section 28] of House Bill No. 116 and the appropriation in [section 1 of this act] for the purpose of making grants to political subdivisions and local governments is increased by up to \$0.5 million.

Section 11. Coordination instruction. If the funding in [this act] is increased sufficiently to fund all the grants in [section 1(3) of this act], then the renewable resource grant authorization in [section 1(6) of HB 512] is void, and the appropriation of proceeds of borrowed funds in [section 1(5) of HB 512] is reduced by \$2.2 million.

Section 12. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 1] is effective July 1, 2007.

Approved May 3, 2007

CHAPTER NO. 432

[HB 116]

AN ACT GENERALLY REVISING RESOURCE INDEMNITY TRUST AND GROUND WATER ASSESSMENT LAWS; ELIMINATING THE RECLAMATION AND DEVELOPMENT GRANTS ACCOUNT AND THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM STATE SPECIAL REVENUE ACCOUNT; CREATING THE NATURAL RESOURCES OPERATIONS STATE SPECIAL REVENUE ACCOUNT AND THE NATURAL RESOURCES PROJECTS STATE SPECIAL REVENUE ACCOUNT; REALLOCATING CERTAIN OIL AND GAS PRODUCTION TAXES AND METALLIFEROUS MINES TAXES INTO THE NEW SPECIAL REVENUE ACCOUNTS; REALLOCATING CERTAIN RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAXES; ELIMINATING CERTAIN STATUTORY APPROPRIATIONS; REALLOCATING CERTAIN RESOURCE INDEMNITY TRUST FUND INTEREST DISTRIBUTIONS; CLARIFYING THE USE OF THE RESOURCE INDEMNITY TRUST FUND; ELIMINATING THE CAP ON THE GROUND WATER ASSESSMENT SPECIAL REVENUE ACCOUNT; CLARIFYING THE USE OF THE WATER STORAGE STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 15-36-331, 15-37-117, 15-38-106, 15-38-202, 15-38-203, 17-5-702, 17-7-502, 19-5-404, 75-1-1101, 75-10-621, 75-10-704, 75-10-743, 80-7-823, 85-1-102, 85-1-603, 85-1-605, 85-1-606, 85-1-613, 85-1-614, 85-1-615, 85-1-616, 85-1-631, 85-2-905, 90-2-1103, 90-2-1111, AND 90-2-1121, MCA; REPEALING SECTIONS 85-1-604 AND 90-2-1104, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Section 15-36-331, MCA, is amended to read:

“15-36-331. Distribution of taxes. (1) (a) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalties collected under this part.

(b) For the purposes of distribution of oil and natural gas production taxes to county and school district taxing units under 15-36-332 and to the state, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) (a) The amount of oil and natural gas production taxes collected for the privilege and license tax pursuant to 82-11-131 must be deposited, in accordance with the provisions of 15-1-501, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(b) The amount of the tax for the oil, gas, and coal natural resource account established in 90-6-1001 must be deposited in the account.

(3) (a) For each tax year, the amount of oil and natural gas production taxes determined under subsection (1)(b) is allocated to each county according to the following schedule:

	2005	2006 and succeeding tax years
Big Horn	45.04%	45.05%

1891	MONTANA SESSION LAWS 2007	Ch. 432
Blaine	58.11%	58.39%
Carbon	48.93%	48.27%
Chouteau	57.65%	58.14%
Custer	80.9%	69.53%
Daniels	49.98%	50.81%
Dawson	50.64%	47.79%
Fallon	41.15%	41.78%
Fergus	83.52%	69.18%
Garfield	48.81%	45.96%
Glacier	64.74%	58.83%
Golden Valley	57.41%	58.37%
Hill	65.33%	64.51%
Liberty	59.73%	57.94%
McCone	52.86%	49.92%
Musselshell	51.44%	48.64%
Petroleum	54.62%	48.04%
Phillips	53.78%	54.02%
Pondera	70.89%	54.26%
Powder River	62.17%	60.9%
Prairie	39.73%	40.38%
Richland	46.72%	47.47%
Roosevelt	46.06%	45.71%
Rosebud	38.69%	39.33%
Sheridan	47.54%	47.99%
Stillwater	54.35%	53.51%
Sweet Grass	60.24%	61.24%
Teton	48.4%	46.1%
Toole	57.14%	57.61%
Valley	54.22%	51.43%
Wibaux	48.68%	49.16%
Yellowstone	48.06%	46.74%
All other counties	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 15-36-332.

(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 each fiscal year through the fiscal year ending June 30, 2011, to be distributed as follows:

(i) 1.23% to the coal bed methane protection account established in 76-15-904;

(ii) 1.45% to the natural resources projects state special revenue account established in [section 28];

~~(iii)(iii) 2.95%~~ 1.45% to the ~~reclamation and development grants~~ natural resources operations state special revenue account established in ~~90-2-1104~~ [section 27];

~~(iii)(iv) 2.95%~~ 2.99% to the orphan share account established in 75-10-743;

~~(iv)(v) 2.65%~~ 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)(vi)~~ all remaining proceeds to the state general fund;

(b) for fiscal years beginning after June 30, 2011, to be distributed as follows:

(i) 2.16% to the natural resources projects state special revenue account established in [section 28];

~~(i)(ii) 4.18%~~ 2.02% to the ~~reclamation and development grants~~ natural resources operations state special revenue account established in ~~90-2-1104~~ [section 27];

~~(ii)(iii) 2.95%~~ 2.95% to the orphan share account established in 75-10-743;

~~(iii)(iv) 2.65%~~ 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)(v)~~ all remaining proceeds to the state general fund.”

Section 2. Section 15-37-117, MCA, is amended to read:

“15-37-117. Disposition of metalliferous mines license taxes. (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501, be allocated as follows:

(a) to the credit of the general fund of the state, 57% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 2.5% of total collections each year;

(c) to the hard-rock mining reclamation debt service fund ~~created~~ established in 82-4-312, 8.5% of total collections each year;

(d) to the ~~reclamation and development grants program~~ natural resources operations state special revenue account established in [section 27], 7% of total collections each year; and

(e) within 60 days of the date the tax is payable pursuant to 15-37-105, to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 37.5% to the county hard-rock mine trust account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(e)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for general planning functions or economic development activities as described in 7-6-2225(3)(c) through (3)(e);

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(e) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(e). The allocation to the county described by subsection (1)(e) is a statutory appropriation pursuant to 17-7-502.”

Section 3. 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 the due date of the annual statement established in 15-38-105, 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 *the proceeds from the resource indemnity and ground water assessment tax* 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 75-10-631, 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~~ *from the tax* in the ground water assessment account established by 85-2-905;

(c) *for the biennium beginning July 1, 2007, \$150,000 of the proceeds from the tax in the water storage state special revenue account established in 85-1-631;*

(e)(d) 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 from the tax divided equally between the environmental quality protection fund established in 75-10-704 and the hazardous waste/CERCLA special revenue account established in 75-10-621;~~

(d)(e) \$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 each succeeding fiscal year from the proceeds from the tax, the amount required under ~~39-10-106(4)~~;

~~(e)(f)~~ all remaining proceeds from the tax in the ~~orphan share account established in 75-10-743~~ natural resources projects state special revenue account, established in [section 28], for the purpose of making grants to be used for mineral development reclamation projects and renewable resource 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. (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 the due date of the annual statement established in 15-38-105, 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 *the proceeds from the resource indemnity and ground water assessment tax* 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 75-10-631, 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 from the tax in the ground water assessment account established by 85-2-905;

(c) for the biennium beginning July 1, 2007, \$150,000 of the proceeds from the tax in the water storage state special revenue account established in 85-1-631;

~~(e)(d)~~ 50% of the remaining proceeds in the ~~orphan share account from the tax divided equally between the environmental quality protection fund established in 75-10-743~~ 75-10-704 and the hazardous waste/CERCLA special revenue account established in 75-10-621; and

~~(d)(e)~~ all remaining proceeds from the tax in the ~~reclamation and development grants~~ natural resources projects state special revenue account, established by ~~90-2-1104~~ in [section 28], for the purpose of making grants to be

used for mineral development reclamation projects *and renewable resource 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 4. 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 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. 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) ~~(i) \$2 \$3.5 million to be deposited into in the renewable resource grant and loan program~~ *natural resources projects* state special revenue account, created by ~~85-1-604 established in [section 28],~~ 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) ~~(ii) \$300,000 \$300,000 to be deposited into in the ground water assessment account created by established in 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.~~

(iii) \$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.

(iv) \$175,000 to be deposited in the environmental contingency account established in 75-1-1101.(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)(i) an amount not to exceed \$50,000 to be deposited in the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii)(ii) \$500,000 to be deposited into in 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% Sixty-five percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program natural resources operations state special revenue account created by 85-1-604 established in [section 27].

(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% 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) 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)(iii) 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% 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 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 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. 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) ~~(i) \$2 \$3.5 million to be deposited into in the renewable resource grant and loan program natural resources projects state special revenue account, created by 85-1-604 established in [section 28], 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) ~~(ii) \$300,000 \$300,000 to be deposited into in the ground water assessment account created by 85-2-905.;~~

(iii) ~~\$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.~~

(v) ~~\$175,000 to be deposited in the environmental contingency account established in 75-1-1101.~~

(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) ~~(i) an amount not to exceed \$50,000 to be deposited in the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and~~

(iii) ~~(ii) \$500,000 to be deposited into in 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 Sixty-five percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program natural resources operations state special revenue account created by 85-1-604 established in [section 27].~~

(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)(iii) 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 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. 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 5. Section 15-38-203, MCA, is amended to read:

"15-38-203. Purpose of fund usage — limitation on future use *Use of funds.* (1) Any funds made available under this chapter must be used and expended to improve the total environment and rectify damage to the environment.

~~(2) It is the intent of the legislature that future appropriations from the resource indemnity trust interest not be made to fund general operating expenses of state agencies.~~

(2) Funding under this chapter must be prioritized so as to maximize the funds available for on-the-ground projects and programs in Montana communities that address the impacts of natural resource development and improve the total environment, while minimizing the use of the funds available under this chapter for the operations of state government."

Section 6. Section 17-5-702, MCA, is amended to read:

"17-5-702. Purpose and intent. (1) The purpose of the coal severance tax trust fund bond provisions of this part is to establish the authority to issue and sell coal severance tax bonds that have been approved by *an* act of the legislature for financing specific renewable resource projects in the state authorized by the legislature and to guarantee redemption of the bonds by revenue derived from the receipts from the coal severance tax imposed by Title 15, chapter 35, part 1, and ~~such~~ other money as *that* the legislature may from time to time determine.

(2) The legislature intends that projects to be financed by coal severance tax bonds include renewable resource projects as part of the program established in Title 85, chapter 1, part 6. The legislature further intends that the income from renewable resource projects in excess of the amount required for debt service and operation and maintenance of those projects and activities be deposited in the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account established in 85-1-604 [section 28]."

Section 7. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 10-2-603; 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; 15-31-906; 15-35-108; 15-36-332; 15-37-117; ~~15-38-202~~; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; ~~82-11-161~~; *82-11-161*; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; 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, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 8. Section 19-5-404, MCA, is amended to read:

"19-5-404. State employer contribution. (1) Except as provided in subsection (2), the state shall pay as employer contributions 25.81% of the compensation paid to all of the employer's employees, except those properly excluded from membership.

(2) The state shall contribute monthly from the ~~renewable resource grant and loan program account in the state special revenue fund~~ *natural resources operations state special revenue account, established in [section 27]*, to the judges' pension trust fund an amount equal to 25.81% of the compensation paid to the chief water court judge. The judiciary shall include in its budget and shall request for legislative appropriation an amount necessary to defray the state's portion of the costs of this section."

Section 9. Section 75-1-1101, MCA, is amended to read:

“75-1-1101. Environmental contingency account objectives. (1) There is an environmental contingency account within the state special revenue fund established in 17-2-102. The environmental contingency account is controlled by the governor.

(2) At the beginning of each ~~biennium, fiscal year,~~ \$175,000 must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund ~~with the following exceptions:~~

~~(a) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account equals or exceeds \$750,000, allocation may not be made; and~~

~~(b) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account is less than \$750,000, then an amount less than or equal to the difference between the unobligated cash balance and \$750,000, but not to exceed \$175,000, must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund.~~

(3) Funds are statutorily appropriated, as provided in 17-7-502, from the environmental contingency account upon the authorization of the governor to meet unanticipated public needs consistent with the following objectives:

(a) to support renewable resource development projects in communities that face an emergency or imminent need for the services or to prevent the physical failure of a project;

(b) to address imminent natural resource restoration and remediation needs that are anticipated to have significant adverse impacts to Montana’s natural environment if not addressed in a timely manner;

~~(b)(c)~~ to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent physical threat or during an emergency, not including:

(i) natural disasters adequately covered by other funding sources; or

(ii) fire *suppression*;

~~(d)~~ to respond to an emergency or imminent threat to persons, property, or the environment caused by mineral development;

~~(d)(e)~~ to respond to an emergency or imminent threat to persons, property, or the environment caused by a hazardous material; and

~~(e)(f)~~ to fund the environmental quality protection fund provided for in 75-10-704 or to take other necessary actions, including the construction of facilities, to respond to actual or potential threats to persons, property, or the environment caused by hazardous wastes or other hazardous materials.

(4) Interest ~~earned~~ from funds in the environmental contingency account ~~accrues to the general fund remains in the account.~~

(5) The governor shall submit, ~~as a part of the information required by 17-7-111, to the legislative finance committee~~ a complete *annual* financial report by *September 15 following the end of the fiscal year* on the environmental contingency account, including a description of all expenditures made since the preceding report.”

Section 10. 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) *proceeds from the resource indemnity and ground water assessment tax as provided by 15-38-106;*

~~(a)~~(b) 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)~~(c) all proceeds of bonds or notes issued under 75-10-623 and all interest earned on proceeds of the bonds or notes; and

~~(c)~~(d) 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) 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

(b) to the extent funds are available after the appropriations in subsection (3)(a), 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)(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. ~~Except as provided in subsection (6), unused~~ *Unused* balances remain in the account until appropriated by the legislature for the purposes specified in this section.

~~(6) (a) If funds are transferred from the orphan share fund to the hazardous waste/CERCLA account pursuant to 75-10-743(9), the department shall, subject to the limitations in subsections (6)(b) and (6)(c) of this section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year, transfer from the hazardous waste/CERCLA account to the orphan share fund the unencumbered amount remaining in the hazardous waste/CERCLA account at the end of the fiscal year that is in excess of the amount appropriated for the next fiscal year from the hazardous waste/CERCLA account.~~

~~(b) The total amount transferred pursuant to subsection (6)(a) may not exceed the total amount transferred to the hazardous waste/CERCLA account pursuant to 75-10-743(9).~~

~~(c) Subsection (6)(a) does not apply to the proceeds of bonds or notes sold pursuant to 75-10-623, to interest on the proceeds of those bonds or notes, or to appropriations of those proceeds or interest."~~

Section 11. Section 75-10-704, MCA, is amended to read:

"75-10-704. Environmental quality protection fund. (1) There is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) ~~Except as provided in subsection (9), the~~ *The* fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) except as provided in subsection (7), establish and implement a system, including the preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds ~~appropriated~~ *allocated* to the fund by the legislature;

(d) *proceeds from the resource indemnity and ground water assessment tax as authorized by 15-38-106;*

~~(d)(e)~~ funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

~~(e)(f)~~ funds received from the interest income of the fund;

~~(f)(g)~~ funds received from settlements pursuant to 75-10-719(7); and

(g)(h) funds received from the interest paid pursuant to 75-10-722.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

(7) (a) There is established a state special revenue account for all funds donated or granted from private parties to remediate a specific release at a specific facility. There must be deposited into the account the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this account.

(b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

(c) If the balance of the fund created in this subsection (7), as determined by the department pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial contribution, all donated or granted funds, including any interest on those donated or granted funds, must be returned to the grantor.

(d) If the balance for a specific project is determined by the department to be sufficient to remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial action, using the funds donated under this subsection (7).

(e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(f) The department shall expend the funds in a manner that maximizes the application of the funds to physically remediating the specific release.

(8) (a) A person may donate in-kind services to remediate a specific release at a specific facility pursuant to subsection (7). A person who donates in-kind services is not liable under 75-10-715 solely as a result of the contribution of in-kind services.

(b) A person who donates in-kind services with respect to remediating a specific release at a specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss.

(c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is caused by conduct of the entity providing in-kind

services that is negligent or grossly negligent or that constitutes intentional misconduct.

(d) When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance, the person may not avoid that liability or responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions of subsection (7) and this subsection (8).

(e) Any donated in-kind services that are employed as part of a remedial action pursuant to this subsection (8) must be approved by the department as appropriate remedial action.

~~(9) (a) If funds are transferred from the orphan share fund to the environmental quality protection fund pursuant to 75-10-743(9), the department shall, subject to the limitation in subsection (9)(b) of this section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year, transfer from the environmental quality protection fund to the orphan share fund the unencumbered amount remaining in the environmental quality protection fund at the end of the fiscal year that is in excess of the amount appropriated for the next fiscal year from the environmental quality protection fund.~~

~~(b) The total transferred pursuant to subsection (9)(a) may not exceed the total amount transferred to the environmental quality protection fund pursuant to 75-10-743(9)."~~

Section 12. Section 75-10-743, MCA, is amended to read:

"75-10-743. 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, except as provided in subsections (9) ~~through (11)~~ (9) and (10), must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-751 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)~~(b) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;

~~(e)~~(c) unencumbered funds remaining in the abandoned mines state special revenue account;

~~(f)~~(d) interest income on the account;

~~(g)~~(e) funds received from settlements pursuant to 75-10-719(7); and

~~(h)~~(f) 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 (7)~~ *subsections (6) and (7)*, 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~~ *Except as provided in subsection (6), reimbursement* from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of a petition provided for 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 75-10-751 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 department's costs incurred in defending the orphan share must be paid from the orphan share fund 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 75-10-751 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).

(c) A state agency that is liable for remedial action costs incurred has a claim against the orphan share fund and must be reimbursed as provided in subsection (3). The agency may submit a claim before or after remedial action is complete. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs. The agency may be reimbursed only after:

(i) its liability has been determined pursuant to 75-10-742 through 75-10-751 or by a court of competent jurisdiction;

(ii) it has received a notice letter pursuant to 75-10-711; and

(iii) the department has approved the costs.

(7) 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.

(8) 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.

~~(9) For the biennium beginning July 1, 2005, and subject to the provisions of section 3, Chapter 355, Laws of 2005, the department may transfer funds from the orphan share fund to the environmental quality protection fund established in 75-10-704, the hazardous waste/CERCLA account established in 75-10-621, or both. The total amount transferred pursuant to this subsection may not exceed \$600,000.~~

~~(10)(9)~~ (a) For the biennium beginning July 1, 2005, up to \$1.25 million may be used by the department to pay the costs incurred by the department in contracting for evaluating the extent of contamination and formulating final remediation alternatives for releases at the Kalispell pole and timber, reliance refinery company, and Yale oil corporation facility complex. If the department spends less than \$1.25 million for those purposes, the remaining funds must be spent for remediation of the facility complex. The department may not seek recovery of the \$1.25 million from potentially liable persons.

(b) The money spent pursuant to subsection ~~(10)(a)~~ (9)(a) must be credited against the amount owed by the state agency in a judgment or settlement agreement for payment of the remedial action costs at the facility for which the money was spent.

(c) The department shall consult with the noticed potentially liable persons regarding contractor selection and determination of the scope of the work for contract tasks. The department shall also provide the noticed potentially liable persons with contract performance updates and shall consult with the noticed potentially liable persons regarding expenses and progress on contract tasks.

(d) The department shall contract for the compilation, assessment, and summarization of the existing data pertaining to the complex described in subsection ~~(10)(a)~~ (9)(a), for recommendations for and conducting of additional investigations and studies necessary to develop remediation alternatives, and for development and assessment of remediation alternatives.

(e) Unless the department is delayed by a challenge to a contracting action, multiple contractor selection processes, or other unanticipated circumstances, the activities authorized under subsection ~~(10)(a)~~ (9)(a) must meet the following schedule:

(i) Contracts for investigations and studies must be in place by August 31, 2005.

(ii) A summary of existing data must be prepared by December 31, 2005.

(iii) The contract or contract task order for investigations, studies, and development and evaluation of final remediation alternatives must be in place by April 30, 2006.

(iv) All intended field work must be completed by November 30, 2006, and to the extent that this field work indicates that followup is necessary, the followup field work must be completed as soon as possible or addressed in the report that must be submitted pursuant to subsection ~~(10)(g)~~ (9)(g).

(v) The contractor shall submit evaluations of the extent of contamination by October 31, 2006.

(vi) The contractor shall submit final remediation alternatives by July 31, 2007.

(f) The department shall report to the environmental quality council quarterly during calendar years 2005, 2006, and 2007 regarding the progress being made to meet the requirements of subsection ~~(10)(e)~~ (9)(e). The report must include information on expenditures.

(g) If investigations completed under this subsection ~~(10)~~ (9) indicate the need for additional information or for pilot tests and other related remedial action process activities, the department shall prepare a report identifying the rationale and estimated costs for additional work and present it to the environmental quality council during the spring of 2007.

(h) The department shall provide to the environmental quality council copies of investigations and reports completed pursuant to subsection ~~(10)(d)~~ (9)(d).

~~(11)(10)~~ (a) Beginning in the fiscal year that commences July 1, 2005, the department shall transfer from the orphan share account to the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 \$1.2 million in each fiscal year until the board of investments makes the certification pursuant to subsection ~~(11)(b)~~ (10)(b) of this section.

(b) (i) The board of investments shall monitor the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 to determine when the amount of money in the long-term or perpetual water treatment permanent trust fund will be sufficient, with future earnings, to provide a fund balance of \$19.3 million on January 1, 2018.

(ii) When the board of investments makes the determination pursuant to subsection ~~(11)(b)(i)~~ (10)(b)(i), the board of investments shall notify the department and certify to the department the amount of money, if any, that must be transferred during the fiscal year in which the board of investments makes its determination pursuant to subsection ~~(11)(b)(i)~~ (10)(b)(i) in order to provide a fund balance of \$19.3 million on January 1, 2018.

(iii) In the fiscal year that the board of investments makes its determination and notifies the department, the department shall transfer only the amount certified by the board of investments, if any, and may not make additional transfers during subsequent fiscal years.

(11) For the biennium beginning July 1, 2007, the department shall transfer from the orphan share fund:

(a) \$600,000 to the hazardous waste/CERCLA account provided for in 75-10-621 to provide for a positive account balance;

(b) \$50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161 to provide for a positive account balance;

(c) \$2 million to the environmental quality protection fund established in 75-10-704 to be used by the department to expedite the cleanup of the burlington northern Santa Fe Livingston site;

(d) \$200,000 to the natural resources operations state special revenue account established in [section 27] to provide for a positive account balance; and

(e) \$800,000 to the natural resources projects state special revenue account established in [section 28] to provide for a positive account balance.”

Section 13. Section 80-7-823, MCA, is amended to read:

“80-7-823. Transfer of funds. (1) There is transferred \$100,000 annually from the highway nonrestricted account, provided for in 15-70-125, to the noxious weed state special revenue account, provided for in 80-7-816, for the purposes provided in 80-7-705.

~~(2) There is a one-time transfer in fiscal year 2003 of up to \$300,000 from the resource indemnity trust fund, as provided in 15-38-202, from the first money paid into the resource indemnity trust fund that exceeds \$100 million for the purposes provided in 80-7-705.”~~

Section 14. Section 85-1-102, MCA, is amended to read:

“85-1-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Administrative costs” means costs incurred by the department:

(a) for the purpose of protecting the department’s properties and assets;

(b) to oversee the operation and maintenance of the projects;

(c) to administer contracts and receivables;

(d) to maintain project financial records;

(e) to provide technical assistance for operating, maintaining, and rehabilitating the projects; and

(f) to assist in securing funds for operating, maintaining, and rehabilitating the projects.

(2) “Cost of operation and maintenance” means the costs of operation, maintenance, and routine repairs and the costs incurred by the water users’ association or the department in the distribution of water from the project, excluding the department’s administrative costs.

(3) “Cost of works” means:

(a) the cost of construction, including any rehabilitation or alteration of the project;

(b) the cost of all lands, property, rights, easements, and franchises acquired that are considered necessary for the construction;

(c) the cost of all water rights acquired or exercised by the department in connection with the works;

(d) the cost of all machinery and equipment, financing charges, and interest prior to and during construction and for a period not exceeding 3 years after the completion of construction;

(e) the cost of engineering and legal services, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project;

(f) administrative expense; and

(g) other expenses that are necessary or incident to the financing authorized in this part and the construction of the works and the placing of the works in operation.

(4) “Department” means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(5) “Owner” means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies, or associations that have any title or interest in any properties, rights, easements, or franchises to be acquired.

(6) (a) “Private person” means any individual, association, partnership, corporation, or other nongovernmental entity that is not eligible for loans and grants under 85-1-605.

(b) The term does not include a governmental entity, such as an agency, local government, or political subdivision of the state, the United States, or any agency of the United States, or any other governmental entity.

(7) “Project” means any one of the works defined in this section or any combination of works that are physically connected or jointly managed and operated as a single unit.

(8) “Public benefits” means those benefits that accrue from a water development project or activity to persons other than the private grant or loan recipient and that enhance the common well-being of the people of Montana. Public benefits include but are not limited to recreation, flood control, erosion reduction, agricultural flood damage reduction, water quality enhancement, sediment reduction, access to recreation opportunities, and wildlife conservation.

