

**LAWS AND RESOLUTIONS
OF THE STATE OF MONTANA**

**Enacted by the
FIFTY-NINTH LEGISLATURE
IN REGULAR SESSION**

**Held at Helena, the Seat of Government
January 3, 2005, through April 21, 2005**

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Executive Director**

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**OFFICERS AND MEMBERS
OF THE MONTANA SENATE**

2005

50 Members

27 Democrats

23 Republicans

OFFICERS

President.....Jon Tester
 President Pro TemporeDan Harrington
 Majority Leader.....Jon Ellingson
 Majority Whips.....Carolyn Squires, Trudi Schmidt
 Minority LeaderBob Keenan
 Minority Whips.....Corey Stapleton, Robert Story
 Secretary of the Senate.....Bill Lombardi

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| Laible, Rick | (R) | 44 | 529 Moose Hollow Rd, Victor MT 59875-9303 |
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| Laslovich, Jesse | (D) | 43 | 112 Mountain View St, Anaconda MT 59711-1616 |
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**OFFICERS AND MEMBERS
OF THE MONTANA HOUSE OF REPRESENTATIVES**

2005

100 Members

50 Democrats

50 Republicans

OFFICERS

Speaker.....Gary Matthews
 House Democratic Leader.....David Wanzenried
 House Democratic Floor Leader.....John Parker
 House Democratic Whips.....Bob Bergren, Gail Gutsche
 House Republican Leader.....Roy Brown
 House Republican Floor Leader.....Michael Lange
 House Republican WhipsDebby Barrett, Dennis Himmelberger
 Chief Clerk of the House.....Marilyn Miller

MEMBERS

| Name | Party | District | Preferred Mailing Address |
|-------------------------|-------|----------|---|
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| Sinrud, John | (R) | 67 | 284 Frontier Dr, Bozeman MT 59718-7975 |
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128 (*House Bill No. 452; Windy Boy*) IMPLEMENTING CERTAIN RECOMMENDATIONS TO REDESIGN THE MEDICAID PROGRAM SPECIFICALLY INVOLVING INDIAN TRIBES, TRIBAL HEALTH CARE FACILITIES, AND INDIAN HEALTH SERVICE HEALTH CARE FACILITIES; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO REQUEST A WAIVER OF FEDERAL MEDICAID LAW SO THAT ANY REDUCTIONS IN MEDICAID ELIGIBILITY DO NOT SHIFT COSTS TO TRIBAL OR INDIAN HEALTH SERVICE HEALTH CARE FACILITIES; REQUIRING THE DEPARTMENT TO WORK WITH TRIBAL GOVERNMENTS TO EXPLORE POSSIBILITIES FOR THE CHILDREN'S HEALTH INSURANCE PROGRAM TO LEVERAGE FEDERAL FINANCIAL PARTICIPATION; REQUIRING THE DEPARTMENT TO EXPLORE OPTIONS OR WAIVERS OF MEDICAID LAW FOR THE PURCHASE OF PRESCRIPTION DRUGS ON A RESERVATION AT TRIBAL OR INDIAN HEALTH SERVICE HEALTH CARE FACILITIES; REQUIRING THE DEVELOPMENT OF A POLICY AND PROCESS TO REVIEW INDIAN ELIGIBILITY ISSUES; REQUIRING THE DEPARTMENT TO WORK WITH INDIAN TRIBES TO IMPROVE THE PROVISION OF MEDICAID SERVICES TO INDIANS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE

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129 (*House Bill No. 463; Facey*) INCREASING THE CREDIT AGAINST CERTAIN PERMITTING FEES FOR CERTAIN USES OF POSTCONSUMER GLASS; INCREASING THE MAXIMUM ALLOWABLE CREDIT; EXTENDING THE DURATION OF THE CREDIT; AMENDING SECTIONS 75-2-225 AND 75-2-226, MCA, AND SECTION 8, CHAPTER 516, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE

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130 (*Senate Bill No. 24; Cromley*) GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 59TH LEGISLATURE; AMENDING SECTIONS 1-1-516, 2-2-106, 2-15-1821, 2-15-1822, 2-18-1204, 3-10-301, 5-7-112, 7-1-2111, 7-2-2422, 7-2-2424, 7-3-173, 7-35-2121, 13-13-211, 15-1-121, 15-1-122, 15-24-3005, 15-30-111, 15-31-115, 15-61-102, 15-65-121, 15-70-301, 16-1-101, 17-2-131, 17-5-507, 17-6-407, 20-3-351, 20-9-141, 20-9-501, 20-10-144, 20-10-146, 20-15-221, 20-20-303, 20-25-308, 23-2-502, 23-2-511, 23-2-514, 23-2-515, 23-2-521, 23-2-614, 27-1-306, 30-14-222, 30-14-223, 30-14-901, 30-14-1407, 33-22-140, 37-10-304, 39-11-201, 39-11-204, 39-71-1011, 39-71-1014, 39-71-2316, 40-5-906, 40-6-405, 41-3-302, 41-3-437, 41-3-445, 44-1-1102, 46-14-221, 46-14-222, 46-19-202, 50-20-101, 50-60-203, 52-2-304, 53-6-703, 53-7-109, 61-3-403, 61-3-522, 61-3-722, 61-4-223, 61-4-515, 61-4-520, 61-8-906, 61-8-913, 61-10-227, 61-10-233, 71-3-534, 72-1-103, 82-15-103, AND 85-7-304, MCA; AND REPEALING SECTIONS 15-7-104, 15-32-108, 20-6-212, AND 85-7-2141, MCA 402

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| 232 | <i>(Senate Bill No. 38; Schmidt)</i> DOUBLING THE PENALTIES FOR VIOLATION OF SPECIAL SPEED LIMITS IMPOSED NEAR SCHOOLS; PROVIDING THAT A PORTION OF MONEY COLLECTED FROM THE FINES BE USED FOR PURPOSES OF ERECTING SIGNS OR OTHER LAW ENFORCEMENT NEEDS; AND AMENDING SECTIONS 3-10-601, 46-17-402, AND 46-18-235, MCA | 738 |
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| 234 | <i>(Senate Bill No. 76; Laslovich)</i> ALLOWING THE LIMITED DEVELOPMENT OF LOST CREEK STATE PARK TO INCLUDE A CAMP HOST PAD; AMENDING SECTION 23-1-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE | 742 |
| 235 | <i>(Senate Bill No. 77; Hansen)</i> MAKING PERMANENT THE HUNTER MANAGEMENT AND THE HUNTING ACCESS ENHANCEMENT PROGRAMS, WHICH ENCOURAGE PUBLIC ACCESS TO PRIVATE AND PUBLIC LANDS FOR HUNTING PURPOSES BY PROVIDING INCENTIVES TO LANDOWNERS AND BY PROVIDING RESTRICTIONS ON LANDOWNER LIABILITY; MAKING PERMANENT THE PROGRAMS' FUNDING SOURCES FROM VARIOUS LICENSE FEES; MAKING PERMANENT THE PRIVATE LANDS/PUBLIC WILDLIFE REVIEW COMMITTEE AND REQUIRING BIENNIAL REPORTS ON PROGRAM SUCCESS AND COMMITTEE SUGGESTIONS; AMENDING SECTION 87-1-269, MCA, SECTION 18, CHAPTER 459, LAWS OF 1995, AND SECTION 6, CHAPTER 544, LAWS OF 1999; REPEALING SECTION 8, CHAPTER 544, LAWS OF 1999, SECTION 9, CHAPTER 216, LAWS OF 2001, AND SECTION 29, CHAPTER 407, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE | 743 |
| 236 | <i>(Senate Bill No. 95; Roush)</i> DEFINING THE TERM "OIL OR GAS WELL FACILITY"; DELAYING THE REQUIREMENT TO APPLY FOR AN AIR QUALITY PERMIT FOR AN OIL OR GAS WELL FACILITY TO JANUARY 3, 2006, OR 60 DAYS AFTER THE INITIAL WELL COMPLETION DATE, WHICHEVER IS LATER; REQUIRING ADOPTION OF RULES TO REGULATE FACILITIES UNTIL A PERMIT IS ISSUED; TRANSFERRING RULEMAKING AUTHORITY FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO THE BOARD OF ENVIRONMENTAL REVIEW; AMENDING SECTIONS 75-2-103, 75-2-211, AND 75-2-218, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE | 744 |
| 237 | <i>(Senate Bill No. 126; Brueggeman)</i> REQUIRING THE OWNER OF A MOTORBOAT, SAILBOAT, OR PERSONAL WATERCRAFT TO VERIFY USE OF THE ORIGINAL IDENTIFYING NUMBER EVERY 3 YEARS BY OBTAINING VALIDATION DECALS AT NO COST; REQUIRING THE OWNER OF A VESSEL TO AFFIX THE VALIDATION DECALS TO THE FORWARD HALF OF THE VESSEL; ESTABLISHING LIMITS ON | |

