

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE OFFENSE OF CRIMINAL DEFAMATION;  
5 AMENDING SECTIONS 45-2-311, 46-3-112, 46-16-103, AND 81-30-103, MCA; REPEALING SECTION  
6 45-8-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9  
10 **Section 1.** Section 45-2-311, MCA, is amended to read:

11 **"45-2-311. Criminal responsibility of corporations.** (1) A corporation may be prosecuted for the  
12 commission of an offense only if:

13 (a) the offense is a misdemeanor, is defined by 45-5-204, 45-6-315, 45-6-317, 45-6-318, 45-6-326,  
14 45-8-113, 45-8-114, ~~45-8-212~~, 45-8-214, 82-1-201, or 82-10-104, or is defined by another statute that clearly  
15 indicates a legislative purpose to impose liability on a corporation and an agent of the corporation performs the  
16 conduct that is an element of the offense while acting within the scope of the agent's office or employment and  
17 in behalf of the corporation, except that any limitation in the defining statute concerning the corporation's  
18 accountability for certain agents or under certain circumstances is applicable; or

19 (b) the commission of the offense is authorized, requested, commanded, or performed by the board of  
20 directors or by a high managerial agent who is acting within the scope of that agent's employment in behalf of  
21 the corporation.

22 (2) A corporation's proof that the high managerial agent having supervisory responsibility over the  
23 conduct that is the subject matter of the offense exercised due diligence to prevent the commission of the offense  
24 is a defense to a prosecution for any offense to which subsection (1)(a) refers, other than an offense for which  
25 absolute liability is imposed. This subsection is inapplicable if the legislative purpose of the statute defining the  
26 offense is inconsistent with the provisions of this subsection.

27 (3) For the purposes of this section:

28 (a) "agent" means any director, officer, servant, employee, or other person who is authorized to act in  
29 behalf of the corporation;

30 (b) "high managerial agent" means an officer of the corporation or any other agent who has a position



1 of comparable authority for the formulation of corporate policy or the supervision of subordinate employees in a  
2 managerial capacity."

3

4 **Section 2.** Section 46-3-112, MCA, is amended to read:

5 **"46-3-112. Requisite act in multiple counties.** (1) Except as provided in 46-3-110(2), if two or more  
6 acts are requisite to the commission of an offense or if two or more acts are committed in furtherance of a  
7 common scheme, the charge may be filed in any county in which any of the acts or offenses occurred.

8 (2) Except as provided in 46-3-110(2), if an act requisite to the commission of an offense occurs or  
9 continues in more than one county, the charge may be filed in any county in which the act occurred or continued.

10 (3) If an element of an offense under 45-5-220, 45-5-625, ~~45-8-212~~, or 45-8-213 involves an electronic  
11 communication, the charge may be filed in the county in or from which the electronic communication was sent  
12 or in the county in which the electronic communication was received or to which it was sent."

13

14 **Section 3.** Section 46-16-103, MCA, is amended to read:

15 **"46-16-103. Who decides questions of law and fact.** (1) All prosecutions deciding issues of fact must  
16 be tried by the court and jury, except on a plea of guilty or nolo contendere.

17 (2) Questions of law must be decided by the court and questions of fact by the jury, ~~except that on a trial~~  
18 ~~for criminal defamation, the jury shall determine both questions of law and of fact.~~ Questions of law and fact must  
19 be decided by the court when a trial by jury is waived under 46-16-110(3)."

20

21 **Section 4.** Section 81-30-103, MCA, is amended to read:

22 **"81-30-103. Unlawful acts.** (1) A person who does not have the effective consent of the owner may not  
23 acquire or otherwise exercise control over an animal facility, an animal from an animal facility, or other property  
24 from an animal facility with the intent to deprive the owner of the facility, animal, or property or to damage the  
25 enterprise conducted at the animal facility.

26 (2) A person who does not have the effective consent of the owner and who intends to damage the  
27 enterprise conducted at an animal facility may not:

28 (a) damage or destroy an animal facility or an animal or property in or on the premises of an animal  
29 facility;

30 (b) enter an animal facility that is at the time closed to the public with the intent to commit an act

1 prohibited by this chapter;

2 (c) remain concealed in an animal facility with the intent to commit an act prohibited by this chapter;

3 (d) enter an animal facility and commit or attempt to commit an act prohibited by this chapter;

4 (e) enter an animal facility to take pictures by photograph, video camera, or other means with the intent  
5 to commit ~~criminal~~ defamation; or

6 (f) enter or remain on the premises of an animal facility if the person:

7 (i) had notice that the entry was forbidden; or

8 (ii) received notice to depart but failed to do so.

9 (3) The provisions of this chapter do not apply to lawful activities of a:

10 (a) government agency or its employees who are carrying out their duties under law or to lawful activities  
11 of a financial institution or other secured party; and

12 (b) humane animal treatment shelter or its employees whose primary purpose is the bona fide control  
13 or humane care of animals or the enforcement of 45-8-211."

14  
15 **NEW SECTION. Section 5. Repealer.** The following section of the Montana Code Annotated is  
16 repealed:

17 45-8-212. Criminal defamation.

18  
19 **NEW SECTION. Section 6. Saving clause.** [This act] does not affect rights and duties that matured,  
20 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

21  
22 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

23 - END -