~~(9) “Renewable resource grant and loan program state special revenue account” means a separate account created by 85-1-604 within the state special revenue fund of the state treasury for the purposes of the renewable resource grant and loan program as set forth in 85-1-604.~~

~~(10)(9) “Renewable resource loan debt service fund” means a separate fund created by 85-1-603 within the debt service fund type of the state treasury, to be used as provided in 85-1-619.~~

~~(11)(10) “Renewable resource loan proceeds account” means a separate account created by 85-1-617 within the state special revenue fund of the state treasury to:~~

~~(a) finance loans under the provisions of the renewable resource grant and loan program to agencies, local governments, and political subdivisions of the state, to private persons, and to any other eligible recipients; and~~

~~(b) purchase liens and operate property, as provided in 85-1-615, from proceeds of bonds issued under part 6 of this chapter.~~

~~(12)(11) “Tribal government” means the officially recognized government of an Indian tribe, nation, or other organized group or community that is located in Montana, that exercises self-government powers, and that is recognized as eligible for those services that are provided by the United States to Indians because of their status as Indians.~~

~~(13)(12) “Water development activity” means an action or program to protect and enhance water-based recreation or to protect or enhance water resources for the benefit of agriculture, flood control, or other uses, including but not limited to the promotion of efficient use of water in agriculture, the improvement of water quality in agriculture and other nonpoint source uses, the protection and enhancement of water-based recreation, the control of erosion of streambanks and control of sedimentation in rivers and streams, and the provision of greater~~

local and state control of Montana's water resources. Water development activities may provide any combination of marketable and nonmarketable benefits.

(14)(13) "Water development project" means a project as defined in subsection (7), except that water development projects:

- (a) are not limited to projects owned or operated by the department; and
- (b) for purposes of the renewable resource grant and loan program, must include water development activities.

(15)(14) (a) "Works" means all property and rights, easements, and franchises relating to property and considered necessary or convenient for the operation of the works and all water rights acquired or exercised by the department in connection with those works.

(b) The term includes:

(i) all means of conserving and distributing water, including but not limited to reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines, and waterworks systems; and

(ii) all works for the conservation, development, storage, distribution, and utilization of water, including but not limited to works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, and supplying water for public, domestic, industrial, or other uses and for fire protection."

Section 15. Section 85-1-603, MCA, is amended to read:

"85-1-603. Renewable resource loan debt service fund created — coal severance tax allocated — renewable resource loan loss reserve fund created. (1) (a) There is created a renewable resource loan debt service fund within the debt service fund type established in 17-2-102.

(b) The state pledges and allocates and directs to be credited to the renewable resource loan debt service fund, as received:

(i) 0.95% of all money from time to time received from the coal severance tax collected under Title 15, chapter 35;

(ii) any principal and accrued interest under 85-1-613(5)(a) received in repayment of a loan made from the proceeds of bonds issued under 85-1-617;

(iii) all interest income earned on proceeds of renewable resource grant and loan program bonds;

(iv) revenue or money otherwise required to be paid into the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account pursuant to ~~85-1-604 [section 28]~~, as determined by the board of examiners in connection with the issuance of bonds pursuant to 85-1-617; and

(v) money received from the renewable resource loan loss reserve fund as the result of a loan loss.

(2) (a) There is a renewable resource loan loss reserve fund within the debt service fund type established in 17-2-102.

(b) The state pledges and allocates and directs to be credited to the renewable resource loan loss reserve fund all accrued interest under 85-1-613(5)(b) received in repayment of a loan made from the proceeds of bonds issued under 85-1-617.

(c) If the department determines that a loan loss has occurred on a loan made pursuant to this part, funds from the renewable resource loan loss reserve fund must be transferred to the renewable resource loan debt service fund in an amount equal to the amount that would otherwise be available for debt service under subsection (1)(b) as a result of the loan loss.”

Section 16. Section 85-1-605, MCA, is amended to read:

“85-1-605. Grants, loans, and bonds for state, local, or tribal government assistance. (1) The department may recommend to the legislature that grants and loans be made from revenue deposited in the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account *established in [section 28]*, that loans be made from renewable resource bond proceeds deposited in the renewable resource loan proceeds account established in 85-1-617(5), and that coal severance tax bonds be authorized pursuant to Title 17, chapter 5, part 7, to provide financial assistance to a department, agency, board, commission, or other division of state government, to a city, county, or other political subdivision or local government body of the state, including an authority as defined in 75-6-304, or to a tribal government. The legislature may approve by appropriation or other appropriate means those grants and loans that it finds consistent with the policies and purposes of the program.

(2) Nothing in this part creates or expands the state’s or a local government’s authority to incur debt, and the legislature may authorize loans only to state and local government entities otherwise structured to incur debt.

(3) Loans may not be authorized except to a state, local, or tribal government entity that agrees to secure the authorized loan with its bond.

(4) In addition to implementing those projects approved by the legislature, the department may request up to 10% of the grant funds available and up to \$10 million for loans from the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account *established in [section 28]* and the renewable resource loan proceeds account in any biennium to be used for emergencies. These emergency grant projects or loan projects, or both, may not be made because of the gross negligence of the state, local, or tribal government applicant, must be approved by the department, and must be defined as those projects otherwise eligible for either grant funding or loan funding, or both, that, if delayed until legislative approval can be obtained, will cause substantial damages or legal liability to the project sponsor. In allocating the funds, the department shall inform the legislative finance committee of the legislature.

(5) The grants and loans provided for by this section may be made for projects that enhance renewable resources in the state through conservation, development, management, or preservation; for assessing feasibility or planning; for implementing renewable resource projects; and for similar purposes approved by the legislature.

(6) Grant and loan agreements with tribal governments in Montana entered into under this part must contain, in addition to other appropriate terms and conditions, the following conditions:

(a) a requirement that in the event a dispute or claim arises under the agreement, state law will govern as to the interpretation and performance of the agreement and that any judicial proceeding concerning the terms of the

agreement will be brought in the district court of the first judicial district of the state of Montana;

(b) an express waiver of the tribal government's immunity from suit on any issue specifically arising from the transaction of a loan or grant; and

(c) an express waiver of any right to exhaust tribal remedies signed by the tribal government."

Section 17. Section 85-1-606, MCA, is amended to read:

"85-1-606. Grants and loans to private persons. (1) To encourage the construction and development of water-related projects, the department may make grants and loans to private persons from funds appropriated from the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account *established in [section 28]* and may make loans to private persons from the renewable resource loan proceeds account.

(2) The department shall publicize the statutes and rules governing grants and loans to private persons for water-related projects, set and publicize application deadlines, and accept applications for grants and loans.

(3) The department shall review, evaluate, and select the water-related projects for which grants or loans may be awarded."

Section 18. Section 85-1-613, MCA, is amended to read:

"85-1-613. (Temporary) Limits on loans. (1) A loan to a private person that is not a water users' association or ditch company organized and incorporated pursuant to Title 85, chapter 6, part 1, or Title 35, chapter 1, part 2, for a renewable resource grant and loan program project may not be made from the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account *established in [section 28]* or the renewable resource loan proceeds account if the loan exceeds the lesser of \$400,000 or 80% of the fair market value of the security given for the project. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors that it considers important.

(2) A loan to a private person that is a water users' association or ditch company organized and incorporated pursuant to Title 35, chapter 1, part 2, or Title 85, chapter 6, part 1, may not be made from the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account *established in [section 28]* or the renewable resource loan proceeds account if the loan would exceed the lesser of \$3 million or an amount representing the annual debt service on the loan that would exceed 80% of the annual net revenue of the system that would be pledged for payment of the loan. In determining the amount of annual net revenue that may be pledged for payment of the loan, annual expenses for operation and maintenance must be subtracted from the gross revenue of the system.

(3) A loan to the state, a local government, or a tribal government for a renewable resource grant and loan program project may not be made by the department from the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account *established in [section 28]* or renewable resource loan proceeds account if the loan exceeds the lesser of \$200,000 or the project sponsor's remaining debt capacity.

(4) The period for repayment of loans may not exceed 30 years.

(5) The interest rate at which loans may be made under this part must be sufficient to:

(a) cover the bond debt service for a loan; and

(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs.

(6) A loan made under this part may not be used for the cost of operation and maintenance of a project. (Terminates June 30, 2007—sec. 2, Ch. 418, L. 2005.)

85-1-613. (Effective July 1, 2007) Limits on loans. (1) A loan to a private person that is not a water users' association or ditch company organized and incorporated pursuant to Title 85, chapter 6, part 1, or Title 35, chapter 1, part 2, for a renewable resource grant and loan program project may not be made from the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account *established in [section 28]* or the renewable resource loan proceeds account if the loan exceeds the lesser of \$400,000 or 80% of the fair market value of the security given for the project. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors that it considers important.

(2) A loan to a private person that is a water users' association or ditch company organized and incorporated pursuant to Title 35, chapter 1, part 2, or Title 85, chapter 6, part 1, may not be made from the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account *established in [section 28]* or the renewable resource loan proceeds account if the loan would exceed the lesser of \$300,000 or an amount representing the annual debt service on the loan that would exceed 80% of the annual net revenue of the system that would be pledged for payment of the loan. In determining the amount of annual net revenue that may be pledged for payment of the loan, annual expenses for operation and maintenance must be subtracted from the gross revenue of the system.

(3) A loan to the state, a local government, or a tribal government for a renewable resource grant and loan program project may not be made by the department from the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account *established in [section 28]* or renewable resource loan proceeds account if the loan exceeds the lesser of \$200,000 or the project sponsor's remaining debt capacity.

(4) The period for repayment of loans may not exceed 30 years.

(5) The interest rate at which loans may be made under this part must be sufficient to:

(a) cover the bond debt service for a loan; and

(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs.

(6) A loan made under this part may not be used for the cost of operation and maintenance of a project."

Section 19. Section 85-1-614, MCA, is amended to read:

"85-1-614. Limits on grants from renewable resource grant and loan program natural resources projects state special revenue account. (1) The maximum grant awarded to a private person may not exceed the lesser of:

(a) 5% of the estimated total funds potentially available in the ~~renewable resource grant and loan~~ *natural resources projects* state special revenue account, *established in [section 28]*, for public and private grants in the biennium in which the grant will be made; or

(b) 25% of the total project cost.

(2) This part does not limit the amount of grant funds that may be appropriated by the legislature to fund a state or local government project.”

Section 20. Section 85-1-615, MCA, is amended to read:

“85-1-615. Security interests — purchase, operation, and resale of encumbered property. (1) The state has a lien upon a project constructed with money from the ~~renewable resource grant and loan~~ *natural resources projects* state special revenue account *established in [section 28]* or the renewable resource loan proceeds account for the amount of the loan and interest due the state. This lien may attach to any project facilities, equipment, easements, real property, shares of stock in a water users’ association, revenue of a water users’ association, accounts receivable of a water users’ association, water purchase agreements, and property of any kind or nature owned by the debtor, including all water rights. The department shall file with the county clerk and recorder of each county in which a part of the project is located either a financing statement or a real estate mortgage covering the loan, its amount, terms, and a description of the security. The county clerk and recorder shall record and index the lien as other liens are required by law to be recorded and indexed. The lien is valid until paid in full or otherwise discharged. The lien must be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens.

(2) From the funds available under ~~85-1-604~~ *[section 27]* or 85-1-617, the state may:

(a) purchase a lien that is prior to the state’s lien if:

(i) the director of the department determines that the loan is in default and the prospects for collecting the loan may be materially increased by purchasing the prior lien; and

(ii) the amount to be paid for the prior lien does not exceed the appraised value of the property;

(b) operate property that is subject to the state’s lien if the director of the department determines that the loan is in default and that the prospects for collecting the loan may be materially increased by operating the property that is subject to the state’s lien; or

(c) purchase a prior lien as provided in subsection (2)(a) and operate property as provided in subsection (2)(b).

(3) Any property acquired under the provisions of this section must be resold as expeditiously as possible to recover funds used under this section and funds loaned to the borrower.”

Section 21. Section 85-1-616, MCA, is amended to read:

“85-1-616. Administration of loans and grants. The department shall:

(1) administer the loan and grant program established by this part;

(2) service loans made or contract and pay for the servicing of loans, including arrangements for obtaining security interests; and

(3) collect reasonable fees or charges for the servicing of loans, including arrangements for obtaining security interests. The fees and charges must be deposited in the ~~renewable resource grant and loan program~~ *natural resources projects* state special revenue account established in ~~85-1-604 [section 28].~~"

Section 22. Section 85-1-631, MCA, is amended to read:

"85-1-631. Water storage state special revenue account created — revenues allocated — appropriations from account. (1) There is a water storage state special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the water storage state special revenue account:

(a) *for the biennium beginning July 1, 2007, the proceeds of the resource indemnity and ground water assessment tax as provided in 15-38-106; and*

(b) money allocated from the resource indemnity trust fund interest earnings pursuant to 15-38-202 and all revenue of the works and other money as provided in 85-1-332.

(3) All revenue provided from 85-1-332(1)(e) and (1)(f) deposited in the water storage state special revenue account must be appropriated solely for the construction, operation, ~~maintenance,~~ and rehabilitation, *expansion, maintenance, and modification* of ~~the works~~ *state-owned water storage projects.*

(4) Money that was not encumbered or expended from the water storage state special revenue account during the previous biennium must remain in the account.

(5) Deposits to the water storage state special revenue account ~~are to~~ *must* be placed in short-term investments and accrue interest, which must be deposited in the water storage state special revenue account.

(6) The purpose of the water storage state special revenue account is to provide money ~~for loans and grants~~ exclusively for:

(a) ~~water storage projects, including the purchase or lease of property;~~

(b) ~~planning, feasibility, and design studies; and~~

(c) ~~other costs related to construction, operation, rehabilitation, expansion, maintenance, and modification of~~ *state-owned water storage projects.*

(7) ~~The department shall administer this section as an integral part of the renewable resource grant and loan program, using, to the extent possible, the same procedures for soliciting, determining eligibility, and rating water storage project proposals and for administering grants and loans, subject to the same limitations, as applied to other renewable resource grants and loans.~~

(8) ~~The following preferences must be considered in ranking proposals for water storage grants and loans:~~

(a) ~~first preference is for the rehabilitation of water storage projects that resolve threats to life and property;~~

(b) ~~second preference is for the improvement or expansion of existing water storage projects; and~~

(c) ~~third preference is for the development of new water storage projects."~~

Section 23. 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; *and*

~~(c) proceeds allocated to the account as provided in 15-38-106; and~~

~~(d)(c) 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 24. Section 90-2-1103, MCA, is amended to read:

“90-2-1103. Definitions. As used in this part, the following definitions apply:

(1) “Department” means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(2) “Financially feasible” means that adequate funds are available to complete the project as approved.

(3) “Mineral” means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium, or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.

(4) “Mineral development” means exploration, extraction, processing, or other activity related to the production of a mineral.

(5) “Mitigation” means the act of rectifying an impact by repairing, rehabilitating, or restoring the affected environment; reducing or eliminating an impact over time by operations that preserve or maintain the environment; or compensating for an impact by replacing or providing substitute resources or habitats.

(6) “Project” means a planned and coordinated action or series of actions addressing an objective consistent with the policy and purpose of the

reclamation and development grants program. A project may consist of problem analysis, feasibility or design studies, environmental monitoring, remedial action plans or implementation, technology demonstration, research, construction or acquisition of capital facilities, or other related actions.

(7) "Public benefits" means those benefits that accrue to citizens as a group and enhance the common well-being of the people of Montana.

(8) "Public resources" means the natural resources of the state, including air, water, soil, minerals, vegetation, and fish and wildlife, and the economic, social, and cultural conditions of Montana citizens.

~~(9) "Reclamation and development grants account" means the reclamation and development grants special revenue account established in 90-2-1104.~~

~~(10)~~(9) "Technically feasible" means that a project or activity can be designed, constructed, operated, or carried out to accomplish its objectives, utilizing accepted engineering and other technical principles and concepts."

Section 25. Section 90-2-1111, MCA, is amended to read:

"90-2-1111. State and local grants. (1) Any department, agency, board, commission, or other division of state government or any city, county, or other political subdivision or tribal government within the state may apply, in accordance with the procedures established by the department, for a grant from the ~~reclamation and development grants~~ *natural resources projects state special revenue* account, *established in [section 28]*, for a project that is consistent with the policy and purpose of the reclamation and development grants program.

(2) The department shall evaluate applications under the eligibility criteria provided in 90-2-1112 and the evaluation criteria provided in 90-2-1113.

(3) The department shall solicit and consider in its evaluation of applications the views of interested persons and public agencies.

(4) Based on its evaluation of eligible applications, the department shall recommend to the governor projects to receive grants from the ~~reclamation and development grants~~ *natural resources projects state special revenue* account *established in [section 28]*.

(5) The governor shall submit all proposals, with his recommended priorities, to the legislature by the first day of any regular legislative session. The legislature may approve by appropriation or other appropriate means grants for those projects it finds consistent with the policies and purposes of the reclamation and development grants program. The department shall administer and oversee the grants to approved projects and monitor the projects."

Section 26. Section 90-2-1121, MCA, is amended to read:

"90-2-1121. Prohibited compensation to public officers or employees — penalty. (1) An officer, attorney, or other employee of the department may not directly or indirectly be the beneficiary of or receive any fee, commission, gift, or other consideration in connection with any transaction or business under the reclamation and development grants program other than the salary, fee, or other compensation received as an officer, attorney, or employee.

(2) A person convicted of violating any provision of this section shall be punished by a fine not to exceed \$2,000 plus the value of any consideration illegally received or by imprisonment for a term not to exceed 2 years, or both.

Any fines collected under this section must be deposited in the ~~reclamation and development grants~~ *natural resources projects state special revenue* account established in [section 28].”

Section 27. Natural resources operations state special revenue account created — revenue allocated — appropriations from account.

(1) There is a natural resources operations state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent required to be credited to the renewable resource loan debt service fund pursuant to 85-1-603, there must be paid into the natural resources operations state special revenue account:

(a) the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(b) the metal mines license tax proceeds as provided in 15-37-117(1)(d);

(c) the oil and natural gas production tax as provided in 15-36-331; and

(d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests.

(3) Appropriations may be made from the natural resources operations state special revenue account for administrative expenses, including salaries and expenses for personnel and equipment, office space, and other expenses necessarily incurred in the administration of natural resources operations.

Section 28. Natural resources projects state special revenue account created — revenue allocated — limitations on appropriations from account. (1) There is a natural resources projects state special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the natural resources projects state special revenue 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 the provisions of 15-38-106;

(c) the oil and natural gas production tax as provided in 15-36-331; and

(d) the excess of the coal severance tax proceeds allocated by 85-1-603 to the renewable resource loan debt service fund above debt service requirements as provided in and subject to the conditions of 85-1-619.

(3) Appropriations may be made from the natural resources projects state special revenue account for grants and loans for designated projects and the activities authorized in 85-1-602 and 90-2-1102.

Section 29. Transfer of funds. (1) For the biennium beginning July 1, 2007, the department of administration shall transfer \$500,000 from the general fund as follows:

(a) \$346,145 to the orphan share fund as provided for in 75-10-743; and

(b) \$153,855 to the environmental contingency account as provided for in 75-1-1101.

(2) At the beginning of fiscal year 2008, the department of natural resources and conservation shall transfer the ending fund balance in the renewable resource grant and loan program state special revenue account established in 85-1-604 and the reclamation and development grants state special revenue

account established in 90-2-1104 to the natural resources operations state special revenue account created in [section 27].

Section 30. Repealer. Sections 85-1-604 and 90-2-1104, MCA, are repealed.

Section 31. Codification instruction. [Sections 27 and 28] are intended to be codified as an integral part of Title 15, chapter 38, and the provisions of Title 15, chapter 38, apply to [sections 27 and 28].

Section 32. Effective date. [This act] is effective July 1, 2007.

Section 33. Termination. [Section 9] terminates June 30, 2009.

Approved May 8, 2007

CHAPTER NO. 433

[HB 304]

AN ACT CREATING THE WATER POLICY INTERIM COMMITTEE; PROVIDING FOR RESEARCH AND STUDY ON WATER-RELATED ISSUES; REQUIRING THAT CERTAIN WATER RIGHT REPORTS AND UPDATES BE PROVIDED TO THE WATER POLICY INTERIM COMMITTEE; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Water policy interim committee. (1) The water policy interim committee is subject to the provisions of 5-5-211 and the committee members appointed may be selected from the following standing committees:

- (a) senate natural resources and energy;
- (b) house natural resources;
- (c) senate agriculture, livestock, and irrigation;
- (d) house agriculture;
- (e) senate local government; and
- (f) house local government.

(2) The water policy interim committee shall conduct a detailed analysis and study of issues related to water quantity, water quality, and water use in Montana. The study must include the following issues at a minimum:

(a) surface water and ground water in closed basins and mitigation, augmentation, or aquifer recharge, including:

(i) review and summary of current Montana law related to mitigation, augmentation, or aquifer recharge;

(ii) analysis of other states' laws and rules related to mitigation, augmentation, or aquifer recharge and the other states' experiences with applying and using mitigation, augmentation, and aquifer recharge;

(iii) comparison of mitigation, augmentation, and aquifer recharge options and alternatives for applying the concepts in Montana water law;

(iv) analysis and determination of water quality testing requirements to ensure that the use of mitigation, augmentation, or aquifer recharge does not adversely affect ground water quality;

(v) analysis of data developed to determine the type and amount of research, data, and analysis necessary to develop a scientifically defensible hydrogeologic assessment to be used in making informed decisions with regard to mitigation, augmentation, or aquifer recharge activity in Montana;

(vi) appropriate monitoring requirements to determine the effectiveness of mitigation, augmentation, or aquifer recharge plans; and

(vii) other issues related to mitigation, augmentation, or aquifer recharge in Montana to facilitate continued economic development and growth while providing reasonable protections to senior appropriators and water quality of surface and ground water resources;

(b) methods for the management of water, particularly in closed basins, to ensure compliance with closed basin law, including:

(i) artificial recharge of ground water, including but not limited to alternatives such as aquifer storage and recovery;

(ii) identifying research necessary, if any, to determine alternatives and options for conducting water management through artificial recharge of ground water; and

(iii) conducting a water quality analysis associated with storage or introduction of surface water to ground water resources;

(c) determining an appropriate, accurate, and time-efficient process for coordinating water quality requirements with the water appropriations process by:

(i) determining how the department of environmental quality and the department of natural resources and conservation are issuing permits that affect ground water or surface water quality and whether or not the water appropriation process and the water quality process are coordinated;

(ii) ensuring that a detailed process is outlined that provides potential applicants with a clear process that must be followed to ensure that prior appropriators and water quality in both surface water and ground water are protected while allowing development in Montana; and

(iii) identifying the extent to which cumulative impacts are analyzed from a water quantity and a water quality perspective and whether or not the two findings are assessed jointly and determining the appropriate level of coordination;

(d) wells that are exempt from the permitting process pursuant to 85-2-306, including:

(i) a detailed reporting of the number of exempt wells currently in Montana and an estimate of the number of exempt wells expected to be developed by 2020;

(ii) a determination and summary of the types of beneficial uses to which water from exempt wells is applied;

(iii) a determination of the hydrogeologic analysis necessary to determine consumptive use on a per-acre or fraction of an acre basis and on a per-use basis;

(iv) an analysis of the amount of water reasonably necessary for the various beneficial uses and a comparison of this reasonable use standard with current statutory limits, including volume, flow rate, and other criteria that the committee determines are necessary to provide for accurate and adequate measurement of water use through exempt wells;

(v) options and alternatives for enforcing statutory limitations regarding exempt well usage; and

(vi) a determination of the necessity and reasons for providing a process that is exempt from the permitting process;

(e) an analysis of water marketing and water reallocation options available in Montana, including:

(i) leasing water rights, water banking, water trading, and water sales;

(ii) the lease-to-sale ratio of water rights in Montana;

(iii) the number of market purchases that have been completed in Montana;

(iv) the purposes for which water trades or sales have taken place;

(v) the feasibility of creating and operating a water bank in Montana; and

(vi) the administrative procedures and costs that would be necessary to establish and operate a water bank in Montana.

(3) The committee shall gather appropriate information that the committee determines is necessary to make sound and well-reasoned policy decisions to guide the management and use of Montana's ground water resource into the future, including but not limited to:

(a) identifying gaps in data necessary to determine appropriate locations to conduct artificial recharge of ground water; and

(b) presenting long-term goals and policy proposals for water management related to ground water resources.

(4) The committee shall prepare a report to submit to the 61st legislature that provides clear policy direction and necessary legislation to guide Montana's water policy and that ensures fair and reasonable use of Montana's water resource as demands on water increase while supplies remain the same or decrease.

Section 2. Appropriation. (1) There is appropriated \$50,000 from the general fund for the biennium beginning July 1, 2007, to the water policy interim committee for the purpose of completing a water quantity and water quality policy analysis.

(2) There is appropriated \$50,000 from the general fund for the biennium beginning July 1, 2007, to the Montana bureau of mines and geology for the purpose of collecting and compiling existing ground water and aquifer testing data for use by the committee.

Section 3. Effective date. [This act] is effective July 1, 2007.

Section 4. Termination. [This act] terminates June 30, 2009.

Approved May 8, 2007

CHAPTER NO. 434

[HB 353]

AN ACT PROVIDING FOR THE RECORDING AND TRANSCRIPTION BY A PEACE OFFICER OF A TELEPHONIC APPLICATION BY THE PEACE OFFICER FOR A SEARCH WARRANT; AND AMENDING SECTION 46-5-222, MCA.

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

Section 1. Section 46-5-222, MCA, is amended to read:

“46-5-222. Search warrants issued by telephone. (1) Whenever ~~the~~ *an* application for a search warrant is made by telephone, the applicant shall, in addition to the requirements contained in 46-5-221, state reasons to justify immediate issuance of a search warrant.