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| | PENALTIES FOR NONCOMPLIANCE; DEFINING “VALIDATION DECAL”; ALLOWING ALL NEW OWNERS 40 DAYS TO OBTAIN AND DISPLAY REGISTRATION AND VALIDATION DECALS AND TO APPLY FOR A NEW CERTIFICATE OF NUMBER; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO PAY FOR INITIAL PROGRAMMING COSTS; AMENDING SECTIONS 23-2-502, 23-2-511, 23-2-512, AND 23-2-513, MCA; AND PROVIDING AN EFFECTIVE DATE | 756 |
| 238 | (<i>Senate Bill No. 206; Lewis</i>) PROVIDING THAT THE PAY INCREASE FOR THE FIRST COMPLETE PAY PERIOD THAT INCLUDES JANUARY 1, 2005, APPLIES TO ALL STATE EMPLOYEES; ENSURING THAT STATE EMPLOYEES WHO WERE PAID LESS THAN 25 CENTS PER HOUR LESS THAN THE MAXIMUM SALARY ACCORDING TO THE PAY SCHEDULE CONTAINED IN 2-18-312, MCA, WILL CONTINUE TO RECEIVE THE FULL BENEFIT OF THE PAY INCREASE FOR ALL STATE EMPLOYEES THAT OCCURRED ON JANUARY 1, 2005; AMENDING SECTION 2-18-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. | 763 |
| 239 | (<i>Senate Bill No. 214; Gebhardt</i>) CLARIFYING THE DAMAGES TO BE AWARDED FOR THE TAKING OF TIMBER WITHOUT LAWFUL AUTHORITY; STATING THE DAMAGES FOR AN INADVERTENT TAKING; STATING THE DAMAGES FOR A TAKING BY PUBLIC OFFICERS OR EMPLOYEES FOR THE PURPOSES OF A HIGHWAY; STATING THE DAMAGES FOR A WILLFUL, WANTON, OR MALICIOUS TAKING; AMENDING SECTION 70-16-107, MCA; AND REPEALING SECTION 70-16-108, MCA. | 765 |
| 240 | (<i>Senate Bill No. 225; Cocchiarella</i>) AUTHORIZING COUNTIES, CITIES, AND TOWNS TO INVEST IN CERTIFICATES OF DEPOSIT IN IN-STATE FEDERALLY INSURED FINANCIAL INSTITUTIONS THAT ARRANGE FOR THE DEPOSIT OF FUNDS IN OTHER FEDERALLY INSURED FINANCIAL INSTITUTIONS ON A RECIPROCAL BASIS; AMENDING SECTION 7-6-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. | 766 |
| 241 | (<i>Senate Bill No. 244; Squires</i>) ALLOWING RECREATIONAL VEHICLES AND CAMPERS USED FOR NONCOMMERCIAL PURPOSES TO EXCEED VEHICLE WIDTH LIMITS UNDER CERTAIN CIRCUMSTANCES; REVISING THE DEFINITION OF “TRAVEL TRAILER”; AMENDING SECTIONS 61-1-129, 61-1-131, 61-1-132, AND 61-10-102, MCA; AND PROVIDING AN EFFECTIVE DATE | 767 |
| 242 | (<i>Senate Bill No. 264; Smith</i>) PROHIBITING ARREST OR CITATION QUOTAS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE | 769 |
| 243 | (<i>Senate Bill No. 282; Smith</i>) REVISING THE LAW PROHIBITING RACIAL PROFILING; REQUIRING WRITTEN POLICIES AND COMPLAINT PROCEDURES; REQUIRING TRAINING FOR LAW ENFORCEMENT OFFICERS; AND AMENDING SECTION 44-2-117, MCA. | 769 |
| 244 | (<i>Senate Bill No. 286; Ryan</i>) REVISING CERTAIN NOTIFICATION AND RETAINAGE PROVISIONS WITH RESPECT TO PUBLIC CONSTRUCTION CONTRACTS; ELIMINATING THE REQUIREMENT ON NONPUBLIC CONSTRUCTION CONTRACTS THAT A PERSON RESPONSIBLE FOR CONSTRUCTION PAYMENTS TO A CONTRACTOR OR SUBCONTRACTOR MUST BE INFORMED THAT INTEREST ACCRUES ON LATE CONSTRUCTION PAYMENTS; REDUCING THE AMOUNT OF RETAINAGE ON NONPUBLIC | |

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| | CONSTRUCTION CONTRACTS FROM 10 PERCENT TO 5 PERCENT; AND AMENDING SECTIONS 28-2-2104 AND 28-2-2110, MCA | 771 |
| 245 | <i>(Senate Bill No. 298; Tropila)</i> ADDRESSING THE PRODUCTION OF FISH AT AND PLANTING OF FISH FROM THE FORT PECK MULTISPECIES FISH HATCHERY; CLARIFYING THAT PRODUCTION OF FISH SPECIES AT THE FORT PECK MULTISPECIES FISH HATCHERY INCLUDES PALLID STURGEON, PADDLEFISH, AND CERTAIN CLASSIFIED WARM WATER SPECIES; PROVIDING THAT ANY WATERS LISTED IN THE 2005 MONTANA FISHING REGULATIONS THAT REQUIRE A WARM WATER STAMP AND WATERS PLANTED WITH FISH FROM THE FORT PECK MULTISPECIES FISH HATCHERY BE PERMANENTLY INCLUDED IN THE LIST OF WATERS FOR WHICH A WARM WATER GAME FISH STAMP IS REQUIRED; AMENDING SECTIONS 87-3-235 AND 87-3-236, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE | 772 |
| 246 | <i>(Senate Bill No. 322; Gillan)</i> PROVIDING FOR THE DUTY OF A HEALTH CARE PROVIDER WHO PERFORMS A MEDICAL EXAM AT THE REQUEST OF A PARTY OTHER THAN THE EXAMINEE; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE | 774 |
| 247 | <i>(Senate Bill No. 325; Gebhardt)</i> REVISING THE PROVISION OF INTERIOR ADVERTISING MATERIAL BY BREWERS, BEER IMPORTERS, AND WHOLESALERS TO RETAILERS; AND AMENDING SECTION 16-3-241, MCA | 774 |
| 248 | <i>(Senate Bill No. 329; Tester)</i> CLARIFYING THE STATE'S ROLE IN PROMOTING "MADE-IN-MONTANA" PRODUCTS; AND AMENDING SECTION 90-1-105, MCA | 776 |
| 249 | <i>(Senate Bill No. 335; Williams)</i> REVISING THE BLIND VENDOR VOCATIONAL OPPORTUNITIES PROGRAM TO INCLUDE MILITARY RESERVATIONS; AND AMENDING SECTION 18-5-402, MCA | 776 |
| 250 | <i>(Senate Bill No. 347; Lind)</i> REVISING LOBBYING REPORTING REQUIREMENTS FOR PRINCIPALS; AND AMENDING SECTION 5-7-208, MCA | 778 |
| 251 | <i>(Senate Bill No. 349; Cocchiarella)</i> PROVIDING THAT AN INSURANCE COMPANY MAY NOT REQUIRE A PERSON ENTITLED TO A CAR RENTAL WHILE THE PERSON'S OWN CAR IS BEING REPAIRED TO SELECT ANY ONE CAR RENTAL BUSINESS; AND PROVIDING THAT AN INSURANCE COMPANY THAT PROVIDES FOR DIRECT PAYMENT TO ANY ONE OR MORE CAR RENTAL BUSINESSES IN THIS STATE MUST PROVIDE FOR DIRECT PAYMENT TO ANY CAR RENTAL BUSINESS CHOSEN BY A PERSON FOR WHOM THE INSURANCE COMPANY IS OBLIGATED TO PROVIDE A CAR RENTAL | 779 |
| 252 | <i>(Senate Bill No. 350; Cocchiarella)</i> PROVIDING THAT DIVISIONS OF LAND THAT ARE EXEMPT FROM REVIEW AS SUBDIVISIONS ARE SUBJECT TO APPLICABLE LOCAL ZONING REGULATIONS; AND AMENDING SECTION 76-3-207, MCA. | 780 |
| 253 | <i>(Senate Bill No. 352; Grimes)</i> CLARIFYING THE INADMISSIBILITY OF MEDICAL MALPRACTICE LEGAL PANEL DECISIONS AND THE BASIS FOR THEM; AMENDING SECTION 27-6-704, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. | 781 |
| 254 | <i>(Senate Bill No. 355; Shockley)</i> REVISING THE PAYMENT OF TRANSCRIPT FEES TO COURT REPORTERS IN CRIMINAL CASES; AMENDING SECTION 3-5-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. | 782 |

- 255 (*Senate Bill No. 363; Williams*) GENERALLY REVISING THE LAWS RELATING TO SPECIAL EDUCATION; CLARIFYING THAT SCHOOL DISTRICTS MAY OFFER SPECIAL EDUCATION PROGRAMS FOR STUDENTS WHO ARE OUTSIDE OF THE REQUIRED AGES; REMOVING REQUIREMENTS THAT THE SUPERINTENDENT OF PUBLIC INSTRUCTION RECOMMEND AND APPROVE SCHOOL DISTRICT SPECIAL EDUCATION PROGRAMS; REPLACING THE TERM "DIAGNOSING" WITH "IDENTIFYING"; REVISING SPECIAL EDUCATION TUITION AND TRANSPORTATION STATUTES TO BE CONSISTENT WITH OTHER TUITION AND TRANSPORTATION STATUTES; CLARIFYING THAT SCHOOL DISTRICTS DO NOT NEED APPROVAL TO PROVIDE A FREE AND APPROPRIATE EDUCATION FOR SPECIAL EDUCATION STUDENTS; ENSURING THAT SCHOOL DISTRICTS MAY RECEIVE FUNDING FOR SPECIAL EDUCATION FOR STUDENTS WITH DISABILITIES WHO ARE UNDER 6 YEARS OF AGE; SHORTENING THE TIME PERIOD FOR APPOINTING A SURROGATE PARENT; MAKING THE REVISIONS NECESSARY TO COMPLY WITH THE REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT; AMENDING SECTIONS 20-7-402, 20-7-403, 20-7-411, 20-7-414, 20-7-420, 20-7-431, 20-7-443, 20-7-461, AND 20-10-144, MCA; REPEALING SECTIONS 20-7-412, 20-7-441, AND 20-7-442, MCA; AND PROVIDING AN EFFECTIVE DATE 783
- 256 (*Senate Bill No. 365; Ellingson*) EXTENDING THE UNIVERSAL SYSTEM BENEFITS CHARGE RATES THROUGH DECEMBER 31, 2009; AMENDING SECTION 69-8-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 791
- 257 (*Senate Bill No. 368; Cocchiarella*) ELIMINATING THE REQUIREMENT, WITH RESPECT TO THE WORKERS' COMPENSATION SUBSEQUENT INJURY FUND, THAT AN EMPLOYER HIRING OR RETAINING A CERTIFIED PERSON WITH A DISABILITY FILE INFORMATION WITH THE DEPARTMENT; PROVIDING CONDITIONS FOR SUBSEQUENT INJURY FUND ELIGIBILITY; AMENDING SECTION 39-71-905, MCA; REPEALING SECTION 39-71-906, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 794
- 258 (*Senate Bill No. 369; Cocchiarella*) PROVIDING THAT A DEALER THAT SELLS NEW AND USED MOTOR VEHICLES OR RECREATIONAL VEHICLES MAY OBTAIN ADDITIONAL DEMONSTRATOR PLATES TO BE PLACED ON VEHICLES BEING MOVED TO OR FROM SERVICE AND REPAIR FACILITIES BEFORE SALE; AND AMENDING SECTION 61-4-129, MCA 795
- 259 (*Senate Bill No. 370; Squires*) PROVIDING FOR COUNTY DETENTION OFFICER MEMBERSHIP IN THE SHERIFFS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-7-101, 19-7-301, AND 19-7-302, MCA; AND PROVIDING AN EFFECTIVE DATE. 796
- 260 (*Senate Bill No. 373; Essmann*) GENERALLY REVISING LICENSING LAWS FOR PROFESSIONAL EMPLOYER ORGANIZATIONS AND GROUPS; DEFINING "FINANCIAL STATEMENTS"; REQUIRING A \$100,000 SECURITY DEPOSIT IN CERTAIN CASES; PROVIDING THAT A SECURITY BOND, A LETTER OF CREDIT, OR MARKETABLE SECURITIES DEPOSITED WITH THE DEPARTMENT MAY BE USED TO PAY CERTAIN LIABILITIES; ALLOWING FOR AFFIDAVITS BY ASSURANCE ORGANIZATIONS TO VERIFY THAT FINANCIAL REQUIREMENTS ARE MET; PROVIDING FOR PROVISIONAL LICENSING; PROVIDING THAT A CLIENT IS NOT PRECLUDED FROM PROVIDING BENEFITS TO EMPLOYEES COEMPLOYED BY A

PROFESSIONAL EMPLOYER ORGANIZATION OR GROUP; AMENDING SECTIONS 39-8-102, 39-8-202, 39-8-204, 39-8-206, 39-8-207, AND 39-8-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 798

261 (*Senate Bill No. 410; Gallus*) EXPANDING THE POWER OF CITIES AND TOWNS TO CONTROL, REMOVE, AND RESTRICT GAME ANIMALS UNDER PLANS APPROVED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AMENDING SECTIONS 7-3-1105, 7-3-1222, 7-31-4110, AND 87-3-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 807

262 (*Senate Bill No. 451; Wheat*) REVISING SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS LICENSING LAWS; REVISING THE DEFINITION OF "PRACTICE OF AUDIOLOGY" AND "PRACTICE OF SPEECH-LANGUAGE PATHOLOGY"; REVISING LICENSE EXEMPTION AND EXAMINATION REQUIREMENTS; AND AMENDING SECTIONS 37-15-101, 37-15-102, 37-15-103, 37-15-303, 37-15-304, 37-15-307, AND 37-15-313, MCA 809

263 (*Senate Bill No. 457; Gebhardt*) REVISING THE TIME PERIOD FOR AN INSURER TO GIVE NOTICE OF PREMIUM DUE; CLARIFYING NOTICE REQUIREMENTS FOR CANCELLATION OF INSURANCE POLICIES ON HOMES FOR NONPAYMENT; AND AMENDING SECTIONS 33-15-1103, 33-15-1105, AND 33-23-401, MCA 814

264 (*Senate Bill No. 460; Weinberg*) ALLOWING THE TRUSTEES OF A UNIFIED SCHOOL DISTRICT OR A JOINT BOARD OF TRUSTEES TO CONDUCT MORE THAN ONE MAIL BALLOT SCHOOL BOND ELECTION ON THE SAME DAY; AMENDING SECTION 13-19-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 815

265 (*Senate Bill No. 478; Gallus*) PROVIDING THAT AN EMERGENCY ADMINISTRATIVE RULE MAY NOT BE USED TO IMPLEMENT AN ADMINISTRATIVE BUDGET REDUCTION; SPECIFICALLY INCLUDING PROVIDERS OF SERVICES UNDER CONTRACTS WITH THE STATE AS AN AFFECTED CLASS OF PERSONS FOR PURPOSES OF A STATEMENT OF THE PROBABLE ECONOMIC IMPACT OF A RULE ON AFFECTED CLASSES OF PERSONS; AMENDING SECTIONS 2-4-303 AND 2-4-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 816

266 (*Senate Bill No. 479; Lind*) SPECIFYING THE ENTITIES TO WHICH A BILL OR DEMAND FOR PAYMENT FOR ANATOMIC PATHOLOGY SERVICES MAY BE PRESENTED; PROHIBITING A PHYSICIAN OR OTHER PRACTITIONER OF THE HEALING ARTS FROM BILLING FOR ANATOMIC PATHOLOGY SERVICES UNLESS THOSE SERVICES WERE PROVIDED BY THE PHYSICIAN OR OTHER PRACTITIONER; SPECIFYING ENTITIES NOT REQUIRED TO REIMBURSE FOR CERTAIN ANATOMIC PATHOLOGY SERVICES; PROVIDING EXEMPTIONS; PROVIDING A REMEDY FOR VIOLATIONS; PROVIDING DEFINITIONS; AND PROVIDING AN APPLICABILITY DATE 818

267 (*Senate Bill No. 497; Tropila*) LIMITING THE TRANSFERABILITY OF THE LOCATION OF RETAIL BEER LICENSES AND ALL-BEVERAGES LIQUOR LICENSES THAT ARE BROUGHT TO WITHIN 5 MILES OF A CITY OR TOWN BECAUSE OF ANNEXATION; AMENDING SECTIONS 16-4-105 AND 16-4-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 820

268 (*House Bill No. 643; Dowell*) PROHIBITING SMOKING IN ALL PUBLIC SCHOOLS AND IN ALL PLACES WHERE THE PUBLIC IS FREE TO

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| | ENTER, INCLUDING BUILDINGS OWNED OR OCCUPIED BY POLITICAL SUBDIVISIONS; PROVIDING LEGISLATIVE INTENT AND PURPOSE; PROVIDING EXCEPTIONS; REQUIRING THE POSTING OF SIGNS INFORMING PERSONS OF THE SMOKING PROHIBITION; PROVIDING FOR ENFORCEMENT; REQUIRING RULEMAKING BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; ALLOWING ADOPTION OF A STRICTER ORDINANCE OR REGULATION BY A POLITICAL SUBDIVISION AFTER SEPTEMBER 30, 2009; ESTABLISHING PENALTIES; AMENDING SECTIONS 20-1-220, 50-40-102, 50-40-103, 50-40-104, 50-40-108, AND 50-40-201, MCA; REPEALING SECTIONS 7-1-120, 50-40-105, 50-40-106, 50-40-107, 50-40-109, 50-40-202, 50-40-203, AND 50-40-207, MCA; AND PROVIDING A TERMINATION DATE | 823 |
| 269 | <i>(Senate Bill No. 191; Grimes)</i> SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE IV, SECTION 8, ARTICLE VI, SECTIONS 1, 2, 3, 4, 6, AND 7, AND ARTICLE X, SECTION 4, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE NAME OF THE STATE AUDITOR BE CHANGED TO THE INSURANCE COMMISSIONER | 828 |
| 270 | <i>(House Bill No. 68; Andersen)</i> PROHIBITING THE ADMINISTRATION OF ANY MEDICINE TO A CHILD IN A LICENSED OR UNLICENSED DAY-CARE FACILITY WITHOUT PROPER AUTHORIZATION FROM THE CHILD'S PARENT OR GUARDIAN; PROVIDING AN EXCEPTION; PROVIDING DEFINITIONS; AND PROVIDING A CRIMINAL PENALTY | 831 |
| 271 | <i>(House Bill No. 105; Parker)</i> PROVIDING FOR PARTIAL PAYMENT OF THE SALARY OF A DEPUTY SHERIFF INJURED IN THE PERFORMANCE OF THE DEPUTY SHERIFF'S DUTY; PROVIDING FOR ASSIGNMENT TO LIGHT DUTY OR ANOTHER DEPARTMENT OR AGENCY; PROVIDING THAT THE DEPUTY SHERIFF AND EMPLOYER RETIREMENT CONTRIBUTIONS MUST BE BASED ON TOTAL COMPENSATION; AND REPEALING SECTION 19-7-810, MCA | 833 |
| 272 | <i>(House Bill No. 140; Parker)</i> CREATING A MONTANA CONSUMER DEBT MANAGEMENT SERVICES ACT; REQUIRING LICENSURE OF CREDIT COUNSELING SERVICES; ESTABLISHING REQUIREMENTS FOR DEBT MANAGEMENT PLANS ENTERED INTO BETWEEN CONSUMERS AND CREDIT COUNSELING SERVICES; DESIGNATING PROHIBITED PRACTICES FOR CREDIT COUNSELING SERVICES; PROVIDING THE DEPARTMENT OF ADMINISTRATION WITH RULEMAKING AUTHORITY; PROVIDING REMEDIES AND PENALTIES; REPEALING CERTAIN DEBT ADJUSTMENT LAWS; AMENDING SECTION 5, CHAPTER 125, LAWS OF 2005; REPEALING SECTIONS 31-3-201, 31-3-202, AND 31-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE | 834 |
| 273 | <i>(House Bill No. 167; MacLaren)</i> INCREASING THE FREQUENCY AT WHICH THE SECRETARY OF STATE IS REQUIRED TO PROVIDE A LIST OF CERTAIN CORPORATIONS, LIMITED PARTNERSHIPS, LIMITED LIABILITY COMPANIES, AND LIMITED LIABILITY PARTNERSHIPS TO THE DEPARTMENT OF REVENUE; AND AMENDING SECTION 15-31-603, MCA | 838 |
| 274 | <i>(House Bill No. 244; Lambert)</i> DESIGNATING TERRY, MONTANA, AS THE OFFICIAL HOME OF THE EVELYN CAMERON GALLERY AND DIRECTING THE DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF TRANSPORTATION TO IDENTIFY IT AS SUCH ON OFFICIAL STATE MAPS AND HIGHWAY SIGNS AND TO AMEND HIGHWAY SIGNS IN THE VICINITY OF TERRY TO REFLECT THE DESIGNATION | 839 |