(2) All testimony given over the telephone that is intended to support an application for a search warrant must be given on oath or affirmation and must identify the person testifying. For the purpose of this section, the judge is authorized to administer an oath or affirmation by telephone.

(3) (a) Sworn or affirmed testimony given over the telephone must be electronically recorded by the judge *or a peace officer* on a recording device in the custody of the judge *or peace officer* when the application is made.

(b) ~~The~~ *If the recording is made by the judge, the* recording must be retained in the court records and must be transcribed verbatim as soon as possible after the application is made. The recording must include the time and date it was recorded.

(c) *If the recording is made by a peace officer, the recording must be transcribed verbatim as soon as possible after the application for the warrant is made. The recording must contain the time and date when it was recorded. The peace officer making the recording shall, as soon as possible, provide the judge with the original recording and a transcription of the recording so that the judge may expeditiously verify the accuracy of the transcription. The original recording must be retained in the court records. The peace officer making the recording shall secure a copy of the recording and transcription of the recording in the same manner as other evidence is secured.*

(4) If the judge approves a warrant over the telephone, the peace officer serving the warrant shall sign the search warrant in the officer's own name and in the judge's name. The peace officer signing the judge's name shall initial the judge's name indicating the signature was authorized by the judge but signed by the officer.

(5) Any search warrant issued by telephone must be signed by the issuing judge or the judge's successor as soon as possible after it has been issued.”

Approved May 8, 2007

CHAPTER NO. 435

[HB 357]

AN ACT REVISING LAWS PERTAINING TO BLIND VENDORS; PROVIDING FOR THE PLACEMENT OF VENDING MACHINES ON STATE HIGHWAYS BY BLIND VENDORS; AMENDING SECTION 60-5-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 60-5-110, MCA, is amended to read:

“60-5-110. Commercial enterprise or structure prohibited — ~~exception~~ exceptions. (1) Except as provided in 60-5-505 and ~~subsection~~ *subsections* (2) and (3) of this section, a commercial enterprise or structure may

not be operated on the publicly owned or leased right-of-way of a controlled-access highway or controlled-access facility.

(2) The department may, under the terms and conditions that it considers appropriate, install or allow others to install electronic communication equipment or electronic informational kiosks on the right-of-way of any state highway, including a controlled-access facility. The department may charge a fee for the use of the equipment or kiosk. The fees must be deposited in the nonrestricted highway state special revenue account to be used for highway purposes.

(3) (a) *The department may, under terms and conditions that it considers appropriate, contract with a blind vendor certified pursuant to Title 18, chapter 5, part 4, for the installation of vending machines on the right-of-way of any state highway, including a controlled-access facility.*

(b) *A blind vendor installing a vending machine pursuant to this subsection (3) is subject to the applicable provisions of Title 18, chapter 5, part 4.*

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

Approved May 8, 2007

CHAPTER NO. 436

[HB 406]

AN ACT EXPANDING ACCESS TO HEALTH CARE SERVICES BY ESTABLISHING A GRANT PROGRAM FOR COMMUNITY HEALTH CENTERS; CREATING AN ADVISORY GROUP; REQUIRING A REPORT TO THE LEGISLATURE; TRANSFERRING GENERAL FUND MONEY; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, approximately one-fifth of Montana's population has no public or private health insurance; and

WHEREAS, many Montanans who are uninsured or underinsured experience difficulty in accessing medical and dental services; and

WHEREAS, uninsured and underinsured people are more likely than those with adequate insurance to be hospitalized for conditions that could have been avoided, to be diagnosed with acute conditions resulting in higher rates of disability and death, or to postpone recommended tests or treatment.

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

Section 1. Short title. [Sections 1 through 9] may be cited as the "Montana Community Health Center Support Act".

Section 2. Legislative intent and purpose. The legislature recognizes that the large number of uninsured and underinsured Montanans has a significant long-term human and economic impact on families, health care providers, and the state of Montana. It is the intent of the legislature through [sections 1 through 9] to enhance access to primary care and preventive care for Montana residents by strengthening and supporting Montana's community health centers.

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

(1) “Advisory group” means the community health centers advisory group provided for in [section 6].

(2) “Department” means the department of public health and human services provided for in Title 2, chapter 15, part 22.

(3) “Federally qualified community health center” means a facility providing primary and preventive medical, dental, mental health, and substance abuse services to medically underserved, disadvantaged, or hard-to-reach populations on a sliding-scale fee basis, operating under federal regulations, and receiving federal funds under the Public Health Service Act, 42 U.S.C. 254b.

(4) “Federally qualified health center lookalike” means a facility that meets all of the expectations established for the federally funded community health center program but does not receive federal operating funds under the Public Health Service Act, 42 U.S.C. 254b.

(5) “Preventive care” means comprehensive care that emphasizes prevention, early detection, and early treatment of conditions, including but not limited to routine physical examinations, health screenings, immunizations, and health education.

(6) “Primary care” means the type of medical care that provides a patient with a broad spectrum of preventive and curative health care services over a long period of time and that coordinates all of the care a patient receives.

(7) “Section 330 funds” means the federal funds commonly known by that name and awarded by the health resources and services administration of the U.S. department of health and human services to health centers that qualify for funding under the Public Health Service Act, 42 U.S.C. 254b.

Section 4. Program expenditures — report to legislature. (1) Subject to appropriation by the legislature, the department shall provide competitive grants in accordance with [section 5 and this section] to community or tribal boards operating as a nonprofit entity in accordance with the Public Health Service Act, 42 U.S.C. 254b, to increase access to primary care and preventive health services for uninsured, underinsured, low-income, or underserved Montanans.

(2) Grants must be made each year to accomplish any of the following goals:

(a) to create and support new nonfederally funded community health centers until federal funds are granted. Successful applicants for the state grants shall also apply for federally qualified health center lookalike status and federal community health center grants at the first available opportunity.

(b) to expand the medical, mental health, or dental services offered by existing federally qualified community health centers or other facilities that have received federally qualified health center lookalike status; and

(c) to provide one-time grants for capital expenditures to existing federally qualified community health centers and facilities with federally qualified health center lookalike status.

(3) The department shall contract with an entity that is able to:

(a) provide technical assistance to new and existing federally qualified community health centers in their efforts to apply for federal funds;

(b) assist new and existing centers in their efforts to expand services; and

(c) collect standardized data on the provision of services to low-income and uninsured Montanans.

(4) The department shall require the contractor to provide an annual report on the services it has provided, the data it has collected, and the status of applications for federal community health center funding.

(5) (a) The department shall provide regular interim reports on the status of the program and program expenditures to the legislative finance committee and the children, families, health, and human services interim committee.

(b) The department shall report to the legislature, as provided for in 5-11-210, the following information for each year of the biennium:

(i) the status of the expenditures made pursuant to [sections 1 through 9];

(ii) the number of people served by the expenditure of funds; and

(iii) the costs to the state of the services provided pursuant to [sections 1 through 9].

Section 5. Grants — application process — obligation of communities. (1) In order to receive funds under [section 4], a community or tribal board must submit a proposal to the department for:

(a) increasing access to health care services by:

(i) creating new primary care and preventive care services; and

(ii) developing sliding scale charge and billing systems; or

(b) expanding existing services by:

(i) increasing medical, dental, or mental health capacity;

(ii) purchasing equipment; or

(iii) renovating clinic facilities.

(2) A proposal funded under [sections 1 through 9] must ensure the board's commitment to attract federal funds for primary care services.

(3) Entities receiving a state grant to start up or expand services shall also seek section 330 funds for those services and may not receive state funding after federal funds are acquired.

Section 6. Advisory group. (1) There is a community health centers advisory group. The group consists of nine members appointed as follows:

(a) two members appointed by the governor;

(b) two members of the Montana house of representatives appointed by the speaker, each from a different political party;

(c) two members of the Montana senate appointed by the president, each from a different political party;

(d) one member designated by the Montana primary care association; and

(e) two executive employees of Montana federally qualified community health centers, each designated by the governor from a list of names provided by the Montana primary care association and one of whom must be a chief financial officer.

(2) Members must be appointed in a manner that achieves the geographic representation of all regions of the state, including urban and rural communities.

(3) Members are appointed for terms of 2 years and may be reappointed for two additional terms. A legislative member position is vacant if the person no longer serves in the legislature. The position of the member appointed by the

governor is vacant if that person is elected to the legislature. A vacancy must be filled in the manner of the original appointment.

(4) Legislative members of the advisory group are entitled to receive compensation and expenses as provided in 5-2-301 for each day spent on advisory group business. Other members are entitled to reimbursement for expenses, as provided in 2-18-501 through 2-18-503, while engaged in advisory group business.

(5) The advisory group is attached to the department of public health and human services for administrative purposes, and the department is responsible for the compensation of group members.

Section 7. Advisory group — purpose and role. (1) The purpose of the advisory group is to oversee the grant award process developed by the department.

(2) The advisory group will recommend to the department the projects that it considers appropriate for funding in accordance with the requirements of [sections 4 and 5]. The advisory group's recommendations are not binding on the department, but when a recommendation is not followed by the department, the department shall provide the reasons to the advisory group.

Section 8. Rulemaking authority. (1) The department shall adopt rules necessary for the administration of [sections 1 through 9].

(2) The rules may include but are not limited to:

- (a) eligibility requirements for entities applying for grants;
- (b) criteria for awarding grants; and
- (c) reporting procedures for grant recipients.

(3) The rules establishing eligibility for state grants must reflect the national model established for federally qualified community health centers receiving section 330 funds as provided by the Public Health Service Act, 42 U.S.C. 254b.

Section 9. Community health center account. (1) There is a community health center account in the state special revenue fund to the credit of the department to provide grants for community health centers.

(2) Money appropriated by the legislature for community health centers must be deposited into the account.

(3) Money must be allocated from the account in accordance with the procedures outlined in [sections 4 and 5].

Section 10. Appropriation. (1) There is transferred \$650,000 from the state general fund to the community health care special revenue account established in [section 9] for each year of the biennium beginning July 1, 2007. The money in the account is appropriated to the department of public health and human services to be allocated to communities for primary and preventive health care services in accordance with [sections 4 and 5].

(2) The appropriation in this section is one-time in nature and is not to be included in the base budget for the 2011 biennium budget.

Section 11. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 50, chapter 4, and the provisions of Title 50 apply to [sections 1 through 9].

Section 12. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 13. Effective date. [This act] is effective July 1, 2007.

Approved May 8, 2007

CHAPTER NO. 437

[HB 592]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF TRANSPORTATION TO ERECT SIGNS TO DIRECT MOTORISTS TO THE MONTANA VETERANS' MEMORIAL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Appropriation. The department of transportation, in coordination with local governing bodies, as appropriate, shall erect signs on public roadways near and in the city of Great Falls to direct motorists to the Montana veterans' memorial. The amount of \$10,000 is appropriated to the department of transportation from the department of transportation state special revenue fund for the period including fiscal years 2007 and 2008 to erect the signs.

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

Approved May 8, 2007

CHAPTER NO. 438

[HB 715]

AN ACT REQUIRING A PORTION OF THE RESEARCH AND COMMERCIALIZATION EXPENDABLE TRUST BE USED FOR CLEAN COAL RESEARCH AND DEVELOPMENT PROJECTS OR RENEWABLE RESOURCE RESEARCH AND DEVELOPMENT PROJECTS; AMENDING SECTIONS 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 90-3-1002, 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~~ *Except as provided in 90-3-1003(5)(b), earnings on the account must be deposited in the account for distribution pursuant to 90-3-1003(3),-(4), through (5) and (7) (8).”*

Section 2. 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, *clean coal research and development projects*, or *renewable resource research and development projects* to be conducted at research and commercialization centers located in Montana;

(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) (a) *At least 30% of the account funds approved for research and commercialization projects must be directed toward projects that enhance clean coal research and development or renewable resource research and development.*

(b) *If the board is not in receipt of a qualified application for a project to enhance clean coal research and development or renewable resource research and development, subsection (5)(a) does not apply.*

(5)(6) 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)(7) 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)~~(8) 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)~~(9) 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)~~(10) 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.

(11) *For the purposes of this section:*

(a) *"clean coal research and development" means research and development of projects that would advance the efficiency, environmental performance, and cost-competitiveness of using coal as an energy source well beyond the current level of technology used in commercial service;*

(b) *"renewable resource research and development" means research and development that would advance:*

(i) *the use of any of the sources of energy listed in 69-8-1003(6) to produce electricity; and*

(ii) *the efficiency, environmental performance, and cost competitiveness of using renewable resources as an energy source well beyond the current level of technology used in commercial service."*

Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

Section 4. 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 July 1, 2007.

Approved May 8, 2007

CHAPTER NO. 439

[HB 729]

AN ACT REVISING ADVERTISING AND PUBLICATION REQUIREMENTS FOR BOARDS OF COUNTY COMMISSIONERS AND CERTAIN OTHER UNITS OF LOCAL GOVERNMENT; PROVIDING THAT A NEWSLETTER OR OTHER PUBLICATION PRODUCED BY A LOCAL GOVERNMENT IS NOT CONSIDERED A NEWSPAPER FOR COUNTY ADVERTISING PURPOSES; AND AMENDING SECTIONS 7-1-2121 AND 7-5-2411, MCA.

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

Section 1. Section 7-1-2121, MCA, is amended to read:

“7-1-2121. Publication and content of notice — proof of publication.

Unless otherwise specifically provided, whenever a local government unit other than a municipality is required to give notice by publication, the following applies:

(1) Publication must be in a newspaper meeting the qualifications of subsections (2) and (3), except that in a county where ~~no~~ a newspaper ~~meets~~ *does not meet* these qualifications, publication must be made in a qualified newspaper in an adjacent county. If there is no qualified newspaper in an adjacent county, publication must be made by posting the notice in three public places in the county, designated by resolution of the governing body.

(2) (a) The newspaper must be:

(i) *be* of general circulation;

(ii) *be* published at least once a week; ~~and~~

(iii) *be* published in the county where the hearing or other action will take place; *and*

(iv) *have, prior to July 1 of each year, submitted to the clerk and recorder a sworn statement that includes:*

(A) *circulation for the prior 12 months;*

(B) *a statement of net distribution;*

(C) *itemization of the circulation that is paid and that is free; and*

(D) *the method of distribution.*

(b) A newspaper of general circulation does not include a newsletter or other document produced or published by the local government unit.

(3) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

(4) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

(5) The notice must be published twice, with at least 6 days separating each publication.

(6) The published notice must contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

(7) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

(8) Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice.”

Section 2. Section 7-5-2411, MCA, is amended to read:

“7-5-2411. County printing contract. (1) The county commissioners shall contract for all advertising required by law and all printed forms required by the county. The advertising required by law must be awarded to a newspaper that:

(a) is published in the county;

(b) has general ~~bona fide and paid~~ circulation ~~with the second-class mailing privilege; and~~

(c) has been published continuously at least once a week in the county for the 12 months preceding the awarding of the contract; *and*

(d) *prior to July 1 of each year, has submitted to the clerk and recorder a sworn statement that includes:*

(i) circulation for the prior 12 months;

(ii) a statement of net distribution;

(iii) itemization of the circulation that is paid and that is free; and

(iv) the method of distribution.

(2) *A newsletter or other document produced or published by the local government unit is not considered a newspaper that has general circulation as provided in subsection (1).*

~~(2)~~(3) Contracts for printed forms and materials may be awarded on an annual basis or may be awarded for a specific printing job.

~~(3)~~(4) (a) The county clerk and recorder shall maintain a list of willing bidders for county printing and shall notify the printing establishments on the list of any call for bids.

(b) A printing establishment must be added to the county clerk and recorder's list when the clerk and recorder receives a written request from the printing establishment.

(c) The county clerk and recorder may delete the name of any printing establishment from the list if it has not submitted a bid during the previous 365 days.”

Approved May 8, 2007

CHAPTER NO. 440

[HB 768]

AN ACT REVISING THE LAW RELATED TO OSTENSIBLE AGENCY; AND AMENDING SECTION 28-10-103, MCA.

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

Section 1. Section 28-10-103, MCA, is amended to read:

“28-10-103. Actual versus ostensible agency — limitation. (1) An agency is either actual or ostensible. An agency is actual when the agent is really employed by the principal. An agency is ostensible when the principal intentionally or by want of ordinary care causes a third person to believe another to be the principal’s agent when that person is not really employed by the principal.

(2) Except as provided in subsection (3), for purposes of a malpractice claim, as defined in 27-6-103, liability may not be imposed on a health care provider, as defined in 27-6-103, for an act or omission by a person or entity alleged to have been an ostensible agent of the health care provider at the time that the act or omission occurred.

(3) Subsection (2) is not applicable unless the health care provider has, by policy or practice, ensured that those persons providing independent professional services have insurance of a type and in the amount required by the rules and regulations of the medical staff, by the medical staff bylaws, or by other similar health care facility rules or regulations. *The insurance provided for in this subsection must be in effect for the period of time during which a medical malpractice action must be brought as provided in 27-2-205.”*

Approved May 8, 2007

CHAPTER NO. 441

[SB 41]

AN ACT PROVIDING THAT A CITY OR TOWN MAY NOT SERVE AS A PASS-THROUGH ENTITY BY USING ITS POWER OF EMINENT DOMAIN TO OBTAIN PROPERTY TO SELL, LEASE, OR PROVIDE TO A PRIVATE ENTITY FOR THE PURPOSES OF URBAN RENEWAL; PROVIDING THAT FOR THE PUBLIC USE OF URBAN RENEWAL, REDEVELOPMENT AND REHABILITATION OF PROPERTY THAT WAS OBTAINED THROUGH CONDEMNATION MAY BE USED ONLY FOR A PUBLIC USE; AMENDING SECTIONS 7-15-4204, 7-15-4206, 7-15-4258, AND 7-15-4259, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-15-4204, MCA, is amended to read:

“7-15-4204. Interpretation. (1) The powers conferred by part 43 and this part are for public uses ~~and purposes~~ for which public money may be expended and the power of eminent domain may be exercised as provided in Title 70, chapter 30. The legislature finds and declares that necessity in the public interest exists for the provisions enacted in part 43 and this part concerning urban renewal.

(2) *A city or town may not serve as a pass-through entity by using its power of eminent domain, as provided in Title 70, chapter 30, to obtain property with the intent to sell, lease, or provide the property to a private entity.*

Section 2. Section 7-15-4206, MCA, is amended to read:

“7-15-4206. Definitions. The following terms, wherever used or referred to in part 43 or this part, have the following meanings unless a different meaning is clearly indicated by the context:

(1) “Agency” or “urban renewal agency” means a public agency created by 7-15-4232.

(2) “Blighted area” means an area that is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; *that* substantially impairs or arrests the sound growth of the city or its environs; *that* retards the provision of housing accommodations; or *that* constitutes an economic or social liability or is detrimental or constitutes a menace to the public health, safety, welfare, and morals in its present condition and use, by reason of:

(a) the substantial physical dilapidation; deterioration; *age obsolescence*, or defective construction, material, and arrangement; ~~or age obsolescence~~ of buildings or improvements, whether residential or nonresidential;

(b) inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality;

(c) inappropriate or mixed uses of land or buildings;

(d) high density of population and overcrowding;

(e) defective or inadequate street layout;

(f) faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

(g) excessive land coverage;

(h) unsanitary or unsafe conditions;

(i) deterioration of site;

(j) diversity of ownership;

(k) tax or special assessment delinquency exceeding the fair value of the land;

(l) defective or unusual conditions of title;

(m) improper subdivision or obsolete platting;

(n) the existence of conditions that endanger life or property by fire or other causes; or

(o) any combination of the factors listed in this subsection (2).

(3) “Bonds” means any bonds, notes, or debentures, (including refunding obligations), authorized to be issued pursuant to part 43 or this part.

(4) “Clerk” means the clerk or other official of the municipality who is the custodian of the official records of the municipality.

(5) “Federal government” means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(6) “Local governing body” means the council or other legislative body charged with governing the municipality.

(7) "Mayor" means the chief executive of a city or town.

(8) "Municipality" means any incorporated city or town in the state.

(9) "Neighborhood development program" means the yearly activities or undertakings of a municipality in an urban renewal area or areas if the municipality elects to undertake activities on an annual increment basis.

(10) "Obligee" means any bondholder or agent or trustee for any bondholder or lessor ~~demising~~ conveying to the municipality property used in connection with an urban renewal project or any assignee or assignees of the lessor's interest or any part of the interest and the federal government when it is a party to any contract with the municipality.

(11) "Person" means any individual, firm, partnership, corporation, company, association, joint-stock association, or school district and includes any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(12) "Public body" means the state or any municipality, township, board, commission, district, or ~~any~~ other subdivision or public body of the state.

(13) "Public officer" means any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or ~~to~~ other activities concerning dwellings in the municipality.

(14) "Public use" means:

(a) a public use enumerated in 70-30-102; or

(b) a project financed by the method provided for in 7-15-4288.

~~(14)~~(15) "Real property" means all lands, including improvements and fixtures on the land, all property of any nature appurtenant to the land or used in connection with the land, and every estate, interest, right, and use, legal or equitable, in the land, including terms for years and liens by way of judgment, mortgage, or otherwise.

~~(15)~~(16) "Redevelopment" may include:

(a) acquisition of a blighted area or portion of the area;

(b) demolition and removal of buildings and improvements;

(c) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part in accordance with the urban renewal plan; and

(d) making the land available for development or redevelopment by private enterprise or public agencies, (including sale, initial leasing, or retention by the municipality itself), at its fair value for uses in accordance with the urban renewal plan. *If the property is condemned pursuant to Title 70, chapter 30, the private enterprise or public agencies may not develop the condemned area in a way that is not for a public use.*

~~(16)~~(17) (a) "Rehabilitation" may include the restoration and renewal of a blighted area or portion of the area in accordance with an urban renewal plan by:

~~(a)~~(i) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements;

~~(b)~~(ii) acquisition of real property and demolition or removal of buildings and improvements on the property when necessary to eliminate unhealthful,

unsanitary, or unsafe conditions; to lessen density; to reduce traffic hazards; to eliminate obsolete or other uses detrimental to the public welfare; to otherwise remove or prevent the spread of blight or deterioration; or to provide land for needed public facilities;

(e)(iii) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part; and

(d)(iv) *subject to 7-15-4259(4)*, the disposition of any property acquired in the urban renewal area, (including sale, initial leasing, or retention by the municipality itself), at its fair value for uses in accordance with the urban renewal plan.

(b) *Rehabilitation may not include the development of the condemned area in a way that is not for a public use if the property is condemned pursuant to Title 70, chapter 30.*

(17)(18) "Urban renewal area" means a blighted area that the local governing body designates as appropriate for an urban renewal project or projects.

(18)(19) "Urban renewal plan" means a plan for one or more urban renewal areas or for an urban renewal project. The plan:

(a) must conform to the growth policy if one has been adopted pursuant to Title 76, chapter 1; and

(b) must be sufficiently complete to indicate, on a yearly basis or otherwise:

(i) any land acquisition, demolition, and removal of structures; redevelopment; improvements; and rehabilitation that is proposed to be carried out in the urban renewal area;

(ii) zoning and planning changes, if any, including changes to the growth policy if one has been adopted pursuant to Title 76, chapter 1;

(iii) land uses, maximum densities, building requirements; and

(iv) the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(19)(20) (a) "Urban renewal project" may include undertakings or activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of blight and may involve redevelopment in an urban renewal area, rehabilitation or conservation in an urban renewal area, or any combination or part of redevelopment, rehabilitation, or conservation in accordance with an urban renewal plan.

(b) *An urban renewal project may not include using property that was condemned pursuant to Title 70, chapter 30, for anything other than a public use.*

Section 3. Section 7-15-4258, MCA, is amended to read:

"7-15-4258. Acquisition and administration of real and personal property. (1) A municipality may:

(a) acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain pursuant to Title 70, chapter 30, or otherwise any real property and personal property that may be necessary for the administration of the

provisions contained in part 43 and this part, together with any improvements on the real property;

(b) hold, improve, clear, or prepare for redevelopment property acquired pursuant to subsection (1)(a);

(c) dispose of real or personal property;

(d) insure or provide for the insurance of real or personal property or the operations of the municipality against any risks or hazards, including the power to pay premiums on any insurance; and

(e) enter into a development agreement with the owner of real property within an urban renewal area and undertake activities, including the acquisition, removal, or demolition of structures, improvements, or personal property located on the real property, to prepare the property for redevelopment.

(2) A development agreement entered into in accordance with subsection (1)(e) must contain provisions obligating the owner to redevelop the real property for a specified use consistent with the urban renewal plan and offering recourse to the municipality if the redevelopment is not completed as determined by the local governing body. The development agreement may not constitute the acquisition of an interest in real property by the municipality within the meaning of 7-15-4262 or 7-15-4263.

(3) ~~However, Except as provided in 7-15-4204(2), 7-15-4206, and 7-15-4259,~~ statutory provisions with respect to the acquisition, clearance, or disposition of property by public bodies may not restrict a municipality in the exercise of functions with respect to an urban renewal project.

(4) A municipality may not acquire real property for an urban renewal project or enter into a development agreement, as provided in subsection (1)(e), unless the local governing body has approved the urban renewal project plan in accordance with 7-15-4216(2) and 7-15-4217.”

Section 4. Section 7-15-4259, MCA, is amended to read:

“7-15-4259. Exercise of power of eminent domain. (1) After the adoption by the local governing body of a resolution declaring that the acquisition of the real property described in the resolution is necessary for an urban renewal project under this part, a municipality may acquire by condemnation, as provided in Title 70, chapter 30, any interest in real property that it considers necessary for urban renewal.

(2) Condemnation for urban renewal of blighted areas is a public use, and property already devoted to any other public use or acquired by the owner or the owner’s predecessor in interest by eminent domain may be condemned for the purposes of this part.