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| 275 | <i>(House Bill No. 297; Wiseman)</i> PROVIDING THAT PAPER BALLOTS MUST BE USED IN ANY ELECTION SO THAT VOTES MAY BE MANUALLY COUNTED; PROVIDING AN EXCEPTION ONLY TO FACILITATE VOTING BY DISABLED VOTERS; AND AMENDING SECTION 13-17-103, MCA | 840 |
| 276 | <i>(House Bill No. 307; Parker)</i> CREATING THE OFFENSE OF MONEY LAUNDERING; PROVIDING FOR THE FORFEITURE AND SALE OF PROPERTY USED IN THE COMMISSION OF THE OFFENSE; AND PROVIDING FOR SALE PROCEEDS TO BE DEPOSITED IN THE STATE GENERAL FUND | 841 |
| 277 | <i>(House Bill No. 326; Peterson)</i> CHANGING THE PENALTY FOR A SECOND OR SUBSEQUENT OFFENSE OF POSSESSION OF METHAMPHETAMINE; REQUIRING THE DEPARTMENT OF CORRECTIONS TO CONTRACT FOR THE ESTABLISHMENT AND MAINTENANCE OF RESIDENTIAL METHAMPHETAMINE TREATMENT PROGRAMS AND TO ADOPT RULES FOR THE PROGRAMS; AND AMENDING SECTIONS 41-5-206, 45-9-102, AND 53-1-203, MCA | 842 |
| 278 | <i>(House Bill No. 379; Windy Boy)</i> ESTABLISHING A PERMANENT TRUST FUND FOR LONG-TERM OR PERPETUAL WATER TREATMENT AT THE ZORTMAN AND LANDUSKY MINE SITES; REQUIRING A TWO-THIRDS VOTE BY THE LEGISLATURE TO APPROPRIATE THE PRINCIPAL OF THE TRUST; DIRECTING THE TRANSFER OF FUNDS FROM THE ORPHAN SHARE ACCOUNT TO THE PERMANENT TRUST FUND; AMENDING SECTION 75-10-743, MCA; AND PROVIDING AN EFFECTIVE DATE | 847 |
| 279 | <i>(House Bill No. 406; Bergren)</i> ADOPTING THE COUNTRY OF ORIGIN PLACARDING ACT; REQUIRING A COUNTRY OF ORIGIN PLACARD ON SPECIFIC COMMODITIES OFFERED FOR SALE IN MONTANA; PROVIDING PENALTIES FOR OFFERING FOR SALE SPECIFIC COMMODITIES WITHOUT INDICATING THE COUNTRY OF ORIGIN AND FOR REMOVING LABELS; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO DEVELOP RULES TO IMPLEMENT THE COUNTRY OF ORIGIN PLACARDING ACT; AND PROVIDING EFFECTIVE DATES | 850 |
| 280 | <i>(House Bill No. 425; Parker)</i> GENERALLY REVISING UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAWS, TELEMARKETING LAWS, AND NEW MOTOR VEHICLE WARRANTY LAWS; PROVIDING THAT ALL ADMINISTRATIVE AND ENFORCEMENT FUNCTIONS RELATING TO UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAWS AND TELEMARKETING LAWS BE PLACED UNDER THE DEPARTMENT OF JUSTICE RATHER THAN SPLIT BETWEEN THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF ADMINISTRATION; REQUIRING COURTS TO AWARD ATTORNEY FEES TO THE PREVAILING PARTY IN AN ACTION FOR UNFAIR TRADE PRACTICES; TRANSFERRING ALL OF THE DEPARTMENT OF ADMINISTRATION'S ADMINISTRATIVE AND ENFORCEMENT FUNCTIONS, INCLUDING RULEMAKING AUTHORITY, PERTAINING TO NEW MOTOR VEHICLE WARRANTIES TO THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 30-14-102, 30-14-121, 30-14-131, 30-14-143, 30-14-201, 30-14-202, 30-14-220, 30-14-222, 30-14-226, 30-14-1403, 30-14-1407, 30-14-1412, 30-14-1413, 61-4-507, 61-4-511, 61-4-512, 61-4-515, 61-4-516, 61-4-517, 61-4-518, 61-4-519, 61-4-520, 61-4-525, 61-4-526, AND 61-4-532, MCA; AND PROVIDING AN EFFECTIVE DATE | 852 |

281 (*House Bill No. 668; Noonan*) PROVIDING EXCEPTIONS AND EXEMPTIONS TO PROHIBITIONS ON POSSESSION OF EXOTIC WILDLIFE FOR ROADSIDE MENAGERIES AND SCIENTIFIC TESTING FACILITIES; PROVIDING ENFORCEMENT ABILITY AND PRESCRIBED REMEDIES TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR VIOLATIONS; PROVIDING THE FISH, WILDLIFE, AND PARKS COMMISSION WITH AUTHORITY TO GRANT EXCEPTIONS; AMENDING SECTIONS 87-5-703, 87-5-704, 87-5-709, 87-5-712, AND 87-5-721, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 864

282 (*House Bill No. 721; Parker*) ESTABLISHING THE MONTANA DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT; RECOGNIZING A JURISDICTIONAL BASIS FOR STATE COURTS TO IMPLEMENT A VOLUNTARY DRUG OFFENDER ACCOUNTABILITY AND TREATMENT PROGRAM FOR QUALIFYING DRUG OFFENDERS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 867

283 (*Senate Bill No. 61; Cocchiarella*) PROVIDING FOR APPOINTMENT OF TWO LEGISLATIVE LIAISONS TO THE STATE COMPENSATION INSURANCE FUND BOARD OF DIRECTORS; PROVIDING COMPENSATION AND LENGTH OF SERVICE; AMENDING SECTION 2-15-1019, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 873

284 (*Senate Bill No. 88; Squires*) PROVIDING THAT AN ELECTOR MAY REQUEST ABSENTEE BALLOTS FOR SUBSEQUENT ELECTIONS; PROVIDING FOR A REQUEST FORM; AMENDING SECTIONS 13-13-212 AND 13-13-214, MCA; AND PROVIDING AN EFFECTIVE DATE 874

285 (*Senate Bill No. 299; Toole*) REVISING DEFINITIONS, COMPONENTS, AND PROCESSES REGARDING THE PRIVATIZATION OF STATE SERVICES AND PRIVATIZATION PLANS; EXTENDING AND IMPOSING DEADLINES REGARDING PRIVATIZATION PLANS AND REVIEW OF PRIVATIZATION PLANS; REQUIRING THE LEGISLATIVE AUDIT COMMITTEE TO MAKE FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS REGARDING PRIVATIZATION PLANS; REQUIRING THE GOVERNOR TO APPROVE OR DISAPPROVE PRIVATIZATION PLANS; AND AMENDING SECTIONS 2-8-301, 2-8-302, 2-8-303, AND 5-13-203, MCA 876

286 (*Senate Bill No. 302; Ellingson*) GENERALLY REVISING ELECTION LAWS; REVISING VOTER REGISTRATION PROVISIONS; REVISING WHEN BALLOTS MUST BE PRINTED; REVISING VOTER IDENTIFICATION REQUIREMENTS; REVISING PROVISIONS ON ABSENTEE VOTING; CLARIFYING HOW REJECTED BALLOTS ARE HANDLED; REVISING PROVISIONS GOVERNING STANDARDS FOR VOTING SYSTEMS; AND AMENDING SECTIONS 13-2-108, 13-2-110, 13-2-115, 13-2-301, 13-2-514, 13-13-201, 13-13-205, 13-13-212, 13-13-213, 13-13-232, 13-13-233, 13-13-241, 13-13-243, 13-15-107, 13-15-201, 13-17-103, AND 13-17-212, MCA; REPEALING SECTIONS 13-2-302 AND 13-15-203, MCA; AND PROVIDING EFFECTIVE DATES 878

287 (*Senate Bill No. 324; Tester*) PROVIDING FOR PRESCRIPTION DRUG ACCESS AND INFORMATION; PROVIDING FOR A STATE PHARMACY ACCESS PROGRAM TO COMPLEMENT THE FEDERAL MEDICARE PART D PROGRAM; PROVIDING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES ADMINISTER THE PROGRAM; PROVIDING FOR A PRESCRIPTION DRUG CONSUMER INFORMATION AND TECHNICAL ASSISTANCE PROGRAM AND EDUCATION OUTREACH FOR CONSUMERS AND PROFESSIONALS;

AMENDING THE PRESCRIPTION DRUG EXPANSION PROGRAM AS A STATE PHARMACY DISCOUNT PROGRAM; AMENDING SECTIONS 53-6-1001, 53-6-1002, 53-6-1003, 53-6-1010, 53-6-1013, AND 53-6-1201, MCA; REPEALING SECTION 13, CHAPTER 551, LAWS OF 2003; AND PROVIDING AN EFFECTIVE DATE 889

288 *(House Bill No. 22; McNutt)* PROVIDING THE FINDINGS AND PURPOSE OF IMPLEMENTING A WATER ADJUDICATION FEE; PROVIDING BENCHMARKS AND ACTION, INCLUDING ELIMINATION OF THE FEE, THAT MUST BE TAKEN IF BENCHMARKS ARE NOT MET BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; ALLOWING THE REEXAMINATION, PRIOR TO THE ISSUANCE OF A FINAL DECREE, OF CLAIMS IN BASINS THAT WERE VERIFIED; DEFINING "OWNER" FOR PURPOSES OF THE WATER ADJUDICATION FEE; ESTABLISHING WATER ADJUDICATION FEES; PROVIDING THAT THE FEE DOES NOT APPLY TO FEDERAL WATER RIGHTS AND INDIAN RESERVED AND ABORIGINAL CLAIMS TO WATER; PROVIDING THAT THE DEPARTMENT OF REVENUE COLLECT THE FEE ON BEHALF OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ASSIGN ANY UNPAID FEES TO THE DEPARTMENT OF REVENUE FOR COLLECTION; PROVIDING THAT A LIEN MAY BE PLACED ON A WATER RIGHT IF THE FEE IS NOT PAID AFTER COLLECTION EFFORTS; ESTABLISHING A WATER ADJUDICATION ACCOUNT; ESTABLISHING THE AMOUNT OF REVENUE ALLOCATED EACH YEAR FROM THE ACCOUNT; PROVIDING THAT THE FEE MAY NOT BE ASSESSED ONCE \$31 MILLION HAS BEEN DEPOSITED IN THE ADJUDICATION ACCOUNT; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE WATER COURT TO REPORT TO THE ENVIRONMENTAL QUALITY COUNCIL AND THE APPLICABLE LEGISLATIVE APPROPRIATION SUBCOMMITTEES; PROVIDING THE PROCESS FOR EXAMINATION OF CLAIMS IN VERIFIED BASINS PRIOR TO THE ISSUANCE OF A FINAL DECREE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-1-216, 85-2-231, AND 85-2-237, MCA; AN PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 896

289 *(House Bill No. 67; Jent)* GENERALLY REVISING PROVISIONS OF THE MONTANA PROCUREMENT ACT; PROVIDING THAT THE PUBLIC HAS THE RIGHT TO INSPECT COMPETITIVE SEALED BIDS AFTER THEY ARE OPENED, SUBJECT TO SPECIFIED LIMITATIONS; PROVIDING THAT ART PURCHASED OR COMMISSIONED FOR A MUSEUM OR PUBLIC DISPLAY IS EXEMPT FROM THE ACT; REVISING THE INFORMATION IN A BID OR OFFER THAT MAY NOT BE DISCLOSED; REMOVING THE SUNSET FROM THE PROVISION AUTHORIZING AN AGENCY TO REQUEST AN ALTERNATIVE PROCUREMENT METHOD; REMOVING THE CAP ON THE AMOUNT FOR WHICH A LETTER OF CREDIT MAY BE ISSUED; PROVIDING AN EXCEPTION TO HOW LONG PERFORMANCE SECURITY ON A CONTRACT MUST BE KEPT; CLARIFYING EXCEPTIONS TO THE CONTRACT TIME PERIOD LIMIT SPECIFIED IN THE ACT; AMENDING SECTIONS 18-4-126, 18-4-132, 18-4-301, 18-4-303, 18-4-304, 18-4-308, 18-4-312, AND 18-4-313, MCA; REPEALING SECTION 29, CHAPTER 181, LAWS OF 2001; AND PROVIDING AN EFFECTIVE DATE 904

290 *(House Bill No. 156; Henry)* ESTABLISHING RECIPROCAL TIME LIMITS FOR HEALTH INSURANCE CLAIM FILING, CLAIM REIMBURSEMENTS, AND CLAIM AUDITS; SETTING A TIME LIMIT

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| | FOR HEALTH INSURANCE ISSUERS TO SEEK REIMBURSEMENT OR AN OFFSET OF A CLAIM AND PROVIDING EXCEPTIONS TO THE TIME LIMIT; REQUIRING AN AGREEMENT TO USE CURRENT CLAIM PAYMENTS TO OFFSET PAST OVERPAYMENTS OR INVALID PAYMENTS; AMENDING SECTION 33-22-101, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE. . . | 911 |
| 291 | <i>(House Bill No. 295; Galvin-Halero)</i> PROHIBITING EXPIRATION DATES ON GIFT CARDS AND GIFT CERTIFICATES; ASSOCIATING OWNERSHIP WITH THE POSSESSOR OF THE CARD OR CERTIFICATE; LIMITING FEES; ALLOWING LIMITED CASH REDEMPTION; AND AMENDING SECTION 30-14-102, MCA. | 913 |
| 292 | <i>(House Bill No. 363; Eaton)</i> CHANGING THE MENTAL STATE ELEMENT OF AND EXPANDING THE OFFENSE OF ASSAULT WITH A BODILY FLUID; INCLUDING AN ASSAULT ON AN EMERGENCY RESPONDER OR A HEALTH CARE PROVIDER, INCLUDING A HEALTH CARE PROVIDER PERFORMING EMERGENCY SERVICES, WHILE THE HEALTH CARE PROVIDER IS ACTING IN THE COURSE AND SCOPE OF THE HEALTH CARE PROVIDER'S PROFESSION OR OCCUPATION; AND AMENDING SECTION 45-5-214, MCA | 915 |
| 293 | <i>(House Bill No. 528; Koopman)</i> REMOVING SEASONAL RESTRICTIONS ON THE BEER AND WINE LICENSE FOR THE YELLOWSTONE AIRPORT; IMPOSING AN ANNUAL FEE OF \$400 ON THE LESSEE OF A RETAIL BEER AND WINE LICENSE AT THE YELLOWSTONE AIRPORT; AMENDING SECTIONS 16-4-304 AND 16-4-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE | 916 |
| 294 | <i>(House Bill No. 628; Clark)</i> PROVIDING FOR A BOARD OF PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS; PROVIDING FOR REGISTRATION WITH THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING BOARD DUTIES; REQUIRING A REPORT TO THE LEGISLATURE ON THE NEED FOR ANY ADDITIONAL REGULATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. | 919 |
| 295 | <i>(House Bill No. 745; Matthews)</i> APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2005; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. | 921 |
| 296 | <i>(Senate Bill No. 1; Schmidt)</i> PROVIDING FOR AN INDICATION ON A DRIVER'S LICENSE THAT A LICENSEE HAS EXECUTED A LIVING WILL DECLARATION; AND AMENDING SECTION 61-5-301, MCA . . | 922 |
| 297 | <i>(Senate Bill No. 104; Gillan)</i> PROVIDING A GRADUATED DRIVER'S LICENSING PROGRAM, WITH MOTOR VEHICLE OPERATION RESTRICTIONS, FOR PERSONS UNDER 18 YEARS OF AGE; AMENDING SECTIONS 61-5-106 AND 61-5-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE. . . | 923 |
| 298 | <i>(Senate Bill No. 116; Laible)</i> REVISING LOCAL GOVERNMENT REVIEW OF PROPOSED SUBDIVISIONS; CREATING DEFINITIONS OF "MINOR SUBDIVISION" AND "PUBLIC UTILITY"; REQUIRING LOCAL SUBDIVISION REGULATIONS TO LIST MATERIALS REQUIRED IN A SUBDIVISION APPLICATION; REQUIRING THE REGULATIONS TO ADDRESS MULTIPLE HEARINGS; REQUIRING THE REGULATIONS TO ESTABLISH EVASION CRITERIA AND PROVIDE FOR AN APPEALS PROCESS; REQUIRING THE REGULATIONS TO ESTABLISH A PREAPPLICATION PROCESS; ESTABLISHING A COMPLETENESS REVIEW FOR THE APPLICATION AND REVIEW FOR SUFFICIENCY OF INFORMATION AND PROVIDING DEADLINES FOR THOSE REVIEWS; PROVIDING A PROCEDURE FOR | |

MULTIPLE HEARINGS WHEN NEW INFORMATION IS PRESENTED TO A GOVERNING BODY; REVISING THE REVIEW PROCEDURE FOR FIRST AND SUBSEQUENT MINOR SUBDIVISIONS FROM A TRACT OF RECORD, ALLOWING FOR EXPEDITED REVIEW OF MINOR SUBDIVISIONS, AND ALLOWING A GOVERNING BODY TO ADOPT REGULATIONS SPECIFIC TO MINOR SUBDIVISIONS; REQUIRING THAT ANY DECISION BY A GOVERNING BODY ON A PROPOSED SUBDIVISION BE ACCOMPANIED BY INFORMATION ON THE APPEALS PROCESS, THE RELEVANT REGULATIONS AND STATUTES, DATA THE GOVERNING BODY USED TO MAKE ITS DECISION, AND CONDITIONS THAT APPLY IF APPROVAL IS CONDITIONAL; AMENDING SECTIONS 76-3-103, 76-3-501, 76-3-504, 76-3-601, 76-3-602, 76-3-603, 76-3-604, 76-3-605, 76-3-608, 76-3-609, 76-3-610, 76-3-620, 76-3-625, AND 76-4-127, MCA; REPEALING SECTION 76-3-505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES. 929

299 (*Senate Bill No. 185; Mangan*) AUTHORIZING COUNTIES, CITIES, TOWNS, AND CONSOLIDATED LOCAL GOVERNMENTS TO IMPOSE IMPACT FEES UPON NEW DEVELOPMENT TO FUND ALL OR A PORTION OF THE PUBLIC FACILITY CAPITAL IMPROVEMENTS AFFECTED BY THE NEW DEVELOPMENT; PROVIDING DEFINITIONS; PROVIDING A METHOD FOR CALCULATING, IMPOSING, AND COLLECTING IMPACT FEES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . 944