(3) The award of compensation for real property taken for an urban renewal project may not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction or proposed assembly, clearance, or reconstruction in the project area. An allowance may not be made for the improvements begun on real property after notice to the owner of the property of the institution of proceedings to condemn the property. Evidence is admissible bearing upon the unsanitary, unsafe, or substandard condition of the premises or the unlawful use of the premises.

(4) A city or town may not serve as a pass-through entity by using its power of eminent domain, as provided in Title 70, chapter 30, to obtain property with the intent to sell, lease, or provide the property to a private entity.”

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

Approved May 8, 2007

CHAPTER NO. 442

[SB 49]

AN ACT GRANTING TO A RELATIVE WHO IS A CARETAKER BUT NOT A PARENT OF A CHILD THE POWER TO ENROLL THE CHILD IN SCHOOL, DISCUSS CERTAIN SCHOOL-RELATED MATTERS, AND CONSENT TO SCHOOL-RELATED MEDICAL CARE UNDER CERTAIN CONDITIONS; PROVIDING FOR A CARETAKER RELATIVE EDUCATIONAL AUTHORIZATION AFFIDAVIT; PROVIDING FOR GOVERNMENTAL IMMUNITY; AMENDING SECTIONS 1-1-215, 20-5-321, 20-5-412, AND 20-5-420, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Purpose — legislative intent — parental rights — definitions. (1) The legislature recognizes that the rights of parents to the custody and control of a child are based upon liberties secured by the United States and Montana constitutions and that a parent’s rights to that custody and control of a child are therefore normally supreme to the interests of other persons. The legislature also recognizes a growing phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and care of their children to a grandparent or other relative for lengthy periods of time. Regardless of the purpose of the absence, a child willfully surrendered to a relative for an extended time period still has the same needs as a child in the care of its parents. In this situation, a caretaker relative assumes responsibilities for the child but has no legal right of control over the child, a situation that interferes in the caretaker relative’s ability to perform routine functions of child rearing, including tending to the educational and educationally related medical needs of the child. It is therefore the purpose of the legislature in these instances to protect the rights of a child granted by Article II, section 15, of the Montana constitution by granting a caretaker relative limited authority for a child left in the relative’s care.

(2) It is the intent of the legislature that a caretaker relative given the responsibility of caring for a child with little or no warning and without any other provision having been made for the child’s care, such as the appointment of a guardian or the provision of a power of attorney, be granted authority to enroll the child in school, discuss with the school district the child’s educational progress, and consent to an educational service and to medical care for the child related to an educational service without superseding any parental rights regarding the child.

(3) [Sections 2 and 3] and this section are not intended to affect the rights and responsibilities of a parent, legal guardian, or other custodian regarding the child, do not grant legal custody of the child to the caretaker relative, and do not grant authority to the caretaker relative to consent to the marriage or adoption of the child or to receive notice of a medical procedure, including abortion, not

consented to by the relative, if notice is required by law, for the child except as expressly provided in this section.

(4) For the purposes of [sections 2 and 3] and this section, the following definitions apply:

(a) “Caretaker relative” or “relative” means an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child.

(b) “Caretaker relative educational authorization affidavit” or “affidavit” means an affidavit completed in compliance with [section 3].

(c) “Health care provider” means a person who provides medical care.

(d) “Medical care” means care, by a health care provider for which parental consent is normally required, for the prevention, diagnosis, or treatment of a mental, physical, or dental injury or disease.

(e) “Parent” means a biological parent, adoptive parent, or other legal guardian of the child whose parental rights have not been terminated.

Section 2. Enrollment by caretaker relative — residency — affidavit. (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child may, in accordance with this section, enroll the child in school, using the rules of residence provided in 1-1-215, if:

(a) in leaving the child with the caretaker relative, the parent expressed no definite time period in which the parent would return for the child;

(b) the child is residing with the caretaker relative on a full-time basis;

(c) the caretaker relative is unable to contact either of the parents following the voluntary leaving of the child with the relative or the parent or parents whom the relative is able to contact refuse to regain custody of the child after a written or oral request by the relative to do so;

(d) no adequate provision, such as the appointment of a guardian ad litem or execution of a power of attorney, has otherwise been made for the educational needs of the child; and

(e) a caretaker relative educational authorization affidavit is completed in compliance with [section 3].

(2) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child may enroll the child in school unless the child’s residency with the caretaker relative is primarily for the purpose of:

(a) attending a particular school; or

(b) participating in athletics at a particular school.

(3) If the child was subject to formal disciplinary action, including suspension or expulsion, at the child’s previous school, the school in which the child is to be enrolled may require the child to comply with a behavior contract as a condition of enrollment.

(4) The school district may require additional reasonable evidence that the caretaker relative lives at the address provided in the affidavit.

Section 3. Caretaker relative educational authorization affidavit — use — immunity — format. (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child has the same authority as a custodial parent of the child to discuss with an educator the

educational progress of the child, consent to an educational service, and consent to medical care related to an educational service for the child for which parental consent is usually required if a caretaker relative educational authorization affidavit is completed in compliance with this section.

(2) An affidavit is effective only if it is signed by the caretaker relative, under oath, before a notary public. A clear photographic copy of an affidavit completed in compliance with this section is sufficient in any instance in which an original is required by a school official or health care provider.

(3) Unless parental rights have been judicially terminated or unless the ability to give legal consent for the child to receive an educational service and any medical care related to the educational service for which parental consent is usually required has been granted to the caretaker relative pursuant to 40-4-211 and 40-4-228, a decision by a parent of the child communicated to a school official, a health care provider, or both, regarding the child supersedes a conflicting decision by a caretaker relative made pursuant to an affidavit completed in compliance with this section. However, a decision by a parent does not supersede a decision by a relative pursuant to an affidavit completed in compliance with this section if the decision by the parent endangers the life of the child. A school official or health care provider may require reasonable proof of authenticity of a decision by a parent intended to supersede a decision by a caretaker relative.

(4) (a) A [public or] private entity or individual who acts in good faith reliance on a caretaker relative educational authorization affidavit completed in compliance with this section who has no actual knowledge of facts contrary to those indicated in the affidavit is not subject to civil liability or criminal prosecution or to a professional disciplinary procedure for an action that would have been proper if the facts had been as the entity or individual believed them to be.

(b) This subsection (4) applies even if an educational service or educationally related medical care, or both, are provided to a child against the wishes of a parent of that child if the person rendering the service does not have actual knowledge of the parent's wishes.

(5) A person who relies on an affidavit completed in compliance with this section has no obligation to make further inquiry or investigation.

(6) An affidavit completed in compliance with this section is effective for the earlier of:

(a) the end of the first school year after delivery of the affidavit to a school district;

(b) until it has been revoked by the caretaker relative; or

(c) until the child no longer resides with the caretaker relative.

(7) If the child ceases to live with the caretaker relative or the caretaker relative revokes the affidavit, the caretaker relative shall provide written notice of that fact to all persons to whom the caretaker relative has given the affidavit or to whom the caretaker relative has caused the affidavit to be given.

(8) This section does not relieve a person from a violation of other law, and this section does not affect the rights of a child's parent except as provided in this section.

(9) A caretaker relative educational authorization affidavit is invalid unless it is written in substantially the following form and contains the warning provided for in paragraph 5 of the format below:

**CARETAKER RELATIVE'S
EDUCATIONAL AUTHORIZATION AFFIDAVIT**

Use of this affidavit is authorized by [this section].

1. INSTRUCTIONS: The completion and signing of the affidavit before a notary public are sufficient to authorize educational enrollment and services and school-related medical care for the named child. Please print clearly.

The child named below lives in my home, and I am 18 years of age or older.

- a. Name of child:
- b. Child's date of birth:
- c. My name (caretaker relative):
- d. My home address:
- e. My relationship to the child (the caretaker relative must be an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the caretaker relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child):

2. I hereby certify that this affidavit is not being used for the purpose of circumventing school residency laws, to take advantage of a particular academic program or athletic activity, to circumvent a disciplinary action of a previous school, or for an otherwise unlawful purpose.

3. My date and year of birth:

4. Check the following if true (all must be checked for this affidavit to apply):

A parent of the child identified in paragraph 1a of this affidavit has left the child with me and has expressed no definite time period when the parent will return for the child.

The child is now residing with me on a full-time basis.

I am unable to locate or contact the parents of the child at this time to notify the parents of my intended authorization, or the parents refuse to regain custody of the child even though I have asked in writing that the parents do so.

No adequate provision, such as appointment of a guardian ad litem or execution of a power of attorney, has been made for enrollment of the child in school, other educational services, or educationally related medical services.

5. **WARNING: DO NOT SIGN THIS FORM IF ANY OF THE STATEMENTS ABOVE ARE INCORRECT, OR YOU WILL BE COMMITTING A CRIME PUNISHABLE BY A FINE, IMPRISONMENT, OR BOTH.**

6. I declare under penalty of false swearing under the laws of Montana that the foregoing is true and correct.

Signed this __ day of _____, 20__.

(Signature of caretaker relative)

(Signature, county, state, and seal of notary public)

7. NOTICES:

a. Completion of this affidavit does not affect the rights of the child's parents or legal guardian regarding the care, custody, and control of the child and does not mean that the caretaker relative has legal custody of the child.

b. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.

c. This affidavit is not valid for more than 6 months after the date on which it is signed by the caretaker relative.

8. ADDITIONAL INFORMATION:

a. TO CARETAKER RELATIVES:

If the child stops living with you, you shall notify anyone to whom you have given this affidavit, as well as anyone who received the affidavit from someone else.

b. TO [PUBLIC AND] PRIVATE SCHOOL OFFICIALS AND [PUBLIC AND] PRIVATE HEALTH CARE PROVIDERS:

(1). A [public or] private school official [or a public school district official] may require additional reasonable evidence that the caretaker relative lives at the address provided in item 1d of the affidavit form.

(2). A [public or] private entity or individual who acts in good faith reliance upon a caretaker relative educational authorization affidavit to enroll a child in school or to provide educational services or educationally related medical care, or both, without actual knowledge of facts contrary to those indicated in the affidavit, is not subject to criminal prosecution or civil liability to any person, or subject to any professional disciplinary action, for reliance on an affidavit completed in compliance with [this section].

Section 4. Section 1-1-215, MCA, is amended to read:

"1-1-215. Residence — rules for determining. Every person has, in law, a residence. In determining the place of residence, the following rules are to be observed:

(1) It is the place where a person remains when not called elsewhere for labor or other special or temporary purpose and to which the person returns in seasons of repose.

(2) There may ~~only~~ be *only* one residence. If a person claims a residence within Montana for any purpose, then that location is the person's residence for all purposes unless there is a specific statutory exception.

(3) A residence cannot be lost until another is gained.

(4) The residence of ~~a minor's parents or, if one of them is deceased or they do not share the same residence, the residence of the parent having legal custody or, if neither parent has legal custody, the residence of the parent with whom the minor customarily resides is the residence of the~~ *an* unmarried minor. ~~In is:~~

(a) *the residence of a minor's parents;*

(b) *if one of the parents is deceased or the parents do not share the same residence, the residence of the parent having legal custody;*

(c) *if neither parent has legal custody, the residence of the parent with whom the minor customarily resides; or*

(d) if the conditions in [section 2] are met, the last-known residence of the parent with whom the minor normally resided immediately prior to residing with the caretaker relative.

(5) In the case of a controversy, the district court may declare which parental residence is the residence of an unmarried minor.

(5)(6) The Except as provided in [sections 1 through 3], the residence of an unmarried minor who has a parent living cannot be changed by either the minor's own act or that of the minor's guardian.

(6)(7) The residence can be changed only by the union of act and intent."

Section 5. Section 20-5-321, MCA, is amended to read:

"20-5-321. Attendance with mandatory approval — tuition and transportation. (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

(a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district and the resident district does not provide transportation; or

(b) (i) the child resides in a location where, because of geographic conditions between the child's home and the school that the child would attend within the district of residence, it is impractical to attend school in the district of residence, as determined by the county transportation committee based on the following criteria:

(A) the length of time that is in excess of the 1-hour limit for each bus trip for an elementary child as authorized under 20-10-121;

(B) whether distance traveled is greater than 40 miles one way from the child's home to school on a dirt road or greater than a total of 60 miles one way from the child's home to school in the district of residence over the shortest passable route; or

(C) whether the condition of the road or existence of a geographic barrier, such as a river or mountain pass, causes a hazard that prohibits safe travel between the home and school.

(ii) The decision of the county transportation committee is subject to appeal to the superintendent of public instruction, as provided in 20-3-107, but the decision must be considered as final for the purpose of the payment of tuition under 20-5-324(5)(a)(ii) until a decision is issued by the superintendent of public instruction. The superintendent of public instruction may review and rule upon a decision of the county transportation committee without an appeal being filed.

(c) the child is a member of a family that is required to send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided that the child resides more than 3 miles from an elementary school in the resident district or that the parent is required to move to the elementary district where the high school is located to enroll another child in high school. A child enrolled in an elementary school pursuant to this subsection (1)(c) may continue to attend the elementary school after the other child has left the high school.

(d) the child is under the protective care of a state agency or has been adjudicated to be a youth in need of intervention or a delinquent youth, as defined in 41-5-103; or

(e) the child is required to attend school outside of the district of residence as the result of a placement in foster care or a group home licensed by the state; or

(f) *the child is residing with a caretaker relative who wants to enroll the child pursuant to [section 2].*

(2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an out-of-district attendance agreement in consultation with an appropriate official of the district that the child will attend.

(b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

(c) (i) The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity and may charge tuition for all students whose tuition is required to be paid by another type of entity. However, any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

(ii) As used in this subsection (2)(c), "entity" means a parent, a guardian, the trustees of the district of residence, or a state agency.

(3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district of attendance shall approve the out-of-district attendance agreement. The trustees of the district of attendance shall:

(a) notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days; and

(b) submit the agreement for a student attending under the provisions of subsection (1)(d) or (1)(e) to the superintendent of public instruction for approval for payment under 20-5-324.

(4) Unless the child is a child with a disability who resides in the district, the trustees of the district where the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find that, because of insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child."

Section 6. Section 20-5-412, MCA, is amended to read:

"20-5-412. Definition — parent-designated adult — administration of glucagon — training. (1) As used in 20-5-413 and this section, "parent-designated adult" means a school district employee, selected by a parent, *an individual who has executed a caretaker relative educational authorization affidavit pursuant to [section 3],* or a guardian of a diabetic student, who voluntarily agrees to administer glucagon to the student.

(2) A parent, *an individual who has executed a caretaker relative educational authorization affidavit pursuant to [section 3],* or a 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, *an individual who has executed a caretaker relative educational authorization*

affidavit pursuant to [section 3], or a 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, *an individual who has executed a caretaker relative educational authorization affidavit pursuant to [section 3], or a 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, *an individual who has executed a caretaker relative educational authorization affidavit pursuant to [section 3], or a guardian.* Written documentation of the training received by the parent-designated adult must be filed with the school district.”

Section 7. Section 20-5-420, MCA, is amended to read:

“20-5-420. Self-administration of asthma medication. (1) As used in this section, the following definitions apply:

(a) “Anaphylaxis” means a systemic allergic reaction that can be fatal in a short time period and is also known as anaphylactic shock.

(b) “Asthma” means a chronic disorder or condition of the lungs that requires lifetime, ongoing, medical intervention.

(c) “Medication” means a medicine, including inhaled bronchodilators, inhaled corticosteroids, and autoinjectable epinephrine, prescribed by a licensed physician as defined in 37-3-102, a physician assistant who has been authorized to prescribe asthma medications as provided in 37-20-404, or an advanced practice registered nurse with prescriptive authority as provided in 37-8-202(5).

(d) “Self-administration” means a pupil’s discretionary use of the asthma medication prescribed for the pupil.

(2) A school, whether public or nonpublic, shall permit the self-administration of medication by a pupil with asthma if the parents or guardians of the pupil provide to the school:

(a) written authorization, acknowledging and agreeing to the liability provisions in subsection (4), for the self-administration of medication;

(b) a written statement from the pupil’s physician, physician assistant, or advanced practice registered nurse containing the following information:

(i) the name and purpose of the medication;

(ii) the prescribed dosage; and

(iii) the time or times at which or the special circumstances under which the medication is to be administered;

(c) documentation that the pupil has demonstrated to the health care practitioner and the school nurse, if available, the skill level necessary to administer the medication as prescribed; and

(d) documentation that the pupil’s physician, physician assistant, or advanced practice registered nurse has formulated a written treatment plan for managing asthma or anaphylaxis episodes of the pupil and for medication use by the pupil during school hours.

(3) The information provided by the parents or guardians must be kept on file in the office of the school nurse or, in the absence of a school nurse, the school's administrator.

(4) The school district or nonpublic school and its employees and agents are not liable as a result of any injury arising from the self-administration of medication by the pupil unless an act or omission is the result of gross negligence, willful and wanton conduct, or an intentional tort. The parents or guardians of the pupil must be given a written notice and sign a statement acknowledging that the school district or nonpublic school may not incur liability as a result of any injury arising from the self-administration of medication by the pupil and that the parents or guardians shall indemnify and hold harmless the school district or nonpublic school and its employees and agents against any claims, except a claim based on an act or omission that is the result of gross negligence, willful and wanton conduct, or an intentional tort.

(5) The permission for self-administration of medication is effective for the school year for which it is granted and must be renewed each subsequent school year or, if the medication dosage, frequency of administration, or other conditions change, upon fulfillment of the requirements of this section.

(6) If the requirements of this section are fulfilled, a pupil with asthma may possess and use the pupil's medication:

- (a) while in school;
- (b) while at a school-sponsored activity;
- (c) while under the supervision of school personnel;
- (d) before or after normal school activities, such as while in before-school or after-school care on school-operated property; or
- (e) while in transit to or from school or school-sponsored activities.

(7) If provided by the parent, *an individual who has executed a caretaker relative educational authorization affidavit pursuant to [section 3], or a guardian and in accordance with documents provided by the pupil's physician, physician assistant, or advanced practice registered nurse, backup medication must be kept at a pupil's school in a predetermined location or locations to which the pupil has access in the event of an asthma or anaphylaxis emergency.*

(8) Youth correctional facilities are exempt from this section and shall adopt policies related to access and use of asthma medications."

Section 8. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 20, chapter 5, and the provisions of Title 20, chapter 5, apply to [sections 1 through 3].

Section 9. Two-thirds vote required — contingent voidness. Because [section 3(4)(a)] 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. If [this act] is not approved by at least two-thirds of the members of each house of the legislature, then the bracketed language in [section 3(4)(a)] and the bracketed language in the notice to school officials and health care providers in part 8b of [section 3(9)] is void.

Section 10. Effective date. [This act] is effective July 1, 2007.

Section 11. Applicability. [This act] applies to a caretaker relative to whom a minor is given by a parent on or after July 1, 2007, for care by the relative.

Approved May 8, 2007

CHAPTER NO. 443

[SB 51]

AN ACT REVISING GROWTH POLICY AND SUBDIVISION LAWS; REQUIRING GROWTH POLICIES TO EVALUATE THE POTENTIAL FOR FIRE AND WILDLAND FIRE; INCLUDING FIRE AND WILDLAND FIRE AMONG THE NATURAL HAZARDS THAT LOCAL SUBDIVISION REGULATIONS ARE REQUIRED TO REASONABLY ADDRESS; REQUIRING SUBDIVISION REGULATIONS TO IDENTIFY AREAS UNSUITABLE FOR DEVELOPMENT UNLESS CERTAIN MITIGATION MEASURES ARE TAKEN, INCLUDING USE OF CONSTRUCTION TECHNIQUES PROVIDED IN DEPARTMENT OF LABOR AND INDUSTRY ADMINISTRATIVE RULES; PROHIBITING A GOVERNING BODY FROM INCLUDING CERTAIN BUILDING REGULATIONS IN SUBDIVISION REGULATIONS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT RULES THAT IDENTIFY CONSTRUCTION TECHNIQUES TO MITIGATE FIRE HAZARDS; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES TO ADDRESS DEVELOPMENT IN THE WILDLAND-URBAN INTERFACE; AMENDING SECTIONS 76-1-601, 76-3-501, 76-3-504, AND 76-13-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 76-1-601, MCA, is amended to read:

“76-1-601. Growth policy — contents. (1) A growth policy may cover all or part of the jurisdictional area.

(2) ~~A growth policy must include the elements listed in subsection (3) by October 1, 2006.~~ The extent to which a growth policy addresses the elements of a growth policy that are listed in subsection (3) is at the full discretion of the governing body.

(3) A growth policy must include:

- (a) community goals and objectives;
- (b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:
 - (i) land uses;
 - (ii) population;
 - (iii) housing needs;
 - (iv) economic conditions;
 - (v) local services;
 - (vi) public facilities;
 - (vii) natural resources; and

(viii) other characteristics and features proposed by the planning board and adopted by the governing bodies;

(c) projected trends for the life of the growth policy for each of the following elements:

- (i) land use;
- (ii) population;
- (iii) housing needs;
- (iv) economic conditions;
- (v) local services;
- (vi) natural resources; and

(vii) other elements proposed by the planning board and adopted by the governing bodies;

(d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (3)(a);

(e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;

(f) an implementation strategy that includes:

- (i) a timetable for implementing the growth policy;
- (ii) a list of conditions that will lead to a revision of the growth policy; and
- (iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;

(g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:

(i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;

(ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located within the county's boundaries on matters related to the growth policy;

(h) a statement explaining how the governing bodies will:

- (i) define the criteria in 76-3-608(3)(a); and
- (ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a); ~~and~~

(i) a statement explaining how public hearings regarding proposed subdivisions will be conducted; *and*

(j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or not there is a need to:

(i) delineate the wildland-urban interface; and

(ii) adopt regulations requiring:

(A) defensible space around structures;

(B) *adequate ingress and egress to and from structures and developments to facilitate fire suppression activities; and*

(C) *adequate water supply for fire protection.*

(4) A growth policy may:

(a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.

(b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;

(c) address the criteria in 76-3-608(3)(a);

(d) evaluate the effect of subdivision on the criteria in 76-3-608(3)(a);

(e) describe zoning regulations that will be implemented to address the criteria in 76-3-608(3)(a); and

(f) identify geographic areas where the governing body intends to authorize an exemption from review of the criteria in 76-3-608(3)(a) for proposed subdivisions pursuant to 76-3-608.

(5) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter.”

Section 2. Section 76-3-501, MCA, is amended to read:

“76-3-501. Local subdivision regulations. The governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for:

(1) the orderly development of their jurisdictional areas;

(2) the coordination of roads within subdivided land with other roads, both existing and planned;

(3) the dedication of land for roadways and for public utility easements;

(4) the improvement of roads;

(5) the provision of adequate open spaces for travel, light, air, and recreation;

(6) the provision of adequate transportation, water, and drainage;

(7) subject to the provisions of 76-3-511, the regulation of sanitary facilities;

(8) the avoidance or minimization of congestion; and

(9) the avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard, *including but not limited to fire and wildland fire*, or the lack of water, drainage, access, transportation, or other public services or that would necessitate an excessive expenditure of public funds for the supply of the services.”

Section 3. Section 76-3-504, MCA, is amended to read:

“76-3-504. Subdivision regulations — contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in 76-3-210, 76-3-509, or 76-3-609, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. ~~and~~ *The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques; or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in [section 5].*

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) allows a subdivider to meet with the agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

(3) The governing body may establish deadlines for submittal of subdivision applications.”

Section 4. Section 76-13-109, MCA, is amended to read:

“76-13-109. Rules. (1) The department may adopt ~~and enforce~~ reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of this part and part 2.

(2) *By October 1, 2009, the department shall adopt rules addressing development within the wildland-urban interface, including but not limited to:*

(a) *best practices for development within the wildland-urban interface;*

(b) *criteria for providing grant and loan assistance to local government entities to encourage adoption of best practices for development within the wildland-urban interface; and*

(c) *identification of enforcement mechanisms.”*

Section 5. Purpose — rulemaking. (1) The purpose of [sections 5 and 6] is to provide specific rulemaking authority to the department of labor and industry for the purposes of 76-3-504(1)(e).

(2) By October 1, 2009, the department shall adopt rules identifying appropriate construction techniques that may be used by a local government in mitigation of identified fire hazards pursuant to 76-3-504(1)(e). Rules adopted under this section may not be construed to be part of the state building code as provided in 50-60-203. The adoption, amendment, or repeal of a rule under this section is of significant public interest for the purposes of 2-3-103.

Section 6. Enforcement. Rules promulgated under [section 5] may be enforced only as provided in Title 76, chapter 3, part 5. The powers and duties for enforcement provided in 76-3-501 apply to rules adopted under [section 5] and do not apply to or include any rules adopted under Title 50, chapter 60, parts 1 through 8.

Section 7. Codification instruction. [Sections 5 and 6] are intended to be codified as an integral part of Title 50, chapter 60, and the provisions of Title 50, chapter 60, apply to [sections 5 and 6].

Section 8. Effective date — applicability. [This act] is effective on passage and approval and applies on or after October 1, 2009.