300 (*Senate Bill No. 255; Gebhardt*) CREATING THE AIRPORT COMPATIBILITY ACT; DEFINING "AIRPORT AFFECTED AREA"; REQUIRING A GOVERNING BODY TO DESIGNATE AN AIRPORT AFFECTED AREA FOR CERTAIN AIRPORTS AND REQUIRING REGULATIONS TO BE CONCURRENTLY ADOPTED; REQUIRING MAPS AND LEGAL DESCRIPTIONS OF THE AIRPORT AFFECTED AREA; REQUIRING A PUBLIC HEARING BEFORE DESIGNATION OF AN AIRPORT AFFECTED AREA; ALLOWING CREATION OF A JOINT REGULATION BOARD; ESTABLISHING CERTAIN MINIMUM REQUIREMENTS FOR AIRPORT AFFECTED AREA REGULATIONS AND ESTABLISHING A PROCEDURE FOR DEVELOPING OR AMENDING THE REGULATIONS; PROVIDING FOR PRIOR NONCONFORMING USES IN AN AIRPORT AFFECTED AREA; PROVIDING FOR ACQUISITION OF PROPERTY UNDER CERTAIN CIRCUMSTANCES; ALLOWING REGULATIONS TO BE PART OF ZONING ORDINANCES; REQUIRING A PERMIT SYSTEM; REQUIRING THE REGULATIONS TO PROVIDE FOR ENFORCEMENT; ESTABLISHING AN APPEALS PROCESS; PROVIDING FOR A VARIANCE FROM THE REGULATIONS; PROVIDING PENALTIES AND REMEDIES FOR VIOLATION OF THE ACT OR REGULATIONS; AMENDING SECTIONS 7-14-4801, 67-1-101, 67-10-102, 67-10-202, 67-10-231, 67-10-402, 67-10-902, 67-11-103, 67-11-201, 67-11-241, AND 70-30-102, MCA; REPEALING SECTIONS 67-4-101, 67-4-102, 67-4-201, 67-4-202, 67-4-203, 67-4-204, 67-4-211, 67-4-301, 67-4-302, 67-4-303, 67-4-304, 67-4-311, 67-4-312, 67-4-313, 67-4-314, 67-4-401, 67-4-402, 67-5-101, 67-5-102, 67-5-201, 67-5-202, 67-5-203, 67-5-204, 67-5-211, 67-5-212, 67-6-101, 67-6-102, 67-6-103, 67-6-201, 67-6-202, 67-6-203, 67-6-204, 67-6-205, 67-6-206, 67-6-207, 67-6-211, AND 67-6-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 949

301 (*Senate Bill No. 274; Barkus*) REVISING THE MONTANA MORTGAGE BROKER AND LOAN ORIGINATOR LICENSING ACT TO REVOKE AN EXEMPTION FOR MORTGAGE BANKERS ACTING AS MORTGAGE

BROKERS; EXPANDING CERTAIN EXEMPTIONS; REQUIRING CERTAIN MORTGAGE BANKERS TO BE LICENSED AS MORTGAGE BROKERS; INCLUDING MORTGAGE BANKER EXPERIENCE AS QUALIFYING EXPERIENCE FOR A MORTGAGE BROKER LICENSE; AND AMENDING SECTIONS 32-9-102, 32-9-104, AND 32-9-109, MCA 965

302 (Senate Bill No. 290; Mangan) REQUIRING CERTAIN WATER AND SANITATION INFORMATION TO BE SUBMITTED WITH A PRELIMINARY PLAT FOR LOCAL SUBDIVISION REVIEW; REQUIRING THE INFORMATION TO CONFORM WITH RULES AND STANDARDS ADOPTED AND PUBLISHED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE BOARD OF ENVIRONMENTAL REVIEW; PROHIBITING A GOVERNING BODY FROM REQUIRING ADDITIONAL WATER AND SANITATION INFORMATION UNLESS CERTAIN PROCEDURES ARE FOLLOWED; REQUIRING A GOVERNING BODY TO COLLECT PUBLIC COMMENT ON THE WATER AND SANITATION INFORMATION AND REQUIRING THE SUBDIVIDER TO FORWARD THE INFORMATION AND PUBLIC COMMENT ON PROPOSED SUBDIVISIONS TO THE APPROPRIATE REVIEWING AUTHORITY; ALLOWING A GOVERNING BODY TO CONDITION APPROVAL ON APPROVAL BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR ON CERTAIN WATER AND SANITATION INFORMATION BEING PROVIDED; PROHIBITING A GOVERNING BODY FROM CONDITIONALLY APPROVING OR DENYING A PROPOSED SUBDIVISION UNLESS THE DECISION IS BASED ON REGULATIONS THAT THE GOVERNING BODY IS AUTHORIZED TO ENFORCE; ALLOWING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES TO CLARIFY THE INFORMATION REQUIRED TO BE SUBMITTED; AND AMENDING SECTIONS 76-3-504, 76-3-511, 76-3-601, 76-3-604, 76-3-608, 76-4-104, AND 76-4-125, MCA 967

303 (Senate Bill No. 412; Cocchiarella) PROVIDING FOR THE LICENSURE AND REGULATION OF ELEVATOR CONTRACTORS, ELEVATOR MECHANICS, AND ELEVATOR INSPECTORS; PROVIDING THE DEPARTMENT OF LABOR AND INDUSTRY WITH RULEMAKING AUTHORITY; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO PROVIDE FOR A LIMITED MECHANIC'S LICENSE AND A LIMITED ELEVATOR CONTRACTOR'S LICENSE; PROVIDING FOR THE APPOINTMENT OF A LICENSED ELEVATOR MECHANIC TO THE BUILDING CODES COUNCIL; REGULATING THE DESIGN, CONSTRUCTION, ALTERATION, OPERATION, MAINTENANCE, REPAIR, INSPECTION, INSTALLATION, AND TESTING OF ELEVATORS, DUMBWAITERS, ESCALATORS, AND OTHER EQUIPMENT; AMENDING SECTION 50-60-115, MCA; REPEALING SECTIONS 50-60-701, 50-60-702, AND 50-60-703, MCA; AND PROVIDING EFFECTIVE DATES 977

304 (Senate Bill No. 433; Lind) REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ESTABLISH A PILOT PROGRAM FOR THE USE OF MEDICAID FUNDS NOT EXPENDED FOR THE PROVISION OF BASIC HEALTH AND SAFETY SERVICES BY INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES; REQUIRING THE DEPARTMENT TO ESTABLISH INDIVIDUAL ACCOUNTS FOR CERTAIN PERSONS WITH DEVELOPMENTAL DISABILITIES; LIMITING THE PURPOSES FOR WHICH THE FUNDS IN THE ACCOUNTS MAY BE USED; REQUIRING THE DEPARTMENT TO MONITOR THE USE OF THE ACCOUNTS; REQUIRING A REPORT TO THE LEGISLATURE; AUTHORIZING THE DEPARTMENT TO ADOPT

RULES FOR PURPOSES OF THE PILOT PROGRAM; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. 987

305 *(Senate Bill No. 491; Gallus)* GENERALLY REVISING BENEFITS AND DEFINITIONS IN THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM; CHANGING HOW AVERAGE SALARIES ARE CALCULATED TO DETERMINE BENEFIT AMOUNTS; AMENDING SECTIONS 19-13-104, 19-13-704, 19-13-803, AND 19-13-902, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 988

306 *(House Bill No. 396; Becker)* ALLOWING PUPILS OF PUBLIC AND NONPUBLIC SCHOOLS TO CARRY AND SELF-ADMINISTER PRESCRIBED ASTHMA MEDICATION; PROVIDING DEFINITIONS; REQUIRING DOCUMENTATION; PROVIDING FOR NOTICE TO THE PARENTS OR GUARDIANS THAT THE SCHOOL DISTRICT MAY NOT INCUR LIABILITY FOR ANY INJURY ARISING OUT OF THE SELF-ADMINISTRATION OF MEDICATION UNLESS THE ACT OR OMISSION IS THE RESULT OF GROSS NEGLIGENCE, WILLFUL AND WANTON CONDUCT, OR AN INTENTIONAL TORT; PROVIDING AN EXEMPTION FOR YOUTH CORRECTIONAL FACILITIES; AND PROVIDING AN EFFECTIVE DATE. 991

307 *(House Bill No. 6; Witt)* 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; PROVIDING FOR A TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE RENEWABLE RESOURCE GRANT ACCOUNT; TEMPORARILY REVISING THE USE OF THE RENEWABLE RESOURCE GRANT AND LOAN STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTION 85-1-604, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE 993

308 *(House Bill No. 7; Callahan)* PROVIDING FOR RECLAMATION AND DEVELOPMENT GRANTS; TEMPORARILY AUTHORIZING ADDITIONAL USES OF THE RECLAMATION AND DEVELOPMENT GRANTS STATE SPECIAL REVENUE ACCOUNT; 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; TEMPORARILY REVISING THE USE OF THE RECLAMATION AND DEVELOPMENT GRANTS ACCOUNT; AMENDING SECTION 90-2-1104, MCA; AND PROVIDING AN EFFECTIVE DATE AND TERMINATION DATES. 999

309 *(House Bill No. 8; Witt)* APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 58TH LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; 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 1002