Approved May 8, 2007

CHAPTER NO. 444

[SB 69]

AN ACT INCREASING THE ALLOCATION OF COAL SEVERANCE TAX TRUST FUNDS AVAILABLE FOR THE VALUE-ADDED LOAN PROGRAM, THE INFRASTRUCTURE LOAN PROGRAM, AND THE MONTANA ECONOMIC DEVELOPMENT LOAN PROGRAM; AMENDING SECTIONS 17-6-305 AND 17-6-311, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 17-6-305, MCA, is amended to read:

“17-6-305. Investment of up to twenty-five percent of coal tax trust fund in Montana economy — report by board. (1) Subject to the provisions of 17-6-201(1), the board shall endeavor to invest ~~up to~~ 25% of the permanent coal tax trust fund established in 17-6-203(6) in the Montana economy, with special emphasis on investments in new or expanding locally owned enterprises. Investments made pursuant to this section do not include investments made pursuant to 17-6-309(2). For purposes of calculating the 25% of the permanent coal tax trust fund, the board shall include all funds listed in 17-5-703(1). The portion of the permanent coal tax trust fund contained in portfolios formerly administered by the Montana board of science and technology development is included in the 25% of the trust fund allocated to the board for in-state investment under this section. *This subsection does not prohibit the board from investing more than 25% of the permanent coal tax trust fund in the Montana economy if it is prudent to do so and the investments will benefit the Montana economy.*

(2) In determining the probable income to be derived from investment of this revenue, the long-term benefit to the Montana economy must be considered.

(3) The legislature may provide additional procedures to implement this section.

(4) The board shall include a report on the investments made under this section as a part of the information required by 17-7-111.”

Section 2. Section 17-6-311, MCA, is amended to read:

“17-6-311. Limitation on size of investments. (1) Except as provided in subsection (2) and this subsection, an investment may not be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of which exceeds 10% of the permanent coal tax trust fund. If an investment results in any one business enterprise or person incurring a debt in excess of 6% of the permanent coal tax trust fund, at least 30% of the debt incurred for the project or enterprise for the coal tax investment that was made to the business enterprise or person must be held by a commercial lender. This subsection does not:

(a) apply to a loan made pursuant to 17-6-317;

(b) limit the board’s authority to make loans to the capital reserve account as provided in 17-6-308(2);

(c) apply to the purchase of debentures issued by a capital company. However, the total amount of debentures purchased by the board may not exceed 1% of the Montana permanent coal tax trust fund at the time of purchase.

(2) The total amount of loans made pursuant to 17-6-309(2) ~~or 17-6-317~~ may not exceed ~~\$50~~ *\$80 million, the total amount of loans made pursuant to 17-6-317 may not exceed \$70 million*, and a single loan may not be less than \$250,000. Except for a loan made pursuant to 17-6-317, a loan may not exceed \$16,666 for each job that is estimated to be created. In determining the size of a loan made pursuant to 17-6-309(2), the board shall consider:

(a) the estimated number of jobs to be created by the project within a 4-year period from the time that the loan is made and the impact of the jobs on the state and the community where the project will be located;

(b) the long-term effect of corporate and personal income taxes estimated to be paid by the business and its employees;

(c) the current and projected ability of the community to provide necessary infrastructure for economic and community development purposes;

(d) the amount of increased salaries, wages, and business incomes of existing jobholders and businesses; and

(e) other matters that the board considers necessary.”

Section 3. Effective date. [This act] is effective July 1, 2007.

Approved May 8, 2007

CHAPTER NO. 445

[SB 100]

AN ACT REVISING THE LAW RELATING TO OUTFITTING WITHOUT A LICENSE; DEFINING “OUTFITTING”; REVISING PENALTIES AND PROVIDING FOR ADDITIONAL SENTENCING CONDITIONS THAT MAY

BE APPLIED FOR VIOLATIONS; AMENDING SECTION 37-47-344, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Outfitting without license — penalties — disposition of fines. (1) A person commits the offense of outfitting without a license if the person purposely or knowingly engages in outfitting while not licensed pursuant to Title 37, chapter 47, or purposely or knowingly violates a licensing rule adopted under Title 37, chapter 47. A violation of this subsection is punishable by a fine of not less than \$200 or more than \$1,000, imprisonment in the county jail for up to 1 year, or both.

(2) A person or entity that represents to any other person, any entity, or the public that the person or entity is an outfitter and who commits the offense of outfitting without a license, as provided in subsection (1), for any portion of 5 or more days for consideration within 1 calendar year for any person or for consideration valued in excess of \$5,000 is punishable by a fine of not more than \$50,000, imprisonment in the state prison for up to 5 years, or both.

(3) (a) In addition to the penalties set out in subsection (1), a person who is convicted of violating subsection (1) loses all hunting, fishing, and trapping licenses and permits and shall forfeit all hunting, fishing, and trapping license privileges in this state for a period set by the court.

(b) In addition to the penalties provided in subsection (2), a person who is convicted of violating subsection (2) loses all hunting, fishing, and trapping licenses and permits and shall forfeit all hunting, fishing, and trapping license privileges in this state for a minimum of 5 years.

(c) The department shall notify the person of any loss of privileges as imposed by the court, and the person shall surrender all licenses and permits, as ordered by the court, within 10 days of notification.

(d) A sentencing court that imposes a period of license revocation pursuant to subsection (3)(a) or (3)(b) shall consider and may impose any of the following conditions during the period of revocation:

(i) prohibiting the offender from participating in any hunting, fishing, or trapping endeavor as a hunter, angler, trapper, scout, guide, observer, or assistant;

(ii) prohibiting the offender from brokering or participating in any lease of property for hunting, fishing, or trapping, either personally or through an agent or representative;

(iii) prohibiting the offender from participating in any seminar or show that is designed to promote hunting, fishing, or trapping;

(iv) prohibiting the offender from purchasing or possessing any hunting, fishing, or trapping permits; and

(v) any other reasonable condition or restriction that is related to the crime committed or that is considered necessary for the rehabilitation of the offender or for the protection of the citizens or wildlife of this state.

(4) A person convicted of outfitting without a license shall reimburse the full amount of any fees received to the person to whom illegal outfitting services were provided.

(5) As used in this section, "consideration" is defined as remuneration given in exchange for outfitting services supplied predicated on a business

relationship between parties. This does not include reimbursement for shared trip expenses.

(6) (a) As used in this section, “outfitting” means providing hunting or fishing services for consideration, including any saddle or pack animal, facilities, camping equipment, personal service, or vehicle, watercraft, or other conveyance for any person to hunt, fish, trap, capture, take, kill, or pursue any game, including fish. The term includes accompanying that person, either part or all of the way, on an expedition for any of these purposes or supervision of a licensed guide or professional guide in accompanying that person.

(b) The term does not include the provision of the services listed in subsection (6)(a) by a person on real property that the person owns for the primary pursuit of bona fide agricultural interests.

Section 2. Section 37-47-344, MCA, is amended to read:

“37-47-344. Penalties — disposition of fines. (1) A person who violates any provision of this chapter or rule adopted under this chapter is guilty of a misdemeanor and is punishable, *unless otherwise specified*, by a fine not exceeding \$500.

~~(2) A person who represents to the public that the person is an outfitter or who purposely engages in outfitting without a license as required by this chapter is guilty of a misdemeanor and is punishable by a fine of not less than \$200 and not more than \$1,000, up to 1 year in the county jail, or both. Each day of violation is a separate offense. In addition, the person must be assessed and pay to the board the amount of all costs incurred by the board in investigating and preparing the case for trial and all prosecution costs, including but not limited to witness, transportation, and per diem expenses.~~

~~(3)(2) Fifty percent of all fines paid under this section must be deposited in the general fund of the county in which the conviction is obtained, and 50% must be deposited in the state special revenue fund for the use of the board in enforcing this chapter. All investigation, preparation, and trial costs paid under this section must be deposited in the state special revenue fund for the use of the board in enforcing the provisions of this chapter. The board may reimburse other agencies for costs reasonably incurred in the enforcement of this chapter.~~

~~(4) A person convicted of engaging in outfitting without a license shall reimburse the full amount of any fees received to the person to whom illegal outfitter services were provided.”~~

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 3, part 1, and the provisions of Title 87, chapter 3, part 1, apply to [section 1].

Section 4. Effective date. [This act] is effective July 1, 2007.

Approved May 8, 2007

CHAPTER NO. 446

[SB 104]

AN ACT SPECIFYING THE TIME WITHIN WHICH A PROSECUTION FOR CERTAIN SEX OFFENSES MAY BE COMMENCED WHEN THE IDENTITY OF THE SUSPECT WHO IS CHARGED WITH THE OFFENSE IS

ESTABLISHED BY DNA EVIDENCE; AND AMENDING SECTION 45-1-205, MCA.

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

Section 1. Section 45-1-205, MCA, is amended to read:

“45-1-205. General time limitations. (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) *A Except as provided in subsection (9),* a prosecution for a felony offense under 45-5-502, 45-5-503, or 45-5-507(4) may be commenced within 10 years after it is committed, except that it may be commenced within 10 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred. A prosecution for a misdemeanor offense under those provisions may be commenced within 1 year after the offense is committed, except that it may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(c) *A Except as provided in subsection (9),* a prosecution under 45-5-504, 45-5-505, 45-5-507(1), (2), (3), or (5), 45-5-625, or 45-5-627 may be commenced within 5 years after the victim reaches 18 years of age if the victim was less than 18 years of age at the time that the offense occurred.

(2) Except as provided in subsection (7)(b) or as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The periods prescribed in subsection (2) are extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination of the minority or incompetency;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations of the laws regulating the activities of outfitters and guides under Title 37, chapter 47, and prosecution must be brought within 3 years after an offense is committed.

(7) (a) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years following the date of the theft, whether or not the offender is in possession of or otherwise exerting unauthorized control over the property at the time the prosecution is commenced. After the 5-year period ends, a prosecution may be commenced at any time if the offender is still in possession of or otherwise exerting unauthorized control over the property, except that the prosecution must be commenced within 1 year after the investigating officer discovers that the offender still possesses or is otherwise exerting unauthorized control over the property.

(8) A prosecution is commenced either when an indictment is found or an information or complaint is filed.

(9) *If after a time period prescribed in subsection (1)(b) or (1)(c) has expired a suspect is conclusively identified by DNA testing, a prosecution may be commenced within 1 year after a suspect is conclusively identified by DNA testing.*

Approved May 8, 2007

CHAPTER NO. 447

[SB 121]

AN ACT PROHIBITING THE SALE AND RESTRICTING THE DISCLOSURE AND USE OF TAX RETURN INFORMATION BY A TAX RETURN PREPARER; PROVIDING RULEMAKING AUTHORITY; PROHIBITING THE DEPARTMENT OF REVENUE FROM PROVIDING INDIVIDUAL INCOME TAX RETURN PREPARATION SERVICES; ALLOWING THE DEPARTMENT OF REVENUE TO PROVIDE FOR THE FILING OF ELECTRONIC INDIVIDUAL INCOME TAX FORMS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Prohibition on sales — restrictions on certain disclosures and uses. (1) (a) Subject to subsection (1)(b), a tax return preparer may not sell, receive any consideration for, or otherwise disclose tax return information for the benefit of the tax return preparer or of any persons controlling, controlled by, or under common control of the tax return preparer.

(b) The provisions of this section do not prevent the bona fide sale of a tax return preparation, accounting, or law practice in the ordinary course of business.

(2) A tax return preparer may not disclose return information to a tax return preparer located outside of the state unless:

- (a) (i) the taxpayer has requested the disclosure; or
- (ii) disclosure is required in connection with an internal audit;
- (b) the tax return preparer located outside of the state agrees:
 - (i) not to sell or receive any consideration for the tax return information; and

(ii) not to otherwise disclose the tax return information for its benefit or for the benefit of any person controlling, controlled by, or under common control with it; and

(c) the local tax return preparer indemnifies the taxpayer for the damages provided for in subsection (3)(d) for any sale or disclosure by the tax return preparer located outside the state in violation of subsection (2)(b).

(3) (a) A person whose tax return information is or will be used or disclosed in violation of subsection (1) or (2) may bring an action to enjoin the violation and for the recovery of damages.

(b) An action under this section may be brought in Montana district court in the county where the plaintiff resides or maintains its principal place of business or in the Montana first judicial district.

(c) If the court finds that the defendant is violating or has violated any of the provisions of subsection (1) or (2), the court shall enjoin the defendant. It is not necessary to allege or prove actual damages to the plaintiff.

(d) In addition to injunctive relief, the plaintiff is entitled to recover from the defendant in an amount that is the greater of three times the amount of actual damages sustained by the plaintiff or up to \$10,000.

(e) 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 equivalent fees at the judge's discretion.

(4) A tax return preparer may disclose or use return information:

(a) for quality or peer reviews;

(b) when authorized to do so by Montana law;

(c) when required to do so by federal or state law; or

(d) pursuant to a court subpoena or administrative summons.

(5) As used in this section, the following definitions apply:

(a) (i) "Return information" includes a taxpayer's identity, the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, or any other data received by, recorded by, prepared by, furnished to, or collected by the department with respect to a return or with respect to the determination of the existence or possible existence of liability or the amount of a liability of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition or any offense.

(ii) The term does not include data in a form that cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer.

(b) "Tax return preparer" means:

(i) any person who:

(A) is engaged in the business of preparing tax returns;

(B) is engaged in the business of providing services in connection with the preparation of tax returns;

(C) prepares or assists in preparing or presents to the public that the person prepares or assists in preparing a tax return for compensation;

- (D) develops software used to prepare or file tax returns; or
- (E) is an electronic return originator; and
- (ii) an individual who, as a part of that individual's duties or employment with a person described in subsection (5)(b)(i), performs services relating to:
 - (A) the preparation or filing of or the provision of services in connection with the preparation or filing of a tax return; or
 - (B) the development of software used to prepare or file tax returns.

Section 2. Prohibition on tax return preparation services — filing electronic returns. The department may not provide electronic individual income tax preparation services. However, the department may provide for the filing of electronic individual income tax forms that include mathematical computations of line items on the electronic forms. The department is encouraged to increase the use of electronic tax filing. This section does not affect the department's responsibilities to provide taxpayer services under 15-1-222.

Section 3. Rulemaking authority. The department may adopt rules to administer and enforce the provisions of [sections 1 and 2].

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 15, chapter 1, part 1, and the provisions of Title 15, chapter 1, part 1, apply to [sections 1 through 3].

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

Approved May 8, 2007

CHAPTER NO. 448

[SB 128]

AN ACT ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CHANGE WATER RIGHTS THAT IT HOLDS IN FEE SIMPLE TO INSTREAM FLOW PURPOSES TO PROTECT, MAINTAIN, OR ENHANCE STREAMFLOW TO BENEFIT FISHERY RESOURCES; REPEALING THE TERMINATION DATE ON LEASING OF WATER RIGHTS BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR INSTREAM FLOW PURPOSES; PROVIDING ADDITIONAL CRITERIA THAT MUST BE MET AND PROCEDURES THAT MUST BE FOLLOWED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CHANGE AN APPROPRIATION RIGHT OR LEASED WATER RIGHT TO INSTREAM FLOW PURPOSES TO ENSURE THAT A CHANGE IN APPROPRIATION RIGHT WILL NOT ADVERSELY AFFECT OTHER WATER RIGHT HOLDERS; AMENDING SECTIONS 85-2-102, 85-2-308, 85-2-402, 85-2-419, 85-2-436, 85-2-602, AND 87-1-257, MCA; REPEALING SECTIONS 85-2-437 AND 85-2-438, MCA, SECTION 11, CHAPTER 658, LAWS OF 1989, SECTIONS 4 AND 7, CHAPTER 740, LAWS OF 1991, AND SECTIONS 5, 6, 7, AND 9, CHAPTER 123, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 85-2-102, MCA, is amended to read:

“85-2-102. (Temporary) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to ~~lease water change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource~~ in accordance with 85-2-436; or

(d) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks *through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource* pursuant to a ~~lease authorized under~~ 85-2-436; or

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(10) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(11) "Ground water" means any water that is beneath the ground surface.

(12) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(13) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(14) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(15) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(16) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(17) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(18) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(19) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(20) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(21) "Water division" means a drainage basin as defined in 3-7-102.

(22) "Water judge" means a judge as provided for in Title 3, chapter 7.

(23) "Water master" means a master as provided for in Title 3, chapter 7.

(24) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(25) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (~~Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.~~)

85-2-102.—(Effective July 1, 2009) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; or

(c) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Developed spring" means any artificial opening or excavation in the ground, however made, including any physical alteration at the point of discharge regardless of whether it results in any increase in the yield of ground water, from which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(9) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(10) "Ground water" means any water that is beneath the ground surface.

(11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(13) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(14) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(15) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(16) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(17) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(18) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(19) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(20) "Water division" means a drainage basin as defined in 3-7-102.

(21) "Water judge" means a judge as provided for in Title 3, chapter 7.

(22) "Water master" means a master as provided for in Title 3, chapter 7.

(23) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(24) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 2. Section 85-2-308, MCA, is amended to read:

"85-2-308. Objections. (1) (a) An objection to an application under this chapter must be filed by the date specified by the department under 85-2-307(2).

(b) The objection to an application for a permit must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-311 are not met.

(2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-402 and 85-2-436, *if applicable*, are not met.

(3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.

(4) For an application for a reservation of water, the objection must state the name and address of the objector and facts indicating that one or more of the criteria in 85-2-316 are not met.

(5) An objector to an application under this chapter shall file a correct and complete objection on a form prescribed by the department within the time period stated on the public notice associated with the application. In order to assist both applicants and objectors, the department shall adopt rules in accordance with this chapter delineating the components of a correct and complete objection. For instream flow water rights for fish, wildlife, and recreation, the rules must require the objector to describe the reach or portion of the reach of the stream or river subject to the instream flow water right and the beneficial use that is adversely affected and to identify the point or points where the instream flow water right is measured and monitored. The department shall

notify the objector of any defects in an objection. An objection not corrected or completed within 15 days from the date of notification of the defects is terminated.

(6) An objection is valid if the objector has standing pursuant to subsection (3), has filed a correct and complete objection within the prescribed time period, and has stated the applicable information required under this section and rules of the department.”

Section 3. Section 85-2-402, MCA, is amended to read:

“85-2-402. (Temporary) Changes in appropriation rights. (1) The right to make a change *in appropriation right* subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change *in appropriation right* proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), (15), and (16); *and, if applicable, subject to subsection (17)*, the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a ~~lease authorization~~ *change in appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource* pursuant to 85-2-436 or a temporary change in appropriation right authorization to maintain or enhance streamflows to benefit the fishery resource pursuant to 85-2-408, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a ~~lease authorization~~ *change in appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource* pursuant to 85-2-436 or a temporary change in appropriation right authorization pursuant to 85-2-408, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must

contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change *in appropriation right* is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change *in appropriation right* in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change *in appropriation right*. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change *in appropriation right* might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change *in appropriation right*. The department may extend time limits specified in the change *in appropriation right* approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change *in appropriation right* approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change *in appropriation right* approval

should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change *in appropriation right* approval.

(11) The original of a change *in appropriation right* approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change *in appropriation right* approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change *in appropriation right* pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area;
or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change *in appropriation right*;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year for all other wells;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well

within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this section.

(17) *The department shall accept and process an application for a change in appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource pursuant to 85-2-436 and this section. (Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)*

85-2-402. (Effective July 1, 2009) Changes in appropriation rights.

(1) ~~The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. Except as provided in 85-2-410 and subsections (15) and (16) of this section, an appropriator may not make a change in an appropriation right without the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.~~

(2) ~~Except as provided in subsections (4) through (6), (15), and (16), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:~~

~~(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.~~

~~(b) Except for a temporary change in appropriation right authorization to maintain or enhance streamflows to benefit the fishery resource pursuant to 85-2-408, the proposed means of diversion, construction, and operation of the appropriation works are adequate.~~

~~(c) The proposed use of water is a beneficial use.~~

~~(d) Except for a temporary change in appropriation right authorization pursuant to 85-2-408, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.~~

~~(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.~~

~~(f) The water quality of an appropriator will not be adversely affected.~~

~~(g) The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.~~

~~(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.~~

~~(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:~~

~~(a) the criteria in subsection (2) are met; and~~

~~(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:~~

~~(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;~~

~~(ii) the benefits to the applicant and the state;~~

~~(iii) the effects on the quantity and quality of water for existing uses in the source of supply;~~

~~(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;~~

~~(v) the effects on private property rights by any creation of or contribution to saline seep; and~~

~~(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.~~

~~(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:~~

~~(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and~~

~~(b) for the withdrawal and transportation of appropriated water for out-of-state use, the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.~~

~~(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:~~

~~(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:~~

~~(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;~~

~~(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and~~

~~(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.~~

~~(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:~~

~~(i) whether there are present or projected water shortages within the state of Montana;~~

~~(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;~~

~~(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and~~

~~(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.~~

~~(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.~~

~~(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the~~

department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change in appropriation right if it determines that the proposed change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change in appropriation right subject to the terms, conditions, restrictions, and limitations that it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change in appropriation right is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section.

(15) (a) An appropriator may change an appropriation right for a replacement well without the prior approval of the department if:

(i) the appropriation right is for:

(A) ground water outside the boundaries of a controlled ground water area;

or

(B) ground water inside the boundaries of a controlled ground water area and if the provisions of the order declaring the controlled ground water area do not restrict such a change;

(ii) the change in appropriation right is to replace an existing well and the existing well will no longer be used;

(iii) the rate and volume of the appropriation from the replacement well are equal to or less than that of the well being replaced and do not exceed:

(A) 450 gallons a minute for a municipal well; or

(B) 35 gallons a minute and 10 acre-feet a year for all other wells;

(iv) the water from the replacement well is appropriated from the same aquifer as the water appropriated from the well being replaced; and

(v) a timely, correct and complete notice of replacement well is submitted to the department as provided in subsection (15)(b).

(b) (i) After completion of a replacement well and appropriation of ground water for a beneficial use, the appropriator shall file a notice of replacement well with the department on a form provided by the department.

(ii) The department shall review the notice of replacement well and shall issue an authorization of a change in an appropriation right if all of the criteria in subsection (15)(a) have been met and the notice is correct and complete.

(iii) The department may not issue an authorization of a change in appropriation right until a correct and complete notice of replacement well has been filed with the department. The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and completed notice of replacement well within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iv) If a notice of replacement well is not completed within the time allowed, the appropriator shall:

(A) cease appropriation of water from the replacement well pending approval by the department; and

(B) submit an application for a change in appropriation right to the department pursuant to subsections (1) through (3).

(c) The provisions of this subsection (15) do not apply to an appropriation right abandoned under 85-2-404.

(d) For each well that is replaced under this subsection (15), the appropriator shall follow the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to 37-43-202.

(e) The provisions of subsections (2), (3), (9), and (10) do not apply to a change in appropriation right that meets the requirements of subsection (15)(a).

(16) (a) An appropriator may change an appropriation right without the prior approval of the department for the purpose of constructing a redundant water supply well in a public water supply system, as defined in 75-6-102, if the redundant water supply well:

(i) withdraws water from the same ground-water source as the original well; and

(ii) is required by a state or federal agency.

(b) The priority date of the redundant water supply well is the same as the priority date of the original well. Only one well may be used at one time.

(c) Within 60 days of completion of a redundant water supply well, the appropriator shall file a notice of construction of the well with the department on a form provided by the department. The department may return a defective notice of construction to the appropriator for correction and completion.

(d) The provisions of subsections (9) and (10) do not apply to a change in appropriation right that meets the requirements of this section.”

Section 4. Section 85-2-419, MCA, is amended to read:

“85-2-419. Salvaged water. It is the declared policy of the state in 85-1-101 to encourage the conservation and full use of water. Consistent with this policy, holders of appropriation rights who salvage water may retain the right to the salvaged water for beneficial use. Except for a short-term lease pursuant to 85-2-410, any use of the right to salvaged water for any purpose or in any place other than that associated with the original appropriation right must be approved by the department as a change in appropriation right in accordance with 85-2-402 and 85-2-436, if applicable. Sale of the right to salvaged water must also be in accordance with 85-2-403, and the lease of the right to salvaged water must be in accordance with 85-2-408, 85-2-410, or 85-2-436.”

Section 5. Section 85-2-436, MCA, is amended to read:

“85-2-436. (Temporary) Water leasing study Instream flow to protect, maintain, or enhance streamflows to benefit fishery resource — change in appropriation rights by department of fish, wildlife, and parks until June 30, 2019. (1) The department of fish, wildlife, and parks and the department, in consultation with the environmental quality council, shall conduct and coordinate a study that, at a minimum:

(a) provides the following data for each designated stream reach and each pilot lease entered into under subsection (2):

(i) the length of the stream reach and how it is determined;

(ii) technical methods and data used to determine critical streamflow or volume needed to preserve fisheries;

(iii) legal standards and technical data used to determine and substantiate the amount of water available for instream flows through leasing of existing rights;

(iv) contractual parameters, conditions, and other steps taken to ensure that each lease in no way harms other appropriators, particularly if the stream is one that experiences natural dewatering; and

(v) methods and technical means used to monitor use of water under each lease;

(b) based on the data provided under subsection (1)(a), develops a complete model of a water lease and lease authorization that includes a step-by-step explanation of the process from initiation to completion.

(1) *The department of fish, wildlife, and parks may change an appropriation right, which it either holds in fee simple or leases, to an instream flow purpose of use and a defined place of use to protect, maintain, or enhance streamflows to benefit the fishery resource.*

(2) *The change in purpose of use or place of use must meet all the criteria and process of 85-2-307 through 85-2-309, 85-2-401, and 85-2-402 and the additional criteria and process in subsection (3) of this section to protect the rights of other appropriators from adverse impacts.*

(2) (a) For purposes of undertaking the study described in subsection (1) and as authorized by law, the department of fish, wildlife, and parks and the department may engage in the activities described in this subsection (2). For purposes of this study, this section is the exclusive means by which the

department of fish, wildlife, and parks may seek to change an appropriation right to an instream flow purpose.

~~(b)(3) (a)~~ The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of *protecting*, maintaining, or enhancing streamflows for the *to* benefit of fisheries in stream reaches determined eligible by the department pursuant to ~~85-2-437~~ *the fishery resource*.