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| 310 | <i>(House Bill No. 12; Sesso)</i> | AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND THE STATE BUILDING ENERGY CONSERVATION PROGRAM AND CREATING A STATE DEBT; PLEDGING THE CREDIT OF THE STATE OF MONTANA TO SECURE THE BONDS; APPROVING ENERGY CONSERVATION PROJECTS FOR FISCAL YEARS 2006 AND 2007; APPROPRIATING BOND PROCEEDS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; CLARIFYING THE REQUIREMENT THAT STATE AGENCIES PROVIDE INFORMATION CONCERNING POTENTIAL ENERGY SAVINGS; AMENDING SECTION 90-4-605, MCA; AND PROVIDING AN EFFECTIVE DATE | 1005 |
| 311 | <i>(House Bill No. 30; Wanzenried)</i> | CLARIFYING THAT LEGISLATORS-ELECT ARE ENTITLED TO COMPENSATION AND EXPENSES FOR AUTHORIZED PRESESSION ACTIVITY; AMENDING SECTION 5-2-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE | 1007 |
| 312 | <i>(House Bill No. 40; Harris)</i> | EXPANDING CIVIL AND CRIMINAL LIABILITY FOR MAKING A FALSE CLAIM TO A STATE AGENCY; AMENDING SECTIONS 17-8-231 AND 45-7-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE | 1008 |
| 313 | <i>(House Bill No. 49; Wilson)</i> | GENERALLY REVISING THE LAW REQUIRING THE REGISTRATION OF SEXUAL AND VIOLENT OFFENDERS; AMENDING THE DEFINITION OF "SEXUAL OFFENSE"; CHANGING WITH WHOM AN OFFENDER MUST REGISTER; CLARIFYING THE PROCEDURE FOR NOTICE OF A CHANGE OF AN OFFENDER'S ADDRESS; CHANGING THE PROCEDURE FOR PETITIONING FOR RELIEF FROM REGISTRATION AFTER 10 YEARS; ALLOWING AN OFFENDER CONVICTED IN ANOTHER JURISDICTION TO BE GIVEN THE RISK LEVEL DESIGNATION ASSIGNED BY THAT JURISDICTION; AND AMENDING SECTIONS 46-23-502, 46-23-504, 46-23-505, 46-23-506, AND 46-23-509, MCA | 1009 |
| 314 | <i>(House Bill No. 53; Jacobson)</i> | PROVIDING THAT CERTAIN FUNDS COLLECTED BY OR ON BEHALF OF THE BOARD OF HORSERACING BE DEPOSITED IN A STATE SPECIAL REVENUE ACCOUNT; PROVIDING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 17-7-502, 23-4-105, 23-4-202, 23-4-204, 23-4-302, AND 23-4-304, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE | 1013 |
| 315 | <i>(House Bill No. 55; Wanzenried)</i> | REQUIRING PERMANENT REGISTRATION OF TRAILER AND SEMITRAILER FLEETS; ESTABLISHING A PERMANENT REGISTRATION FEE; REQUIRING SURRENDER TO THE DEPARTMENT OF TRANSPORTATION OF THE REGISTRATION AND LICENSE PLATE OF A TRAILER OR SEMITRAILER THAT IS REMOVED FROM A FLEET; AMENDING SECTION 61-3-721, MCA; AND PROVIDING AN EFFECTIVE DATE. | 1017 |
| 316 | <i>(House Bill No. 70; Stahl)</i> | EXEMPTING COUNTY COMMISSIONERS OF CERTAIN COUNTIES FROM THE RESTRICTION ON APPOINTMENT OF RELATIVES TO POSITIONS WITHIN THE COUNTY; REQUIRING THE COUNTY COMMISSIONER RELATED TO THE PERSON BEING APPOINTED TO ABSTAIN FROM VOTING ON THE APPOINTMENT; PROVIDING FOR SPECIFIC NOTICE OF THE INTENDED APPOINTMENT; AND AMENDING SECTION 2-2-302, MCA | 1021 |
| 317 | <i>(House Bill No. 73; Buzzas)</i> | AUTHORIZING A COUNTY, CITY, TOWN, OR MUNICIPALITY TO IMPOSE A VOTED LEVY FOR PROGRAMS THAT PREVENT SUBSTANCE ABUSE; AND PROVIDING AN EFFECTIVE DATE | 1022 |

318 (*House Bill No. 85; Kaufmann*) ELIMINATING CERTAIN REQUIREMENTS FOR REPORTING BY THE DEPARTMENT OF REVENUE TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE AND THE LEGISLATURE; AMENDING SECTIONS 15-6-218 AND 15-30-1114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1024

319 (*House Bill No. 89; Witt*) CHANGING THE REQUIREMENTS OF THE ELECTRONIC VIDEO GAMBLING MACHINE AUTOMATED ACCOUNTING AND REPORTING SYSTEM; DEFINING “ELECTRONICALLY CAPTURED DATA”; ELIMINATING THE TAX CREDIT AND LOAN PROVISIONS FOR MACHINE OWNERS PARTICIPATING IN THE SYSTEM; ELIMINATING THE PLEDGE OF MACHINE TAXES TO GUARANTEE REPAYMENT OF THE LOANS; AMENDING SECTIONS 23-5-602, 23-5-610, 23-5-611, 23-5-621, AND 23-5-637, MCA; REPEALING SECTION 23-5-638, MCA, AND SECTION 10, CHAPTER 424, LAWS OF 1999; AND PROVIDING AN EFFECTIVE DATE 1025

320 (*House Bill No. 104; Lenhart*) GENERALLY REVISING PROVISIONS OF THE TEACHERS’ RETIREMENT SYSTEM; CLARIFYING THE PROVISION FOR ESTABLISHING A GOVERNMENTAL EXCESS BENEFIT ARRANGEMENT AND ELIMINATING THE PROVISION’S CONTINGENT EFFECTIVE DATE; CLARIFYING PROVISIONS ON THE REDEPOSIT OF CONTRIBUTIONS FOR MEMBERSHIP SERVICE AND ON RETIREES RETURNING TO EMPLOYMENT BY STRIKING RELEVANT LANGUAGE IN CURRENT CODE SECTIONS AND RECODIFYING THE LANGUAGE AS NEW SECTIONS; PROVIDING FOR THE OPTION TO PURCHASE MONTANA UNIVERSITY SYSTEM OPTIONAL RETIREMENT PROGRAM SERVICE; REVISING CERTAIN PROVISIONS GOVERNING THE RECALCULATION OF BENEFITS WHEN A RETIRED MEMBER RETURNS TO EMPLOYMENT; PROVIDING FOR THE REDUCTION OF RETIREMENT BENEFITS IN LIEU OF CANCELING THE BENEFITS IN CERTAIN CIRCUMSTANCES; CLARIFYING PROVISIONS ON EMPLOYEE TERMINATION PAY CONTRIBUTIONS; AMENDING SECTIONS 19-20-208, 19-20-212, 19-20-302, 19-20-401, 19-20-407, 19-20-415, 19-20-602, 19-20-716, 19-20-718, 19-20-802, 19-20-804, 19-20-806, AND 19-20-1001, MCA, AND SECTION 29, CHAPTER 111, LAWS OF 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 1032

321 (*House Bill No. 109; Jent*) TRANSFERRING RESPONSIBILITY FOR THE MAINTENANCE OF THE CAPITOL COMPLEX GROUNDS FROM THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 2-17-803, 2-17-804, 2-17-805, 2-17-811, 2-17-812, AND 2-17-817, MCA; AND PROVIDING AN EFFECTIVE DATE. 1047

322 (*House Bill No. 119; Golie*) MAKING PERMANENT THE CRITERIA FOR THE USE OF MOTORBOAT ACCOUNT FUNDS FOR BOATING FACILITIES, INCLUDING THE USE OF FUNDS TO MATCH FEDERAL FUNDS PURSUANT TO RECOMMENDATIONS OF THE BOATING ADVISORY COUNCIL; MAKING PERMANENT THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CONTRACT WITH COUNTIES TO ADMINISTER DESIGNATED PARTS OF THE STATE RECREATIONAL BOATING SAFETY PROGRAM; MAKING PERMANENT THE BOATING ADVISORY COUNCIL; MAKING PERMANENT THE AMOUNT OF THE FINE FOR FAILURE TO PAY THE BOAT FEE IN LIEU OF TAX AT FOUR TIMES THE FEE DUE; REPEALING SECTION 6, CHAPTER 511, LAWS OF 1993, SECTIONS 9

AND 10, CHAPTER 476, LAWS OF 1995, AND SECTIONS 2, 3, AND 4, CHAPTER 95, LAWS OF 2001; AND PROVIDING A DELAYED EFFECTIVE DATE 1050

323 (House Bill No. 142; Ripley) REVISING LAWS RELATING TO STATE FINANCE OF LOCAL WATER AND SEWER PROJECTS; AUTHORIZING THE ISSUANCE OF GRANT OR REVENUE ANTICIPATION NOTES BY THE BOARD OF EXAMINERS; AUTHORIZING FORGIVENESS OF CERTAIN LOANS TO DISADVANTAGED COMMUNITIES UNDER THE DRINKING WATER STATE REVOLVING FUND PROGRAM; AUTHORIZING ADDITIONAL USES OF THE PROCEEDS OF STATE GENERAL OBLIGATION BONDS; AUTHORIZING STATE DEBT; AMENDING SECTIONS 17-5-805, 75-5-1122, 75-6-226, AND 75-6-227, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1050

324 (House Bill No. 169; McAlpin) REVISING THE LAWS RELATING TO THE ENFORCEMENT OF THE TOBACCO MASTER SETTLEMENT AGREEMENT; CLARIFYING THE APPLICATION OF THE TOBACCO RESERVE FUND LAWS TO ROLL-YOUR-OWN TOBACCO; REQUIRING A TOBACCO PRODUCT MANUFACTURER WHO WISHES TO HAVE PRODUCTS LISTED ON THE ATTORNEY GENERAL'S DIRECTORY OF PRODUCTS PERMISSIBLE FOR SALE IN MONTANA TO DEMONSTRATE COMPLIANCE WITH THE LAW; ALLOWING THE ATTORNEY GENERAL TO REQUEST THE DEPARTMENT OF JUSTICE TO PROCEED JUDICIALLY TO SEEK REVOCATION OF A NONCOMPLIANT WHOLESALER'S LICENSE; CLARIFYING THE CALCULATION OF ATTORNEY FEES, COSTS, AND PENALTIES RECOVERED IN ENFORCEMENT ACTIONS; REVISING AND EXTENDING RULEMAKING AUTHORITY; REVISING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 16-11-402, 16-11-404, 16-11-502, 16-11-503, 16-11-507, 16-11-509, 16-11-511, AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A CONTINGENT VOIDNESS PROVISION 1053