~~(e)(b)~~ Upon receipt of a correct and complete application for a *lease change in purpose of use or place of use* from the department of fish, wildlife, and parks, the department shall publish notice of the application as provided in 85-2-307. Parties who believe that they may be adversely affected by the proposed *lease change in appropriation right* may file an objection as provided in 85-2-308. A *lease change in appropriation right* may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a *lease change* of an existing *appropriation right* for the purpose of *protecting*, maintaining, or enhancing streamflows for the *to* benefit of fisheries *the fishery resource* if the applicant submits a correct and complete application and meets the requirements of 85-2-402.

~~(d)(c)~~ The application for a *lease change in appropriation right* authorization must include specific information on the length and location of the stream reach in which the streamflow ~~must is to be~~ *protected*, maintained, or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

~~(e)(d)~~ The maximum quantity of water that may be leased *changed to instream flow* is the amount historically diverted by the lessor. However, only the amount historically consumed, or a smaller amount if specified by the department in the *lease change in appropriation right* authorization, may be used to *protect*, maintain, or enhance streamflows below the lessor's point of diversion that *existed prior to the change in appropriation right*.

~~(f)(e)~~ The ~~lease~~ *A lease for instream flow purposes* may ~~not be issued entered~~ for a term of ~~more than up to~~ 10 years, but it may be renewed once for up to 10 years, except that a lease of water made available from the development of a water conservation or storage project is ~~restricted to~~ *may be for* a term equal to the expected life of the project but ~~to~~ not more than 30 years. *All leases may be renewed an indefinite number of times but not for more than 10 years for each term*. Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 30 90 days for submission of new evidence of adverse effects to other water rights. A *lease change in appropriation right* authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection ~~(2)(j)~~ ~~(3)(i)~~ submits evidence of adverse effects to the appropriator's rights that has not been considered previously. If new evidence is submitted, a *lease change in appropriation right* authorization must be obtained according to the requirements of 85-2-402.

~~(g)(f)~~ During the term of the lease, ~~the~~ *The* department may modify or revoke the *lease change in appropriation right* authorization *up to 10 years after it is approved* if an appropriator other than an appropriator described in subsection ~~(2)(j)~~ ~~(3)(i)~~ *submits new evidence not available at the time the change in appropriation right was approved that proves by a preponderance of evidence that the appropriator's water right is adversely affected*.

~~(h)~~(g) The priority of appropriation for a lease *or change in appropriation right* under this section is the same as the priority of appropriation of the right that is *leased changed to an instream flow purpose*.

~~(i)~~(h) Neither a change in appropriation right nor any other authorization is required for the reversion of ~~the a leased~~ appropriation right to the lessor's previous use.

~~(j)~~(i) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a *lease change in appropriation right* authorization under this section may not object to the exercise of the *lease changed water right* according to its terms or the reversion of ~~the a leased~~ appropriation right to the lessor according to the lessor's previous use.

~~(k)~~(j) The department of fish, wildlife, and parks shall pay all costs associated with installing devices or providing personnel to measure streamflows according to the measuring plan ~~submitted~~ *required* under this section.

~~(3)~~~~(a)~~(4) (a) The department of fish, wildlife, and parks shall complete and submit to the department, commission, and environmental quality council ~~an annual study a biennial~~ progress report by December 1 of each ~~year odd-numbered years~~. This report must include the applicable information listed in subsection (1) for each lease, a summary of stream reach designation activity under 85-2-437, and a summary of leasing activity on all designated streams. If the department of fish, wildlife, and parks has not leased additional water rights under this section by December 1 of any year, the department of fish, wildlife, and parks shall provide compelling justification for that fact in the study progress report *a summary of all appropriation rights changed to an instream flow purpose in the last 2 years*.

(b) *For each change in appropriation right to an instream flow purpose, the report must include a copy of the change authorization issued by the department and must address:*

(i) *the length of the stream reach and how it is determined;*

(ii) *critical streamflow or volume needed to protect, maintain, or enhance streamflow to benefit the fishery resource;*

(iii) *the amount of water available for instream flow as a result of the change in appropriation right;*

(iv) *contractual parameters, conditions, and other steps taken to ensure that each change in appropriation right does not harm other appropriators, particularly if the stream is one that experiences natural dewatering; and*

(v) *methods used to monitor use of water under each change in appropriation right.*

~~(b)~~ A final study report must be adopted by the department and commission and submitted to the environmental quality council, which shall complete the final report by December 1, 2008.

~~(4)~~(5) This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired.

(6) (a) *From [the effective date of this act] through June 30, 2019, the department of fish, wildlife, and parks may change, pursuant to this section, the appropriation rights that it holds in fee simple to instream flow purposes on no more than 12 stream reaches.*

(b) After June 30, 2019, the department may not change the appropriation rights that it holds in fee simple to instream flow purposes on any stream reaches.

(7) After June 30, 2019, the department may not enter into any new lease agreements pursuant to this section or renew any leases that expire after that date. (Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)”

Section 6. Section 85-2-602, MCA, is amended to read:

“85-2-602. Definitions. Unless the context clearly requires otherwise, in this part the following definitions apply:

(1) (a) “Application” means an application for a permit under part 3 of this chapter to appropriate surface water from any source of supply within the basin for either or both of the following purposes:

- (i) a reservoir with a total planned capacity of 14,000 acre-feet or more; or
- (ii) for a flow rate greater than 20 cubic feet of water per second.

(b) The term also includes an application for approval under 85-2-402 and 85-2-436, if applicable, to change the purpose of use.

(2) “Basin” means the Yellowstone River basin.

(3) “Reservation” means a reservation of water provided for by 85-2-316.”

Section 7. Section 87-1-257, MCA, is amended to read:

“87-1-257. River restoration program. (1) The department shall administer a river restoration program.

(2) The program may consist of physical projects to improve rivers and their associated lands in order to conserve and enhance fish and wildlife habitat, including but not limited to ~~the~~ a change in appropriation right or leasing of water rights under 85-2-436.

(3) The department shall work cooperatively with individuals, conservation districts, and state, local, private, tribal, and federal organizations to achieve the goals of the program and may contract with private organizations to implement specific river restoration projects.

(4) The department shall present projects to the local conservation district for review and recommendations and obtain any applicable permits.

(5) The department shall receive the consent of the landowner or lessee of any associated lands before initiating physical projects on these lands.

(6) A project conducted under the program may not restrict or interfere with the exercise of any water right.”

Section 8. Repealer. (1) Sections 85-2-437 and 85-2-438, MCA, are repealed.

(2) Section 11, Chapter 658, Laws of 1989, sections 4 and 7, Chapter 740, Laws of 1991, and sections 5, 6, 7, and 9, Chapter 123, Laws of 1999, are repealed.

Section 9. Effective date. [This act] is effective on passage and approval.

Approved May 8, 2007

CHAPTER NO. 449

[SB 130]

AN ACT GENERALLY REVISING LAWS RELATING TO FIRES; REVISING LAWS GOVERNING THE DEPARTMENT OF JUSTICE'S FIRE PREVENTION AND INVESTIGATION SECTION AND LAWS REFERENCING AND GOVERNING LOCAL GOVERNMENTAL FIRE AGENCIES; STANDARDIZING USAGE OF THE TERM "GOVERNMENTAL FIRE AGENCY"; CLARIFYING THAT A CHIEF OF A GOVERNMENTAL FIRE AGENCY MAY RECEIVE CONFIDENTIAL CRIMINAL JUSTICE INFORMATION; ELIMINATING RESTRICTIONS ON PAY FOR SPECIAL FIRE INSPECTORS; CLARIFYING THE PENALTY FOR SETTING OR LEAVING A FIRE THAT CAUSES DAMAGE AND INCREASING THE MINIMUM FINE; ELIMINATING DUPLICATE PROVISIONS PROHIBITING CERTAIN CAMPFIRES AND THROWING LIGHTED MATERIAL; REQUIRING FIRE INCIDENT REPORTS TO BE FILED WITH THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 2-7-501, 2-15-1519, 2-15-2005, 7-6-204, 18-8-202, 25-13-613, 39-71-118, 40-6-402, 44-5-103, 44-5-303, 46-18-261, 50-3-101, 50-3-102, 50-3-106, 50-5-215, 50-19-403, 50-37-107, 50-37-108, 50-37-109, 50-60-202, 50-61-102, 50-61-114, 50-61-115, 50-61-121, 50-62-101, 50-62-102, 50-62-103, 50-62-112, 50-63-102, 50-63-103, 50-63-202, 50-63-203, 50-63-401, 50-63-402, 50-63-404, 50-78-102, 52-2-733, 52-2-734, 52-4-205, 53-20-307, 61-8-102, 61-8-364, 61-9-402, AND 75-10-725, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 2-7-501, MCA, is amended to read:

"2-7-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Audit" means a financial audit and includes financial statement and financial-related audits as defined by government auditing standards as established by the U.S. comptroller general.

(2) "Board" means the Montana board of public accountants provided for in 2-15-1756.

(3) "Department" means the department of administration.

(4) (a) "Financial assistance" means assistance provided by a federal, state, or local government entity to a local government entity or subrecipient to carry out a program. Financial assistance may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance. Financial assistance includes awards received directly from federal and state agencies or indirectly when subrecipients receive funds identified as federal or state funds by recipients. The granting agency is responsible for identifying the source of funds awarded to recipients. The recipient is responsible for identifying the source of funds awarded to subrecipients.

(b) Financial assistance does not include direct federal, state, or local government cash assistance to individuals.

(5) "Financial report" means a presentation of financial statements, including applicable supplemental notes and supplemental schedules, that are prepared in a format published by the department using the Budgetary Accounting and Reporting System for Montana Cities, Towns, and Counties

Manual and that reflect a current financial position and the operating results for the 1-year reporting period.

(6) "Independent auditor" means:

(a) a federal, state, or local government auditor who meets the standards specified in the government auditing standards; or

(b) a licensed accountant who meets the standards in subsection (6)(a).

(7) (a) "Local government entity" means a county, city, district, or public corporation that:

(i) has the power to raise revenue or receive, disburse, or expend local, state, or federal government revenue for the purpose of serving the general public;

(ii) is governed by a board, commission, or individual elected or appointed by the public or representatives of the public; and

(iii) receives local, state, or federal financial assistance.

(b) Local government entities include but are not limited to:

(i) airport authority districts;

(ii) cemetery districts;

(iii) counties;

(iv) county housing authorities;

(v) county road improvement districts;

(vi) county sewer districts;

(vii) county water districts;

(viii) county weed management districts;

(ix) drainage districts;

(x) fire department relief associations *companies*;

(xi) fire districts;

(xii) *fire service areas*;

~~(xii)~~(xiii) hospital districts;

~~(xiii)~~(xiv) incorporated cities or towns;

~~(xiv)~~(xv) irrigation districts;

~~(xv)~~(xvi) mosquito districts;

(xvii) *municipal fire departments*;

~~(xvi)~~(xviii) municipal housing authority districts;

~~(xvii)~~(xix) port authorities;

~~(xviii)~~(xx) solid waste management districts;

~~(xix)~~(xxi) rural improvement districts;

~~(xx)~~(xxii) school districts, including a district's extracurricular funds;

~~(xxi)~~(xxiii) soil conservation districts;

~~(xxii)~~(xxiv) special education or other cooperatives;

~~(xxiii)~~(xxv) television districts;

~~(xxiv)~~(xxvi) urban transportation districts;

~~(xxv)~~(xxvii) water conservancy districts; and

~~(xxvi)~~(xxviii) other miscellaneous and special districts.

(8) "Revenues" means all receipts of a local government entity from any source excluding the proceeds from bond issuances."

Section 2. Section 2-15-1519, MCA, is amended to read:

"2-15-1519. Fire services training advisory council. (1) The board of regents shall appoint a fire services training advisory council to work with the director of the fire services training school. The membership of the council ~~shall~~ *must* include the following:

- (a) a fire chief;
- (b) a volunteer firefighter;
- (c) a paid firefighter;
- (d) a fire service instructor;
- (e) a person involved in fire prevention;
- (f) a representative of the insurance industry; and
- (g) a professional educator.

(2) The board shall solicit and consider the recommendations of appropriate organizations and associations of fire service personnel in making appointments under subsection (1).

(3) Members shall serve for 4-year terms and may be removed for cause. If a vacancy occurs, a member must be appointed to fill the unexpired term. A member may be reappointed.

(4) A representative of the state fire prevention and investigation ~~program section~~ of the department of justice, a fire control officer designated by the director of the department of natural resources and conservation, and the director of the fire services training school are ex officio members of the council."

Section 3. Section 2-15-2005, MCA, is amended to read:

"2-15-2005. State fire prevention and investigation ~~program section~~ — advisory council. (1) There is a state fire prevention and investigation ~~program section~~ in the department of justice and under the supervision and control of the attorney general.

(2) A person appointed to administer the fire prevention and investigation ~~program section~~ shall represent the state of Montana as the state fire marshal and must be a person qualified by experience, training, and high professional competence in matters of fire service and safety.

(3) The attorney general shall create a fire prevention and investigation advisory council in accordance with procedures provided in 2-15-122."

Section 4. Section 7-6-204, MCA, is amended to read:

"7-6-204. Crediting of interest — exceptions. (1) Interest paid and collected on deposits or investments must be credited to the general fund of the county, city, or town to whose credit the funds are deposited unless otherwise provided:

- (a) by law;
- (b) by terms of a gift, grant, or donation; or
- (c) by subsections (2) and (3).

(2) Subject to subsection (1), interest paid and collected on the deposits or investments of the funds of a volunteer fire district or department organized in an unincorporated area under Title 7, chapter 33, part 21 or 23, *or of a fire service area or county fire department* must be credited to the account of that fire district, *service area*, or department.

(3) Subject to subsection (1), interest paid and collected on the deposits or investments of any fund separately created and accounted for by a county, city, or town may be credited to the separately created fund proportionately to each fund's participation in the deposit or investment."

Section 5. Section 18-8-202, MCA, is amended to read:

"18-8-202. Definitions. Unless the context clearly indicates otherwise, in this part, the following definitions apply:

(1) "Agency" means a state agency, local agency, or special district.

(2) "Architectural, engineering, and land surveying" means services rendered by a person, other than as an employee of an agency, contracting to perform activities within the scope of the general definition of professional practice and licensed for the respective practice as an architect pursuant to Title 37, chapter 65, or an engineer or land surveyor pursuant to Title 37, chapter 67.

(3) "Licensed professional" or "licensed architect, professional engineer, professional land surveyor" means a person providing professional services who is not an employee of the agency for which the services are provided.

(4) "Local agency" means a city, town, county, special district, municipal corporation, agency, port district or authority, airport authority, political subdivision of any type, or any other entity or authority of local government, in corporate form or otherwise.

(5) "Person" means an individual, organization, group, association, partnership, firm, joint venture, or corporation.

(6) "Special district" means a unit of local government, other than a city, town, or county, authorized by law to perform a single function or a limited number of functions, including but not limited to water districts, irrigation districts, fire districts, *fire service areas*, school districts, community college districts, hospital districts, sewer districts, and transportation districts.

(7) "State agency" means a department, agency, commission, bureau, office, or other entity or authority of state government."

Section 6. Section 25-13-613, MCA, is amended to read:

"25-13-613. Property necessary to carry out governmental functions. (1) In addition to the property mentioned in 25-13-609(1), ~~there shall be the following property is exempt to from~~ all judgment debtors the following property:

(a) ~~all fire engines, hooks, and ladders, with the cart, trucks, and carriages, hose, buckets, implements, and apparatus thereto appertaining, and all furniture and uniforms of any fire company or department organized under any laws of this state necessary firefighting equipment and facilities of a governmental fire agency organized under Title 7, chapter 33;~~

(b) all arms, uniforms, and accouterments required by law to be kept by any person and one gun to be selected by the debtor;

(c) all courthouses, jails, public offices, and buildings, lots, grounds, and personal property; *and* the fixtures, furniture, books, papers, and

appurtenances belonging and pertaining to the courthouse, jail, and public offices belonging to any county of this state; and

(d) all cemeteries, public squares, parks, and places, public buildings, town halls, public markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto ~~belonging and appertaining~~ owned or held by any town or incorporated city or dedicated by such a city or town to health, ornament, or public use or for the use of any fire or military company organized under the laws of the state.

(2) ~~No article, however, or species of~~ *The* property mentioned *listed* in this section is *not* exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage lien ~~thereon~~ *on the property*, and ~~no a person who is not a bona fide resident of this state shall have the benefit of~~ *is not entitled to* these exemptions.”

Section 7. Section 39-71-118, MCA, is amended to read:

“39-71-118. Employee, worker, volunteer, and volunteer firefighter defined. (1) As used in this chapter, the term “employee” or “worker” means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers’ compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon

the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-1-301;

(g) ~~a person who is an enrolled member of a volunteer fire department, as described in 7-33-4109; volunteer firefighter as described in 7-33-4109~~ or a person who provides ambulance services under Title 7, chapter 34, part 1; and

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. *The person* is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may ~~only~~ be *only* for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(d) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).

(4) (a) The term “volunteer firefighter” means a firefighter who is an enrolled and active member of a ~~fire company organized and funded by a county, a rural fire district, or a fire service area~~ *governmental fire agency organized under Title 7, chapter 33, except 7-33-4109.*

(b) The term “volunteer hours” means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer’s premises.

(5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer’s insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$900 a month and not more than 1 1/2 times the state’s average weekly wage.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer’s insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (6)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$200 a week and not more than 1 1/2 times the state’s average weekly wage.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the state's average weekly wage.

(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d)."

Section 8. Section 40-6-402, MCA, is amended to read:

"40-6-402. Definitions. As used in this part, the following definitions apply:

(1) "Child-placing agency" means an agency licensed under Title 52, chapter 8, part 1.

(2) "Court" means a court of record in a competent jurisdiction and, in Montana, means a district court or a tribal court.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Emergency services provider" means:

(a) a uniformed or otherwise identifiable employee of a fire department, hospital, or law enforcement agency when the individual is on duty inside the premises of the fire department, hospital, or law enforcement agency; or

(b) any law enforcement officer, as defined in 7-32-201, who is in uniform or is otherwise identifiable.

(5) "Fire department" means a ~~fire department organized by a city, town, or city-county consolidated local government~~ *governmental fire agency organized under Title 7, chapter 33.*

(6) "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

(7) "Guardian ad litem" means a person appointed to represent a newborn under Title 41, chapter 3.

(8) "Hospital" has the meaning provided in 50-5-101.

(9) "Law enforcement agency" means a police department, a sheriff's office, a detention center as defined in 7-32-2241, or a correctional institution as defined in 45-2-101.

(10) "Newborn" means an infant who a physician reasonably believes to be no more than 30 days old.

(11) "Surrender" means to leave a newborn with an emergency services provider without expressing an intent to return for the newborn."

Section 9. Section 44-5-103, MCA, is amended to read:

"44-5-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.

(2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.

(3) “Confidential criminal justice information” means:

- (a) criminal investigative information;
- (b) criminal intelligence information;
- (c) fingerprints and photographs;
- (d) criminal justice information or records made confidential by law; and
- (e) any other criminal justice information not clearly defined as public criminal justice information.

(4) (a) “Criminal history record information” means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising ~~therefrom~~ *from complaints, indictments, or informations*; sentences; correctional status; and release. It includes identification information, such as fingerprint records or photographs, unless the information is obtained for purposes other than the administration of criminal justice.

(b) Criminal history record information does not include:

- (i) records of traffic offenses maintained by the department of justice; or
- (ii) court records.

(5) (a) “Criminal intelligence information” means information associated with an identifiable individual, group, organization, or event compiled by a criminal justice agency:

(i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential criminal operation, or producing an estimate of future major criminal activities; or

(ii) in relation to the reliability of information, including information derived from reports of informants or investigators or from any type of surveillance.

(b) Criminal intelligence information does not include information relating to political surveillance or criminal investigative information.

(6) (a) “Criminal investigative information” means information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance.

(b) The term does not include criminal intelligence information.

(7) “Criminal justice agency” means:

- (a) any court with criminal jurisdiction;
- (b) any federal, state, or local government agency designated by statute or by a governor’s executive order to perform as its principal function the administration of criminal justice, including a *governmental* fire agency *organized under Title 7, chapter 33*, or a fire marshal ~~that~~ *who* conducts criminal investigations of fires;

(c) any local government agency not included under subsection (7)(b) that performs as its principal function the administration of criminal justice pursuant to an ordinance or local executive order; or

(d) any agency of a foreign nation that has been designated by that nation’s law or chief executive officer to perform as its principal function the

administration of criminal justice and that has been approved for the receipt of criminal justice information by the Montana attorney general, who may consult with the United States department of justice.

(8) (a) "Criminal justice information" means information relating to criminal justice collected, processed, or preserved by a criminal justice agency.

(b) The term does not include the administrative records of a criminal justice agency.

(9) "Criminal justice information system" means a system, automated or manual, operated by foreign, federal, regional, state, or local governments or governmental organizations for collecting, processing, preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

(10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have terminated and describing the nature of the termination or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or *if* criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(b) Particular dispositions include but are not limited to:

- (i) conviction at trial or on a plea of guilty;
- (ii) acquittal;
- (iii) acquittal by reason of mental disease or defect;
- (iv) acquittal by reason of mental incompetence;
- (v) the sentence imposed, including all conditions attached to the sentence by the sentencing judge;
- (vi) deferred imposition of sentence with any conditions of deferral;
- (vii) nolle prosequi;
- (viii) a nolo contendere plea;
- (ix) deferred prosecution or diversion;
- (x) bond forfeiture;
- (xi) death;
- (xii) release as a result of a successful collateral attack;
- (xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action for determination of mental incompetence or mental illness;
- (xiv) a finding of civil incompetence or mental illness;
- (xv) exercise of executive clemency;
- (xvi) correctional placement on probation or parole or release; or
- (xvii) revocation of probation or parole.

(c) A single arrest of an individual may result in more than one disposition.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice

agency that maintains the information. It includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Fingerprints" means the recorded friction ridge skin of the fingers, palms, or soles of the feet.

(13) "Public criminal justice information" means:

- (a) information made public by law;
- (b) information of court records and proceedings;
- (c) information of convictions, deferred sentences, and deferred prosecutions;
- (d) information of postconviction proceedings and status;
- (e) information originated by a criminal justice agency, including:
 - (i) initial offense reports;
 - (ii) initial arrest records;
 - (iii) bail records; and
 - (iv) daily jail occupancy rosters;
- (f) information considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or
- (g) statistical information.

(14) "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(15) "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable."

Section 10. Section 44-5-303, MCA, is amended to read:

"44-5-303. Dissemination of confidential criminal justice information — procedure for dissemination through court. (1) Except as provided in subsections (2) through (4), dissemination of confidential criminal justice information is restricted to criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure. Permissible dissemination of confidential criminal justice information under this subsection includes receiving investigative information from and sharing investigative information with a ~~fire service chief~~ *chief of a governmental fire agency organized under Title 7, chapter 33*, or fire marshal concerning the criminal investigation of a fire.

(2) If the prosecutor determines that dissemination of confidential criminal justice information would not jeopardize a pending investigation or other criminal proceeding, the information may be disseminated to a victim of the offense by the prosecutor or by the investigating law enforcement agency after consultation with the prosecutor.

(3) Unless otherwise ordered by a court, a person or criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of the information with the originating agency.

Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

(4) The county attorney or the county attorney's designee is authorized to receive confidential criminal justice information for the purpose of cooperating with local fetal, infant, and child mortality review teams. The county attorney or the county attorney's designee may, in that person's discretion, disclose information determined necessary to the goals of the review team. The review team and the county attorney or the designee shall maintain the confidentiality of the information.

(5) (a) If a prosecutor receives a written request for release of confidential criminal justice information relating to a criminal investigation that has been terminated by declination of prosecution or relating to a criminal prosecution that has been completed by entry of judgment, dismissal, or acquittal, the prosecutor may file a declaratory judgment action with the district court pursuant to the provisions of the Uniform Declaratory Judgments Act, Title 27, chapter 8, for release of the information. The prosecutor shall:

(i) file the action in the name of the city or county that the prosecutor represents and describe the city's or county's interest;

(ii) list as defendants anyone known to the prosecutor who has requested the confidential criminal justice information and anyone affected by release of the information;

(iii) request that the prosecutor be allowed to deposit the investigative file and any edited version of the file with the court pursuant to the provisions of Title 27, chapter 8;

(iv) request the court to:

(A) conduct an in camera review of the confidential criminal justice information to determine whether the demands of individual privacy do not clearly exceed the merits of public disclosure; and

(B) order the release to the requesting party defendant of whatever portion of the investigative information or edited version of the information the court determines appropriate.

(b) In making an order authorizing the release of information under subsection (5)(a), the court shall make a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure and authorize, upon payment of reasonable reproduction costs, the release of appropriate portions of the edited or complete confidential criminal justice information to persons who request the information.

(c) In an action filed for the court-ordered release of confidential criminal justice information under subsection (5)(a), the parties shall bear their respective costs and attorney fees.

(6) The procedures set forth in subsection (5) are not an exclusive remedy. A person or organization may file any action for dissemination of information that the person or organization considers appropriate and permissible."

Section 11. Section 46-18-261, MCA, is amended to read:

"46-18-261. Recovery of suppression and investigation expenses for fires caused by arson. (1) A person convicted of arson, negligent arson, or solicitation of or conspiracy to commit arson or negligent arson may be ordered, as part of the sentence, to reimburse law enforcement *agencies*, and fire fighting

governmental fire agencies organized under Title 7, chapter 33, and the state for the cost of suppressing and investigating a fire that occurred during the commission of the crime.

(2) The court may order a person doing a presentence investigation and report to include documentation of the costs of suppressing and investigating the fire and of the defendant's ability to pay and may receive evidence concerning the matters at the time of sentencing.

(3) The court shall specify the amount, method, and time of payment, which may include but is not limited to installment payments. The court may order a probation officer or other appropriate officer attached to or working closely with the court in the administration of justice to supervise payment and report any default to the court.

(4) Upon petition by the offender and after a hearing, the payment may be modified. Agencies receiving payment at that time must be notified of and allowed to participate in the hearing.

(5) This section does not limit the right of a law enforcement *agency* or ~~firefighting~~ *governmental fire* agency to recover from the offender in a civil action, but the findings in the sentencing hearing and the fact that payment of costs was part of the sentence are inadmissible in and have no legal effect on the merits of a civil action. Costs paid by the offender must be deducted from a recovery awarded in a civil action."

Section 12. Section 50-3-101, MCA, is amended to read:

"50-3-101. Definitions. In this chapter, "department" means the department of justice and "fire prevention and investigation ~~program~~ *section*" means the state fire prevention and investigation ~~program~~ *section* of the department of justice provided for in 2-15-2005."

Section 13. 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 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~~ *governmental fire agencies organized under Title 7, chapter 33, in fire 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.

(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 *if the rules do not conflict with building regulations adopted by the department of labor and industry.*

(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 *an existing* 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 14. Section 50-3-106, MCA, is amended to read:

“50-3-106. Appointment of special fire inspectors. (4) Special fire inspectors may be appointed to perform any ~~function~~ *inspection* of the fire prevention and investigation ~~program~~ *section*.

(2) ~~When performing these duties or attending a training course approved by the department, special fire inspectors may be paid at a rate not to exceed \$56 a day plus travel expenses as provided for in 2-18-501 through 2-18-503, as amended.”~~

Section 15. Section 50-5-215, MCA, is amended to read:

“50-5-215. Standards for adult foster care homes. The department may adopt rules establishing standards for the licensing of adult foster care homes. The standards must provide for the safety and comfort of the residents and may be adopted by the department only after receiving the advice and recommendations of the state fire prevention and investigation ~~program~~ *section* of the department of justice in relation to fire and safety requirements for adult foster care homes.”

Section 16. 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 department of public health and human services. Approval 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) a lead person has been designated for the purposes of management of the review team;

(c) at least five of the individuals listed in subsection (2) have agreed to serve on the review team; and

(d) 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;

(i) a representative of the department of public health and human services;

(j) a forensic pathologist;

(k) a pediatrician;

(l) a family practice physician;

(m) an obstetrician;

(n) a nurse practitioner;

(o) a public health nurse;

(p) a mental health professional;

(q) a local trauma coordinator;

(r) a representative of the bureau of Indian affairs or the Indian health service, or both, who is located within the county; and

(s) representatives of the following:

(i) local emergency medical services;

(ii) a local hospital;

(iii) a local hospital medical records department;

(iv) a local *governmental fire department agency organized under Title 7, chapter 33*; 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 17. Section 50-37-107, MCA, is amended to read:

“50-37-107. Supervised public display of fireworks authorized. (1) The state fire prevention and investigation ~~program~~ *section* of the department of justice or the governing body of a city, town, or county may, under reasonable rules adopted by them, grant permits for supervised public displays of fireworks to be held by municipalities, fair associations, amusement parks, and other organizations or groups of individuals.

(2) Each display ~~shall~~ *must*:

(a) be handled by a competent operator, who must be approved by the state fire prevention and investigation ~~program~~ *section* or the governing body of the city, town, or county in which the display is to be held; and

(b) be located, discharged, or fired as, in the opinion of the state fire prevention and investigation ~~program~~ *section* or the chief of the ~~fire department~~ *local governmental fire agency organized under Title 7, chapter 33*, or other officer designated by the governing body of the city, town, or county after proper inspection, not to be hazardous to persons or property.

(3) Application for permits ~~shall~~ *must* be made in writing at least 15 days prior to the date of the display.

(4) After the privilege has been granted, sales, possession, use, and distribution of fireworks for the display are lawful for that purpose only.

(5) ~~No~~ A permit granted under this section is *not* transferable.”

Section 18. Section 50-37-108, MCA, is amended to read:

“50-37-108. General liability insurance required for public display. The state fire prevention and investigation ~~program~~ *section* or the governing body of the city, town, or county shall require 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 19. Section 50-37-109, MCA, is amended to read:

“50-37-109. Confiscation. A representative of the state fire prevention and investigation ~~program~~ *section* or any sheriff, police officer, ~~or~~ constable, ~~officer of a governmental fire agency organized under Title 7, chapter 33, or firewarden~~ shall seize, take, remove, or cause to be removed at the expense of the owner all stocks of fireworks or combustibles offered or exposed for sale, stored, or held in violation of this chapter.”

Section 20. Section 50-60-202, MCA, is amended to read:

“50-60-202. Department to be sole state agency to promulgate building regulations — exception. ~~No~~ *The department is the only* state agency ~~except the department~~ *that* may promulgate building regulations as defined in 50-60-101, except the department of justice may promulgate regulations relating to use of buildings and installation of equipment. The state fire prevention and investigation ~~program~~ *section* of the department of justice shall review building plans and regulations for conformity with rules promulgated by the department.”

Section 21. Section 50-61-102, MCA, is amended to read:

“50-61-102. Department of justice to administer chapter. (1) The department of justice has general charge and supervision of the enforcement of this chapter, and the officers enumerated in 50-61-114 shall act under its general charge and supervision, shall assist the department in giving effect to this chapter, and are subject to its direction and the rules adopted under 50-3-102 and 50-3-103 for the enforcement of 50-61-120, ~~and 50-61-121,~~ and this chapter.

(2) Upon its approval of a fire code and a plan for enforcement of the code filed by a municipality, ~~district, or fire service area or other governmental fire agency organized under Title 7, chapter 33,~~ the department may ~~certify approve~~ a municipal, ~~district, or fire service area or governmental fire agency~~ fire inspection program for local enforcement.”

Section 22. Section 50-61-114, MCA, is amended to read:

“50-61-114. Fire chief and fire inspector to make inspections. 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 ~~or fire inspector~~ of the ~~fire department of each municipality, district, or fire service area~~ *governmental fire agency organized under Title 7, chapter 33*, when a fire inspection program is established, or a fire inspector of the department of justice, when a fire inspection program does not exist:

(1) shall enter into school buildings at least once each 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 23. Section 50-61-115, MCA, is amended to read:

“50-61-115. Notice of violations. (1) When a building is found that is not in compliance with fire safety rules promulgated by the department of justice, the person making the inspection or the department shall serve a written notice upon the party whose duty it is to maintain the safety of the building.

(2) The notice must specify the time within which the defective conditions must be remedied, ~~which may not be more than 90 days.~~

(3) The notice is served if delivered to the person to be notified, if left with any adult person at the usual residence or place of business of the person to be notified, or if deposited in the post office directed to the last-known address of the person to be notified. Whenever buildings are managed and controlled by a board of trustees, board of commissioners, or other governing body, the notice is served if delivered to the president, secretary, or treasurer of the board of trustees, board of commissioners, or other governing body.”

Section 24. Section 50-61-121, MCA, is amended to read:

“50-61-121. Restrictions on storage of smokeless powder and small arms primers. (1) A retail establishment may stock up to 400 pounds of smokeless powder on the premises of a building with a sprinkler system or 200 pounds on the premises of a building without a sprinkler system if storage of this stock conforms to the following conditions:

(a) no more than 20 pounds are on display in a customer service area;

(b) the storage area is clearly posted as off limits to customers;

(c) the storage area is clearly posted prohibiting smoking or any open flame or sparks; and

(d) the storage area is a room designed and constructed to restrict smoke travel that is separate from the customer service area, that has a self-closing entrance door, and that conforms to one of the following:

(i) It is constructed of material sufficient to achieve a 1-hour fire resistant-rated barrier between the storage area and the customer service area. The smokeless powder must be stored in cabinets made of wood or equivalent material that is at least 1 inch thick, and each cabinet must contain no more than 200 pounds of smokeless powder. Cabinets must be separated by 25 feet.

(ii) It is protected by a fire suppression sprinkler system approved by the state fire prevention and investigation ~~program section~~ *section* of the department of justice or a ~~fire marshal of the local jurisdiction~~ *chief of a governmental fire agency organized under Title 7, chapter 33, or the chief's designee*, and the storage area has cabinets as provided for in subsection (1)(d)(i).

(iii) Smokeless powder stock is contained in a cabinet with casters and constructed of wood at least 1 inch thick that is covered on all sides with 5/8-inch sheetrock.

(2) A retail establishment may stock up to 250,000 small arms primers if storage of this stock conforms to the following conditions:

(a) no more than 20,000 primers in a building with a sprinkler system or 10,000 primers in a building without a sprinkler system are on display in a customer service area;

(b) the storage area must conform to the conditions imposed in subsections (1)(a) through (1)(d), except that no more than 125,000 small arms primers may be stored in one cabinet, and the minimum required separation between cabinets is 15 feet; and

(c) small arms primers are retained in packaging approved by the U.S. department of transportation."

Section 25. Section 50-62-101, MCA, is amended to read:

"50-62-101. Entering of buildings for purpose of examination authorized. ~~The officers~~ *An officer* of the state fire prevention and investigation ~~program section~~ *section* of the department of justice or the chief or *chief's designee* of the ~~fire department of each municipality or district~~ *a governmental fire agency organized under Title 7, chapter 33*, where a fire ~~department~~ *agency* is established at all reasonable hours may, as authorized by law, enter into all buildings and upon all premises within ~~his~~ *the officer's, chief's, or designee's* jurisdiction for the purpose of determining whether the building or premises conforms to laws and rules relating to fire hazards and fire safety."

Section 26. Section 50-62-102, MCA, is amended to read:

"50-62-102. Structures or conditions creating fire hazard a public nuisance — order to remedy. (1) If any building or other structure ~~that for want of proper repair; by reason of age, dilapidated condition, defective or poorly installed wiring and equipment, defective chimneys, defective gas connections, defective heating apparatus, or the existence of any combustible materials, flammable conditions, or other fire hazards; or for any other cause or reason~~ is especially liable to fire ~~for reasons including but not limited to lack of proper repair, age, dilapidated condition, defective or poorly installed wiring and equipment, defective chimneys, defective gas connections, defective heating apparatus, or the existence of any combustible materials, flammable conditions, or other fire hazards~~ and is dangerous to the safety of the building premises or to

the public or is so situated as to endanger in a way that endangers other buildings and property in the vicinity, the state fire prevention and investigation ~~program section~~ of the department of justice or other ~~officer person identified in 50-62-101~~ may declare the building or other structure to be a public nuisance and proceed according to 50-62-103 or subsection (2) of this section.

(2) If the state fire prevention and investigation ~~program section~~, an officer of the ~~program section~~, or an ~~officer mentioned a person identified in 50-62-101~~ determines that a building or other structure constitutes a public nuisance for any reason identified in subsection (1) of this section, the ~~department section, officer, or other officer person~~ shall order the hazardous condition or material to be removed or remedied. The order must be in writing and directed generally to the owner, lessee, agent, or occupant of the building or structure.

(3) If the hazardous condition or material can be removed or remedied within a period of 24 hours, the order must contain notice that the condition or material must be remedied or removed. The owner, lessee, agent, or occupant upon whom the notice is served who fails to comply with the notice is liable for any expenses incurred in the removal or remedying of the hazardous condition or material by the fire prevention and investigation ~~program section, officer of the section, or other officer mentioned person identified in 50-62-101.~~

Section 27. Section 50-62-103, MCA, is amended to read:

"50-62-103. Service of order to repair hazardous condition or demolish structure. (1) If the fire prevention and investigation ~~program section~~ of the department of justice, ~~an officer of the section, or any officer mentioned other person identified in 50-62-101,~~ upon an examination or inspection, determines that a building or other structure constitutes a public nuisance for any reason identified in 50-62-102 and the condition cannot be removed or remedied within 24 hours, the ~~program section, or officer, or person~~ shall order the hazardous condition to be repaired or the structure to be torn down or demolished and all dangerous conditions remedied.

(2) The order ~~shall must~~ be in writing, ~~shall recite must provide~~ the grounds ~~therefor for the order,~~ and ~~shall must~~ be filed in the office of the clerk of the district court of the county in which the building or structure ordered to be altered, repaired, or demolished is ~~situated, and thereupon all located.~~ All further proceedings for the enforcement ~~thereof shall be had in that court of the order must be held in the district court in which the order is filed.~~

(3) A copy of the order filed as ~~aforsaid provided in this section,~~ together with a written notice that it has been filed and will be put in force unless the owner, occupant, or tenant ~~shall file files objections or an answer to the order with the clerk of the court his objections or answer thereto~~ within the time specified in 50-62-104, ~~shall must~~ be served upon the owner and any purchaser under contract for deed of the building or structure directed to be altered, repaired, or demolished. If there is a tenant occupying the building, service ~~shall must~~ also be made upon ~~him the tenant.~~ Service ~~shall must~~ be made ~~personally upon the owner and occupant, if there is one, personally either within or without the state.~~

(4) If the ~~whereabouts~~ location of the owner or any purchaser under contract for deed is unknown and cannot be ascertained by the department of justice by the exercise of reasonable diligence, then upon filing in the office of the clerk of the district court an affidavit to this effect, service of the notice upon the owner or any purchaser under contract for deed may be made by the clerk of the district court by publication of it once in each week for 3 successive weeks in a

newspaper printed and published in the county in which the building or structure is located and by posting a copy thereof of the notice in a conspicuous place upon the building or structure, and the service so Service made in this manner is complete upon the expiration of the publication period. Proof of service of the notice shall must be filed in the office of the clerk of the district court within 5 days after the service thereof of the notice.”

Section 28. Section 50-62-112, MCA, is amended to read:

“50-62-112. Notice of violations. (1) When the storage of class I or class II liquids, as defined in the uniform fire code adopted by the department of justice, in a tank on a farm or ranch is not in compliance with rules promulgated by the department of justice, the person making the inspection or the department shall serve a written warning notice upon the owner or operator of the tank.

(2) The notice must specify the violations found and the time within which the violations must be corrected. A penalty may not be imposed if the violation is corrected within the time period allowed.”

Section 29. Section 50-63-102, MCA, is amended to read:

“50-63-102. Penalty Civil penalty for setting or leaving fire causing damage. (1) Any A person who shall upon any land within this state set or leave any sets or leaves a fire that shall spread and damage or destroy spreads and damages or destroys property of any kind not his own shall upon conviction be punished by a fine belonging to the person is subject to a civil penalty of not less than \$10 \$50 or more than \$500. If such fire be set maliciously, whether on his own or on another’s land, with intent to destroy property not his own, he shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for not less than 1 or more than 50 years.

(2) During the closed season, any person who shall kindle a campfire on land not his own in or dangerously near any forest material and leave same unquenched or who shall be a party thereto or who shall by throwing away any lighted cigar, cigarette, matches, or by the use of firearms or in any other manner start a fire in forest material not his own and leave same unquenched shall, upon conviction, be fined not less than \$10 or more than \$100 or be imprisoned in the county jail not exceeding 60 days.”

Section 30. Section 50-63-103, MCA, is amended to read:

“50-63-103. Liability of offender for damages and costs. Any A person who shall upon any land within this state, whether on his own or on another’s land, set sets or leave any leaves a fire that shall spread and damage or destroy spreads and damages or destroys property of any kind not his own shall be not belonging to the person is liable for all damages caused thereby by the fire, and any an owner of property damaged or destroyed by such the fire may maintain a civil suit for the purpose of recovering such damages. Any A person who shall upon any land within this state, whether on his own or on another’s land, set sets or leave any leaves a fire which that threatens to spread and damage or destroy property shall be is liable for all costs and expenses incurred, including but not limited to expenses incurred in investigation of the fire and administration of fire suppression, by the state of Montana, by any forestry association, or by any person extinguishing or preventing the spread of such the fire.”

Section 31. Section 50-63-202, MCA, is amended to read:

“50-63-202. Fire chief or sheriff to conduct investigation. If the fire occurs within a municipality, organized fire district, or fire service area, the chief of the governmental fire department agency organized under Title 7,

chapter 33, having jurisdiction or the chief's designee shall make conduct the investigation. If the fire occurs outside a municipality, organized fire district, or fire service area, the county sheriff shall make conduct the investigation or ensure that an investigation is conducted."

Section 32. Section 50-63-203, MCA, is amended to read:

"50-63-203. Notification to department of justice — reports to be filed. (1) If it appears that 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 *with the department* a written report of the cause 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.

(3) *Each official responsible for investigating fires shall file with the department of justice a fire incident report on each fire. Reports must be made on forms provided by the department and must contain information prescribed by the department. These reports must be sent to the department on a monthly basis or at intervals determined by the department."*

Section 33. Section 50-63-401, MCA, is amended to read:

"50-63-401. Insurer to provide information regarding fire loss to certain agencies upon request. Each insurer engaged in issuing fire insurance policies in the state of Montana shall upon written request of any appropriate law enforcement *agency* or *governmental* fire ~~protection~~ agency *organized under Title 7, chapter 33*, release to the requesting agency all information in its possession relating to a fire loss of real or personal property. The information may include but is not limited to:

(1) any insurance policy relevant to the fire loss under investigation and any application for ~~such a~~ *the* policy;

(2) premium payment records;

(3) the history of previous claims made by the insured for fire loss; *and*

(4) material relating to the investigation of the loss, including statements of any person, proof of loss, and other relevant evidence."

Section 34. Section 50-63-402, MCA, is amended to read:

"50-63-402. Insurer to report suspicious fires. ~~Whenever~~ *When* an insurer has reason to believe that a fire loss in which it has an interest may be of other than accidental cause, it shall notify an appropriate law enforcement *agency* or *governmental* fire ~~protection~~ agency *organized under Title 7, chapter 33*, and provide ~~such~~ *the* agency with all material developed from its inquiry into the fire loss."

Section 35. Section 50-63-404, MCA, is amended to read:

"50-63-404. Testimony of agency personnel in action to recover under insurance policy. Law enforcement *agency* and *governmental* fire ~~protection~~ agency personnel may be required to testify as to any information in their possession regarding the fire loss of real or personal property in any civil action in which a person seeks recovery from an insurer under a policy for the fire loss."

Section 36. Section 50-78-102, MCA, is amended to read:

“50-78-102. Definitions. As used in this chapter, the following definitions apply:

(1) “Chemical manufacturer” means an employer in codes 31 through 33, as defined in the North American Industry Classification System Manual, with a workplace where chemicals are produced for use or distribution.

(2) “Chemical name” means the scientific designation of a chemical in accordance with the nomenclature system developed by the international union of pure and applied chemistry or the chemical abstracts service rules of nomenclature or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.

(3) “Common name” means any designation or identification, such as code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(4) “Department” means the department of environmental quality provided for in Title 2, chapter 15, part 35.

(5) “Designated representative” means:

(a) the individual or organization to whom an employee gives written authorization to exercise the employee’s rights under this chapter; or

(b) a recognized or certified collective bargaining agent who is automatically a designated representative without regard to written employee authorization.

(6) “Distributor” means a business, other than a chemical manufacturer, that supplies hazardous chemicals to other distributors or to employers.

(7) “Employee” means a person who may be exposed to hazardous chemicals in the workplace under normal operating conditions or possible emergencies.

(8) “Employer” means a person, firm, corporation, partnership, association, governmental agency, or other entity that is engaged in business or providing services and that employs workers.

(9) “Exposure” means ingestion, inhalation, absorption, or other contact in the workplace with a hazardous chemical and includes potential, accidental, or possible exposure.

(10) “Hazardous chemical” means, except as provided in 50-78-103:

(a) any element, chemical compound, or mixture of elements or compounds that is a physical hazard or health hazard, as defined by subsection (c) of the OSHA standard, and that has been identified as such by the federal occupational safety and health administration or the manufacturer and has been filed with the federal occupational safety and health administration;

(b) any hazardous chemical, as defined by subsection (d)(3) of the OSHA standard; or

(c) any emitter of ionizing radiation.

(11) “Label” means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

(12) “Local fire chief” means:

~~(a) the chief of the municipal fire department or the chief’s agent, for any workplace located within a city or town; or~~

~~(b) the county rural fire chief or the district rural fire chief or the chief's agent, for any workplace not located within a city or town a governmental fire agency organized under Title 7, chapter 33, or the chief's designee.~~

(13) "Manufacturing employer" means an employer with a workplace classified in codes 31 through 33 of the North American Industry Classification System who manufactures, uses, or stores a hazardous chemical.

(14) "Material safety data sheet" means a document prepared in accordance with the requirements of the OSHA standard and containing chemical hazard and safe handling information.

(15) "Nonmanufacturing employer" means an employer with a workplace classified in a North American Industry Classification System code other than 31 through 33.

(16) "OSHA standard" means the hazard communication standard issued by the federal occupational safety and health administration, codified under 29 CFR 1910.1200, ~~as that statute reads on January 1, 1985.~~

(17) "Trade secret" means a confidential formula, pattern, process, device, or information, including chemical name or other unique chemical identifier, that is used in an employer's business and that gives the employer an opportunity to obtain an advantage over competitors.

(18) "Work area" means a room or defined space in a workplace where hazardous chemicals are produced, used, or stored and where employees are present.

(19) "Workplace" means an establishment at one geographical location containing one or more work areas.

(20) "Workplace chemical list" means the list of hazardous chemicals developed under ~~this chapter or under~~ subsection (e)(1)(i) of the OSHA standard *or under this chapter.*

Section 37. Section 52-2-733, MCA, is amended to read:

"52-2-733. Periodic visits to facilities by department — investigations — consultation with licensees and registrants. (1) The department or its authorized representative shall make periodic visits to all licensed day-care centers to ensure that minimum standards are maintained.

(2) The department may investigate and inspect the conditions and qualifications of any day-care center, group day-care home, or family day-care home seeking or holding a license or registration certificate under the provisions of this part.

(3) The department shall visit and inspect at least 20% of all registered family day-care homes and group day-care homes in each of the governor's planning regions annually.

(4) The department shall make annual unannounced visits to day-care centers.

(5) Upon request of the department, the state fire prevention and investigation ~~program~~ *section* of the department of justice shall inspect any day-care facility for which a license or registration certificate is applied for or issued and shall report its findings to the department.

(6) Upon request, the department shall give consultation to every licensee and registrant who desires to upgrade the services of the licensee's or registrant's program.

(7) This section may not be construed to require the department to conduct an inspection of each day-care facility applying for a registration certificate under the provisions of this part.”

Section 38. Section 52-2-734, MCA, is amended to read:

“52-2-734. Fire safety — certification required. (1) The state fire prevention and investigation ~~program~~ *section* of the department of justice shall adopt and enforce rules for the protection of children in day-care centers from fire hazards and arrange for ~~such any~~ inspections and investigations ~~as~~ it considers necessary.

(2) Before a license can be issued to operate a day-care center, each applicant shall submit to the department a certificate of approval from the state fire prevention and investigation ~~program~~ *section* of the department of justice indicating ~~that compliance with fire safety rules have been met.~~”

Section 39. Section 52-4-205, MCA, is amended to read:

“52-4-205. Rulemaking. (1) The department shall, for the purpose of licensing, adopt rules to govern administration, operation, and health and safety requirements for community homes for persons with severe disabilities in order to protect rights of residents. The department shall provide for temporary and provisional licensing.

(2) The state fire prevention and investigation ~~program~~ *section* of the department of justice shall provide advice and recommendations to the department concerning licensing requirements for health and safety.”

Section 40. Section 53-20-307, MCA, is amended to read:

“53-20-307. Health and safety standards for licensing. (1) (a) After initial certification by the state fire prevention and investigation ~~program~~ *section* of the department of justice, community homes must be certified annually for fire and life safety by the department of justice.

(b) The department of justice shall notify the department of public health and human services when a community home has been certified.

(2) (a) Local health officers shall certify community homes for compliance with health and safety standards. If for any reason the local authority cannot complete the certification in a timely manner, the department of public health and human services is authorized to make the determination on certification.

(b) A reasonable fee may be charged to authorized parties, as defined in 53-20-303, for the health and safety certification.”

Section 41. Section 61-8-102, MCA, is amended to read:

“61-8-102. Uniformity of interpretation — definitions. (1) Interpretation of this chapter in this state must be as consistent as possible with the interpretation of similar laws in other states.

(2) As used in this chapter, unless the context requires otherwise, the following definitions apply:

(a) “Authorized emergency vehicle” means a vehicle of ~~the fire department or fire patrol~~ *a governmental fire agency organized under Title 7, chapter 33*, an ambulance, and an emergency vehicle designated or authorized by the department.

(b) “Bicycle” means:

(i) a vehicle propelled solely by human power upon which any person may ride and that has two tandem wheels and a seat height of more than 25 inches from the ground when the seat is raised to its highest position, except scooters and similar devices; or

(ii) a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion, and an independent power source providing a maximum of 2 brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement may not exceed 3.05 cubic inches, (50 centimeters), regardless of the number of chambers in the power source. The power source may not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour, (48.28 kilometers an hour), on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged.

(c) "Business district" means the territory contiguous to and including a highway when within any 600 feet along a highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings that occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

(d) "Controlled-access highway" means a highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the highway, street, or roadway except at the points and in the manner as determined by the public authority having jurisdiction over the highway, street, or roadway.

(e) "Crosswalk" means:

(i) that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway;

(ii) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrians crossing by lines or other markings on the surface.

(f) "Flag person" means a person who directs, controls, or alters the normal flow of vehicular traffic upon a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person, except a uniformed traffic enforcement officer exercising the officer's duty as a result of a planned vehicular traffic hazard, must be equipped as required by the rules of the department of transportation.

(g) "Highway" has the meaning provided in 61-1-101, but includes ways that have been or are later dedicated to public use.

(h) "Ignition interlock device" means ignition equipment that:

(i) analyzes the breath to determine blood alcohol concentration;

(ii) is approved by the department pursuant to 61-8-441; and

(iii) is designed to prevent a motor vehicle from being operated by a person who has consumed a specific amount of an alcoholic beverage.

(i) (i) "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines or if there are no curb lines then the lateral boundary lines of the roadways of two highways that join one another at or

approximately at right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(ii) When a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of the divided highway by an intersecting highway must be regarded as a separate intersection. If the intersecting highways also include two roadways 30 feet or more apart, then every crossing of two roadways of the highways must be regarded as a separate intersection.

(j) "Local authorities" means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

(k) "Noncommercial motor vehicle" or "noncommercial vehicle" means any motor vehicle or combination of motor vehicles that is not included in the definition of commercial motor vehicle in 61-1-101 and includes but is not limited to the vehicles listed in 61-1-101(7)(b).

(l) "Official traffic control devices" means all signs, signals, markings, and devices not inconsistent with this title that are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(m) "Pedestrian" means any person on foot or any person in a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(n) "Police vehicle" means a vehicle used in the service of any law enforcement agency.

(o) "Private road" or "driveway" means a way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(p) "Residence district" means the territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of 300 feet or more is primarily improved with residences or residences and buildings in use for business.

(q) "Right-of-way" means the privilege of the immediate use of the roadway.

(r) "School bus" has the meaning provided in 20-10-101.

(s) "Sidewalk" means that portion of a street that is between the curb lines or the lateral lines of a roadway and the adjacent property lines and that is intended for use by pedestrians.

(t) "Traffic control signal" means a device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

(u) "Urban district" means the territory contiguous to and including any street that is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of one-fourth mile or more."

Section 42. Section 61-8-364, MCA, is amended to read:

"61-8-364. Crossing firehose. A vehicle may not be operated over an unprotected hose of a *governmental fire department agency organized under Title 7, chapter 33*, when the hose is laid down on any roadway, private road, or private driveway, to be used at any fire or alarm of fire, without the consent of the *fire department agency official in command*."

Section 43. 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.

(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.

(5) The use of signal equipment as described in this section imposes upon the 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.

(6) An employee, agent, or representative of the state or a political subdivision of the state or of a *governmental fire department agency organized under Title 7, chapter 33*, 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 (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 *be* 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 61-8-102, may display blue lights, lenses, or globes.

(8) A police vehicle 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.

(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.

(10) A violation of subsection (5) is considered reckless endangerment of a highway worker, as provided in 61-8-301(4), and is punishable as provided in 61-8-715.”

Section 44. Section 75-10-725, MCA, is amended to read:

“75-10-725. Immunity of ~~volunteer fire company or department~~ fire agency and employees for hazardous or deleterious substance cleanup. A ~~volunteer fire company or department that is organized by a municipality, county, rural fire district, fire service area, or other entity~~ governmental fire agency organized under Title 7, chapter 33, and the employees of the ~~company or department~~ agency are not liable for civil damages, except damages for gross negligence or willful or wanton misconduct, for their acts or omissions that are directly related to the hazardous material incident.”

Section 45. Effective date. [This act] is effective June 1, 2007.

Approved May 8, 2007

CHAPTER NO. 450

[SB 147]

AN ACT CLARIFYING THE AUTHORITY OF THE PRESIDING OFFICER OF A BOARD OF COUNTY COMMISSIONERS TO CLOSE AREAS TO ACCESS UPON A DECLARATION OF AN EMERGENCY OR DISASTER; AMENDING SECTION 10-3-406, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Activity restrictions in high fire hazard areas. (1) A board of county commissioners may designate areas on private land or on land that is not under the jurisdiction of a municipality or a state or federal agency as high fire hazard areas.

(2) Except as provided in 87-3-106(2), in designated high fire hazard areas, the board may require all persons, firms, or corporations present or engaged in any activity in those areas to cease operations or activities or to adjust working hours to less critical periods of the day.

(3) The presiding officer of the board may control ingress and egress into a high fire hazard area if an emergency or disaster is declared under the provisions of Title 10, chapter 3, part 4.

(4) (a) An entity that is conducting official business, an entity having actual residence as a permanent or principal place of abode in the designated area, or an entity engaged in employment that does not present a fire hazard must be allowed ingress and egress unless there is a significant risk to human health or safety.

(b) For the purposes of this section, “official business” includes but is not limited to the functions of governmental agencies and the activities of utilities, cooperatives, and telecommunications providers to operate, construct, repair, and maintain utility facilities that are essential to the public.

Section 2. Section 10-3-406, MCA, is amended to read:

“10-3-406. Authority of principal executive officer. (1) Upon the declaration of an emergency or disaster under 10-3-402 or 10-3-403 and the issuance of an order as required by 10-3-404, the principal executive officer may:

(1)(a) direct and compel the evacuation of all or part of the population from an *incident or* emergency or disaster area within that political subdivision when necessary for the preservation of life or other disaster mitigation, response, or recovery; and

(2)(b) control the ingress and egress to and from an *incident or* emergency or disaster area; ~~and the movement of persons within the area, and the occupancy of premises therein.~~

(2) *Subject to [section 1(4)(a)], the authority to control ingress and egress, as provided in subsection (1)(b), includes the authority to close wildland areas to access during periods of extreme fire danger.”*

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 33, part 22, and the provisions of Title 7, chapter 33, part 22, apply to [section 1].

Section 4. Effective date. [This act] is effective June 1, 2007.

Approved May 8, 2007

CHAPTER NO. 451

[SB 165]

AN ACT GENERALLY REVISING THE MONTANA DEFERRED DEPOSIT LOAN ACT; INCLUDING DEFERRED DEPOSIT LENDERS IN THE DEFINITION OF REGULATED LENDERS; INCREASING LICENSING FEES; REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION ANNUALLY EXAMINE EACH DEFERRED DEPOSIT LENDER'S OPERATION; MODIFYING BOOKKEEPING REQUIREMENTS FOR DEFERRED DEPOSIT LENDERS; PROHIBITING ADDITIONAL DEFERRED DEPOSIT LOANS TO CONSUMERS WITH AN OUTSTANDING DEFERRED DEPOSIT LOAN; AUTHORIZING THE DEPARTMENT TO CONDUCT INVESTIGATIONS AND ISSUE SUBPOENAS AND CEASE AND DESIST ORDERS; AUTHORIZING THE DEPARTMENT TO SEEK COURT-ORDERED INJUNCTIONS; AND AMENDING SECTIONS 31-1-111, 31-1-702, 31-1-703, 31-1-705, 31-1-706, 31-1-711, 31-1-712, 31-1-713, 31-1-714, 31-1-715, 31-1-721, AND 31-1-723, MCA.

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

Section 1. Section 31-1-111, MCA, is amended to read:

“31-1-111. Definition of regulated lender. The term “regulated lender”, as used in 31-1-112 and 31-1-116, means:

(1) a bank, building and loan association, savings and loan association, trust company, credit union, credit association, consumer loan licensee, *deferred*

deposit loan licensee, development corporation, bank holding company, or a mutual or stock insurance company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by:

- (a) an agency of the state of Montana; or
- (b) an agency of the federal government;
- (2) a subsidiary of an entity described in subsection (1);
- (3) a Montana state agency or a federal agency that is authorized to lend money;
- (4) a corporation or other entity established by congress or the state of Montana that is owned, in whole or in part, by the United States or the state of Montana and that is authorized to lend money.”

Section 2. Section 31-1-702, MCA, is amended to read:

“31-1-702. Purpose — rules — fees. (1) The purpose of this part is to protect consumers who enter into short-term, high-rate loans with lenders from abuses that occur in the credit marketplace when the lenders are unregulated.

(2) The department may adopt rules to implement the provisions of this part. The rules may include but are not limited to rules establishing forms and procedures for licensing, rules pertaining to acceptable practices at a business location, rules establishing disclosure requirements, and rules establishing complaint and hearing procedures.

(3) *All fees collected pursuant to the provisions of this part must be deposited in the department's special revenue account to be used by the department in carrying out its supervisory functions under this part.*”

Section 3. Section 31-1-703, MCA, is amended to read:

“31-1-703. Definitions. For the purposes of this part, the following definitions apply:

(1) “Account” means any banking, checking, credit union, commercial, savings, savings and loan, brokerage, investment, or other kind of depository account held by a consumer.

(2) “Check” means a negotiable instrument, as defined in 30-3-104, that is drawn on a *state or federal bank, credit union, or savings and loan association* and is payable on demand at the maturity of a deferred deposit loan.

(3) “Consumer” means a natural person who, singly or jointly with another natural person, enters into a deferred deposit loan.

(4) “Deferred deposit lender” or “licensee” means a person engaged in the business of making deferred deposit loans.

(5) “Deferred deposit loan” means an arrangement, including all representations made by the deferred deposit lender whether express or implied, in which:

(a) a person accepts a check dated on the date on which the check is written and agrees to hold the check for a period of days prior to deposit or presentment;

(b) a person accepts a check dated subsequent to the date on which the check is written and agrees to hold the check for deposit or presentment until the date written on the check; or

(c) a person accepts written authorization from a consumer to electronically deduct from the consumer's account on a specific date the amount of the loan and fees that are authorized under this part.

(6) "Department" means the department of administration.

(7) "Person" means a natural person, sole proprietorship, firm, partnership, corporation, or other entity."

Section 4. Section 31-1-705, MCA, is amended to read:

"31-1-705. License — business locations — rules. (1) A person may not engage in or offer to engage in the business of making deferred deposit loans unless licensed by the department. *A license may be granted to a person located within the state or to a person located outside of the state who uses the internet, facsimiles, or third persons to conduct transactions with consumers in this state.*

(2) An applicant for a license to engage in the business of making deferred deposit loans shall pay to the department a license application fee of ~~375~~ *500*.

(3) (a) The department may not issue or renew a license unless findings are made that:

(i) the financial responsibility, experience, character, and general fitness of the applicant warrant the belief that the business will be operated lawfully and fairly and within the provisions of this part;

(ii) the applicant has unencumbered assets of at least \$25,000 for each location;

(iii) the applicant has provided a sworn statement that the applicant will not in the future, directly or indirectly, use a criminal process to collect the payment of deferred deposit loans or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default; and

(iv) other information that the department considers necessary has been provided.

(b) The department may not issue or renew a license if the criminal history of the employees of the applicant demonstrates any convictions involving fraud or financial dishonesty or if the department's findings show adverse civil judgments involving fraudulent or dishonest financial dealings.

(4) A license may not be issued for longer than 1 year. The license year must coincide with the calendar year, and the license fee for any period less than 6 months is ~~187.50~~ *250*.

(5) Each licensee shall post a bond in the amount of \$10,000 for each location. The bond must continue in effect for 2 years after the licensee ceases operation in the state. The bond must be available to pay damages and penalties to consumers harmed by any violation of this part.

(6) More than one place of business may not be maintained under the same license, but the department may issue more than one license to the same licensee upon compliance with the provisions of this section governing issuance of a single license."

Section 5. Section 31-1-706, MCA, is amended to read:

"31-1-706. License renewal fee. (1) A person licensed under 31-1-705 shall pay, on or before December 1 of each year, a license renewal fee of ~~125~~ *500* for each license that the person holds under this part.

(2) Failure to pay any yearly license renewal fee required by this section within the time prescribed will result in the automatic revocation of the license subject to renewal.”

Section 6. Section 31-1-711, MCA, is amended to read:

“31-1-711. ~~Annual examinations~~ Examinations — fee. (1) The department ~~shall~~ *may* conduct ~~annually~~ an examination of each licensee’s deferred deposit lending operation to ensure that the licensee is in compliance with the provisions of this part.

(2) (a) A licensee shall pay the department a fee in the amount of \$300 a day for each examiner required to conduct an ~~annual~~ examination.

(b) *The department may charge a licensee for no more than three examinations a year under this section.*

(3) A licensee shall make available to a department examiner the information required under 31-1-714 or as required by rule.

(4) ~~Completion of an annual examination must, in the absence of the department’s finding just cause to revoke or suspend a license, constitute grounds for license renewal.”~~

Section 7. Section 31-1-712, MCA, is amended to read:

“31-1-712. License revocation or suspension — restitution — penalty.

(1) ~~If the~~ *The department finds, after due shall provide a 10-day written notice of a proposed violation that includes a statement of the alleged violation and provision for a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure Act., The notice must be based on a finding that any person, licensee, or officer, agent, employee, or representative, whether licensed or unlicensed, of the person or licensee has violated any of the provisions of this part, has failed to comply with the rules, regulations, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, or has furnished false information to the department, or has operated without a required license. the* ~~The~~ department may impose a civil penalty not to exceed \$1,000 for each violation *and not to exceed \$5,000 for each administrative action* and may issue an order revoking or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee *or to engage in the business of making deferred deposit loans. In addition, the department may order restitution to borrowers and reimbursement for the department’s cost in bringing the administrative action.*

(2) *All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or, in the case of an unlicensed business, to the last-known address of record.*

(2)(3) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

(4) *The department may reinstate any suspended or revoked license if there is not a fact or condition existing at the time of reinstatement that would have justified the department’s refusal to originally issue the license. If a license has been suspended or revoked for cause, an application may not be made for the issuance of a new license or the reinstatement of a suspended or revoked license for a period of 6 months from the date of suspension or revocation.*

(5) *All civil penalties collected pursuant to this section must be deposited in the state general fund.*”

Section 8. Section 31-1-713, MCA, is amended to read:

“31-1-713. Complaint procedure. (1) The department shall maintain a list of licensees that is available to interested persons and to the general public. The department shall also establish by rule a procedure under which an aggrieved consumer or any member of the public may file a complaint against a licensee or an unlicensed person who violates any provision of this part.

(2) The department may hold hearings, *subject to the contested case provisions of Title 2, chapter 4, part 6*, upon the request of a party to the complaint, make findings of fact or conclusions of law, issue cease and desist orders, refer the matter to the appropriate law enforcement agency for prosecution for a violation of this part, seek injunctive or other relief in district court, or suspend or revoke a license granted under this part.”

Section 9. Section 31-1-714, MCA, is amended to read:

“31-1-714. Information and annual reports. (1) Each licensee shall keep and use books, accounts, and records that will enable the department to determine if the licensee is complying with the provisions of this part and maintain any other records required by the department. The department is authorized to examine the records at any reasonable time. The records must be kept for 2 years following the last entry on a loan and must be kept according to generally accepted accounting procedures that include an examiner being able to review the recordkeeping and reconcile each ~~consumer~~ *deferred deposit* loan with documentation maintained in the consumer’s loan file records.

(2) Each licensee shall file, on forms prescribed by the department, an annual report with the department on or before March 31 for the 12-month period in the preceding year ending as of December 31. The report must disclose in detail and under appropriate headings:

(a) the resources, assets, and liabilities of the licensee at the beginning and the end of the period;

(b) the income, expense, gain, loss, and balance sheets;

(c) the total number of deferred deposit loans made in the year ending as of December 31 of the previous year, *including*:

(i) *the number of individual consumers with 12 or fewer new deferred deposit loans; and*

(ii) *the number of individual consumers with 13 or more new deferred deposit loans;*

(d) *the average deferred deposit loan amount, average annual interest percentage rate, and average deferred deposit loan term;*

(e) *the number of deferred deposit loans rescinded;*

~~(f)~~(f) the total number of deferred deposit loans outstanding as of December 31 of the previous year;

~~(g)~~(g) the minimum and maximum amount of checks for which deposits were deferred in the year ending as of December 31 of the previous year;

~~(h)~~(h) the total number and dollar amount of returned checks, the total number and dollar amount of checks recovered, and the total number and dollar

amount of checks charged off during the year ending as of December 31 of the previous year;

(g)(i) the total number and dollar amount of agreements involving electronic transactions or deductions, the total number and dollar amount of electronic deductions made by the licensee, and the total number and dollar amount of electronic deductions for insufficient funds charged off during the year ending as of December 31 of the previous year; and

(h)(j) verification that the licensee has not used a criminal process or caused a criminal process to be used in the collection of any deferred deposit loans or used any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default during the year ending as of December 31 of the previous year.

(3) A report must be verified by the oath or affirmation of the owner, manager, or president of the deferred deposit lender.

(4) (a) If a licensee conducts another business or is affiliated with other licensees under this part or if any other situation exists under which allocations of expense are necessary, the licensee shall make the allocation according to appropriate and reasonable accounting principles as approved by the department.

(b) Information about any other business conducted on the same premises where deferred deposit loans are made must be provided as required by the department.

(5) Each licensee shall file a copy of the disclosure documents described in 31-1-721 with the department prior to the date of commencement of business at each location, at the time any changes are made to the documents, and annually upon renewal of the license. These documents must be available to interested parties and to the general public through the department.”

Section 10. Section 31-1-715, MCA, is amended to read:

“31-1-715. Loan requirements — right of rescission — arbitration — completion of transaction. (1) ~~Each~~ A deferred deposit loan may not have a term that exceeds 31 days.

(2) The amount of the deferred deposit loan, exclusive of the fee allowed in 31-1-722(2), may not exceed \$300.

(3) The minimum amount of a deferred deposit loan is \$50.

(4) The check written by the consumer in a deferred deposit loan must be made payable to the licensee.

(5) (a) The loan agreement must contain a provision that the consumer may rescind the transaction if, by 5 p.m. of the licensee’s first business day following the day that the loan was executed, the consumer provides the licensee with cash or certified funds equaling 100% of the amount loaned to the consumer.

(b) A licensee may not charge a consumer any fee or interest if the consumer rescinds the loan as provided in subsection (5)(a).

(c) Except as provided in subsection (5)(a), a consumer does not have a right to rescind the loan unless the licensee agrees to the rescission.

(6) (a) A loan agreement may not contain a mandatory arbitration clause that is oppressive, unconscionable, unfair, or in substantial derogation of a consumer’s rights.

(b) A mandatory arbitration clause that complies with the applicable standards of the American arbitration association must be presumed to not violate the provisions of subsection (6)(a).

(7) Only the licensee may make an electronic deduction from the consumer's account. The licensee shall ensure that information obtained from the consumer about the consumer's account remains confidential.

(8) The licensee shall provide the consumer, or each consumer if there is more than one, with a copy of the loan documents described in 31-1-721 upon consummation of the loan.

(9) The holder or assignee of any check written by a consumer in connection with a deferred deposit loan takes the instrument subject to all claims and defenses of the consumer.

(10) A deferred deposit loan transaction is completed when the licensee receives payment in full from the consumer in cash or, if payment is made by check or electronic transfer from the consumer's account, when the check or electronic transfer is debited to the consumer's account by the consumer's financial institution. Once a deferred deposit loan transaction is complete, a licensee may enter into a new deferred deposit loan with the consumer. Deferred deposit loans may not be renewed or extended.

Section 11. Section 31-1-721, MCA, is amended to read:

"31-1-721. Required disclosures — loan agreement. (1) Before entering into a deferred deposit loan, the licensee shall deliver to the consumer a pamphlet prepared by or at the direction of the department that:

(a) explains, in simple language, all of the consumer's rights and responsibilities in a deferred deposit loan transaction;

(b) includes a telephone number to the department's office that handles concerns or complaints by consumers; and

(c) informs consumers that the department's office can provide information about whether a lender is licensed and other legally available information.

(2) Licensees shall provide consumers with a written agreement on a form specified or approved by the department that can be kept by the consumer, which must include the following information:

(a) the name, address, and phone number of the licensee making the deferred deposit loan and the initials or other written means of identifying the individual employee who signs the agreement on behalf of the licensee;

(b) the name, address, and phone number of the consumer obtaining the deferred deposit loan;

(c) ~~an itemization of the fees and interest charges to be paid by the consumer~~ *all disclosures required by the federal Truth in Lending Act, 15 U.S.C. 1601, et seq.;*

(d) a clear description of the consumer's payment obligations under the loan; and

(e) in a manner that is more conspicuous than the other information provided in the loan document and that is in at least 14-point bold typeface, a statement that "you cannot be prosecuted in criminal court for collection of this loan". The statement must be located immediately preceding the signature of the consumer."

Section 12. Section 31-1-723, MCA, is amended to read:

“31-1-723. Prohibited acts. A licensee making deferred deposit loans may not commit, or have committed on behalf of the licensee, any of the following prohibited acts:

(1) engaging in the business of deferred deposit lending unless the department has first issued a valid license;

(2) threatening to use or using a criminal process in this or any other state to collect on the loan made to a consumer in this state or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default;

(3) altering the date or any other information on a check received from a consumer;

(4) altering or changing the date upon which the licensee and consumer agreed to make any electronic deductions from the consumer’s account unless the consumer agrees in writing to the change;

(5) making any false, misleading, or deceptive representation to a financial institution relating to a consumer who has agreed to provide payment for a loan through an electronic deduction;

(6) using any device or agreement that would have the effect of charging or collecting more fees, charges, or interest than those allowed by this part, including but not limited to entering into a different type of transaction or renewing or rolling over a loan with the consumer;

(7) engaging in unfair, deceptive, or fraudulent practices in the making or collection of a deferred deposit loan;

(8) entering into a deferred deposit loan with a consumer that is unconscionable. In determining whether a deferred deposit loan transaction is unconscionable, consideration must be given to, but is not limited to, whether the amount of the loan exceeds 25% of the consumer’s monthly net income.

(9) charging to cash a check representing the proceeds of the deferred deposit loan;

(10) charging to perform an electronic deduction or transaction to obtain the proceeds of the deferred deposit loan;

(11) using or attempting to use the check provided by the consumer in a deferred deposit loan as security for purposes of any state or federal law;

(12) using or attempting to use the consumer’s authorization to deduct the amount set forth in the loan agreement or any other information obtained from the consumer or the consumer’s financial institution for any purpose other than to collect the proceeds of the deferred deposit loan;

(13) accepting payment of the deferred deposit loan through the proceeds of another deferred deposit loan ~~provided by the same licensee or any affiliate;~~

(14) ~~making a deferred deposit loan that, when combined with another outstanding deferred deposit loan owed to the licensee, exclusive of the fee allowed in 31-1-722(2), exceeds a total of \$300 when combining the face amount of the checks written in connection with each loan. Regardless of the total of the loans, a licensee may not make a loan to a consumer who has two or more deferred deposit loans outstanding with the licensee. entering into a deferred deposit loan with a consumer who has an outstanding deferred deposit loan;~~

(15) renewing, repaying, refinancing, or consolidating a deferred deposit loan with the proceeds of another deferred deposit loan made to the same consumer. However, a licensee may without charge extend the term of the loan beyond the due date.

(16) accepting any collateral for a deferred deposit loan;

(17) charging any interest, fees, or charges other than those specifically authorized by this part, including but not limited to charges for insurance;

(18) threatening to take any action against a consumer that is prohibited by this part or making any misleading or deceptive statements regarding the deferred deposit loan;

(19) making a misrepresentation of a material fact by an applicant in obtaining or attempting to obtain a license;

(20) including any of the following provisions in the loan agreement required by 31-1-721:

(a) a hold harmless clause;

(b) a confession of judgment clause;

(c) a waiver of the right to a jury trial, if applicable, in any action brought by or against a consumer;

(d) any assignment of or order for payment of wages or other compensation for services;

(e) a provision in which the consumer agrees not to assert any claim or defense arising out of the contract; or

(f) a waiver of any provision of this part.”

Section 13. Investigations by department — subpoenas — oaths — examination of witnesses and evidence. (1) The department may investigate any matter, upon complaint or otherwise, if it appears that a person has engaged in or offered to engage in any act or practice that is in violation of any provision of this part or any rule adopted or order issued by the department pursuant to this part.

(2) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this part. The department may administer oaths and affirmations to a person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by the subpoena, a judge of the district court of Lewis and Clark County or the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated in the subpoena.

(4) If a person served with a subpoena refuses to obey the subpoena or to give testimony or produce evidence as required by the subpoena, the department may proceed under the contempt provisions of Title 3, chapter 1, part 5.

(5) Failure to comply with a court-ordered subpoena is punishable pursuant to 45-7-309.

Section 14. Cease and desist orders. (1) If it appears to the department that a person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this part or any rule adopted or order issued by the department pursuant to this part, the department may issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The order may apply only to the alleged act or practice constituting a violation of this chapter. The department may issue a temporary order pending the hearing that:

(a) remains in effect until 10 days after the hearings examiner issues proposed findings of fact and conclusions of law and a proposed order; or

(b) becomes final if the person to whom notice is addressed does not request a hearing within 10 days after receipt of the notice.

(2) A violation of an order issued pursuant to this section is subject to the penalty provisions of this part.

Section 15. Injunctions — receivers. (1) Whenever the department has reason to believe that a person is using, has used, or is about to knowingly use any method, act, or practice that violates any provision of this part or any rule adopted or order issued by the department pursuant to this part, the department, upon determining that proceeding would be in the public interest, may bring an action in the name of the state against the person to restrain by temporary or permanent injunction or temporary restraining order the use of the unlawful method, act, or practice.

(2) The notice for an action pursuant to subsection (1) must state generally the relief sought and be served at least 20 days before the hearing of the action in which the relief sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by 27-19-315.

(3) An action under this section may be brought in the district court in the county in which a person resides or has the person's principal place of business or in the district court of Lewis and Clark County if the person is not a resident of this state or does not maintain a place of business in this state.

(4) A district court may issue temporary or permanent injunctions or temporary restraining orders to restrain and prevent violations of this part, and an injunction must be issued without bond to the department. If the department is successful in obtaining an injunction or restraining order under this section, the department is entitled to an award of reasonable attorney fees and costs.

(5) 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 this part. 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 16. Codification instruction. [Sections 13 through 15] are intended to be codified as an integral part of Title 31, chapter 1, part 7, and the provisions of Title 31, chapter 1, part 7, apply to [sections 13 through 15].

Approved May 8, 2007