325 (House Bill No. 170; Wilson) MAKING TECHNICAL CORRECTIONS TO THE LAW ON FUND TRANSFERS RELATING TO CERTAIN VEHICLE TAXES AND FEES; CLARIFYING THE YEARS IN WHICH MONEY FOR THE NOXIOUS WEED STATE SPECIAL REVENUE ACCOUNT AND FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS IS ALLOCATED; CLARIFYING THE APPLICATION OF THE \$2 ANNUAL SEARCH AND RESCUE SURCHARGE; CLARIFYING THAT VEHICLE COUNTS NECESSARY FOR CERTAIN CALCULATIONS BE DETERMINED FOR VEHICLES EVEN IF VEHICLE REGISTRATION OCCURRED PRIOR TO JANUARY 1, 2004; AMENDING SECTION 15-1-122, MCA, AND SECTION 50, CHAPTER 592, LAWS OF 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 1061

326 (House Bill No. 173; Heinert) ALLOWING THE DEPARTMENT OF MILITARY AFFAIRS TO USE THE SEARCH AND RESCUE SURCHARGE MONEY IN THE STATE SPECIAL REVENUE ACCOUNT BOTH DURING THE FISCAL YEAR WHEN THE MONEY IS DEPOSITED AND DURING THE FOLLOWING FISCAL YEAR; AMENDING SECTION 87-1-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1064

327 (House Bill No. 204; Witt) CHANGING THE PURPOSE FOR WHICH THE DEPARTMENT OF JUSTICE MAY USE EXAMINATION COSTS PAID BY A MANUFACTURER SEEKING THE EXAMINATION AND APPROVAL OF A NEW VIDEO GAMBLING MACHINE OR

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| | ASSOCIATED EQUIPMENT OR A MODIFICATION TO AN APPROVED MACHINE OR ASSOCIATED EQUIPMENT; DELETING THE STATUTORY APPROPRIATION OF THE COSTS TO THE DEPARTMENT; AMENDING SECTIONS 17-7-502 AND 23-5-631, MCA; AND PROVIDING AN EFFECTIVE DATE. | 1066 |
| 328 | <i>(House Bill No. 211; Parker)</i> CLARIFYING THE TERM OF THE SUPREME COURT; AMENDING SECTION 3-2-303, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE | 1068 |
| 329 | <i>(House Bill No. 213; Gallik)</i> GENERALLY REVISING ADMINISTRATIVE PROVISIONS GOVERNING THE PUBLIC EMPLOYEES', JUDGES', HIGHWAY PATROL OFFICERS', SHERIFFS', GAME WARDENS' AND PEACE OFFICERS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS, THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT, AND THE LOCAL POLICE OFFICERS' RETIREMENT FUNDS; CLARIFYING TERMINOLOGY RELATED TO TERMINATION OF SERVICE AND EMPLOYMENT; REFINING THE DEFINITION OF "VESTED"; CLARIFYING SERVICE CREDIT IN MORE THAN ONE SYSTEM; CHANGING THE HOURS THAT MAY BE WORKED WHEN A RETIREE RETURNS TO WORK; PROVIDING FOR CORRECTIONS TO SERVICE PURCHASE ERRORS; DELETING THE BAN ON ESTABLISHING A NEW ACCOUNT FOR AN ALTERNATE PAYEE; CLARIFYING ELIGIBILITY TO APPLY FOR DISABILITY BENEFITS; CLARIFYING EDUCATION PROGRAM REQUIREMENTS; DELETING THE USE OF COVERED PAYROLL TERMINOLOGY REGARDING EMPLOYER CONTRIBUTIONS; CLARIFYING THE DEFINITION OF "COMPENSATION"; REVISING OPTIONAL MEMBERSHIP ELECTION PROVISIONS; CLARIFYING EMPLOYER PAYMENTS FOR EMPLOYEE SERVICE PURCHASES; CLARIFYING DISABILITY BENEFITS FOR PUBLIC EMPLOYEES' RETIREMENT SYSTEM MEMBERS WHO JOINED BEFORE FEBRUARY 24, 1991; CLARIFYING SURVIVORSHIP PAYMENT OPTIONS; CLARIFYING RETIREMENT BENEFIT PAYMENT OPTION 4; CLARIFYING CERTAIN PROVISIONS IN THE DEFINED CONTRIBUTION RETIREMENT PLAN UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; CORRECTING AN OVERSIGHT TO ALLOW MEMBERS OF THE JUDGES' RETIREMENT SYSTEM TO PURCHASE MILITARY SERVICE; REVISING THE ELECTION OF GUARANTEED ANNUAL BENEFIT PROVISIONS IN THE JUDGES' RETIREMENT SYSTEM; ELIMINATING A PROVISION IN CERTAIN SYSTEMS THAT CONFLICTED WITH OTHER SYSTEMS' PROVISIONS REGARDING PAYMENTS TO MINOR CHILDREN; ELIMINATING A REQUIREMENT THAT FIRE DISTRICTS HAVE CERTAIN INSURANCE RATINGS IN ORDER FOR VOLUNTEER FIREFIGHTERS TO GET SERVICE CREDIT; REVISING CATCHUP PROVISIONS OF THE DEFERRED COMPENSATION PLAN; REVISING THE DEADLINE BY WHICH LOCAL POLICE FUND INFORMATION MUST BE SUBMITTED TO THE PUBLIC EMPLOYEES' RETIREMENT BOARD; COORDINATING DEPARTMENT OF JUSTICE PROVISIONS REGARDING INJURY AND REASSIGNMENT OF HIGHWAY PATROL OFFICERS WITH THE DISABILITY PROVISIONS OF THE HIGHWAY PATROL OFFICES' RETIREMENT SYSTEM; AMENDING SECTIONS 19-2-303, 19-2-502, 19-2-602, 19-2-703, 19-2-704, 19-2-706, 19-2-903, 19-2-907, 19-2-908, 19-2-909, 19-3-108, 19-3-112, 19-3-201, 19-3-316, 19-3-318, 19-3-319, 19-3-401, 19-3-403, 19-3-412, 19-3-505, 19-3-908, 19-3-1002, 19-3-1005, 19-3-1015, 19-3-1204, 19-3-1501, 19-3-2104, 19-3-2111, 19-3-2112, 19-3-2114, 19-3-2116, 19-3-2117, 19-3-2121, 19-3-2126, 19-5-103, 19-5-402, 19-5-404, 19-5-410, 19-5-701, 19-5-902, 19-6-301, 19-6-402, 19-6-404, 19-6-505, 19-6-709, 19-7-301, 19-7-403, | |

19-7-404, 19-7-801, 19-7-1001, 19-8-301, 19-8-502, 19-8-504, 19-8-801, 19-9-301, 19-9-703, 19-9-710, 19-9-804, 19-9-902, 19-9-905, 19-9-1202, 19-9-1207, 19-9-1208, 19-13-301, 19-13-605, 19-13-802, 19-13-805, 19-17-108, 19-17-407, 19-19-205, 19-50-103, 19-50-104, 44-1-515, AND 44-1-518, MCA; AND PROVIDING AN EFFECTIVE DATE. 1068

330 *(House Bill No. 299; Wells)* AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR DEPARTMENT OF TRANSPORTATION EQUIPMENT STORAGE BUILDINGS; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1125

331 *(House Bill No. 324; Driscoll)* CREATING THE CRIME OF OBSTRUCTING HEALTH CARE FACILITY ACCESS 1126

332 *(House Bill No. 346; Golie)* ALLOWING CERTAIN RETIRED VOLUNTEER FIREFIGHTERS TO RETURN TO WORK WHILE CONTINUING TO RECEIVE A PENSION BENEFIT; PRESCRIBING ELIGIBILITY CRITERIA; AMENDING SECTIONS 19-17-102, 19-17-401, AND 33-22-136, MCA; AND PROVIDING AN EFFECTIVE DATE 1127

333 *(House Bill No. 436; Himmelberger)* ALLOWING A SUBDIVIDER TO DONATE LAND TO A SCHOOL DISTRICT, SUBJECT TO APPROVAL OF THE LOCAL GOVERNING BODY AND ACCEPTANCE BY SCHOOL DISTRICT TRUSTEES, TO FULFILL PARK DEDICATION REQUIREMENTS FOR SUBDIVISIONS; AND AMENDING SECTIONS 7-16-2324 AND 76-3-621, MCA 1130

334 *(House Bill No. 440; Wiseman)* PROVIDING THAT ADMINISTRATIVE RULES OF THE DEPARTMENT OF AGRICULTURE INCLUDE A REQUIREMENT THAT THE OWNER OF AN ANHYDROUS AMMONIA TANK PLACE A LOCK ON THE TANK; PROVIDING THAT A VIOLATION FOR NOT INSTALLING A TANK LOCK MUST BE CONSIDERED A MINOR OFFENSE FOR A CERTAIN PERIOD OF TIME; PROVIDING FOR AN ANHYDROUS AMMONIA TANK LOCK PROGRAM; PROVIDING AN APPROPRIATION; AMENDING SECTION 80-10-503, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. 1132

335 *(House Bill No. 450; Jopek)* REVISING THE LAWS GOVERNING THE ADMINISTRATION OF STATE LAND; PROVIDING FOR CONSIDERATION OF CERTAIN LOCAL GOVERNMENT ORDINANCES AND RESOLUTIONS WHEN CERTAIN SALES OF LAND ARE PROPOSED OR MADE; AMENDING SECTIONS 77-1-202, 77-1-904, AND 77-2-310, MCA; AND PROVIDING AN EFFECTIVE DATE. 1134

336 *(House Bill No. 451; Sonju)* AUTHORIZING ISSUANCE BY LOCAL GOVERNMENTS OF BONDS FOR THE CONSTRUCTION AND CONSTRUCTION ENGINEERING PHASES OF PROJECTS ON THE URBAN HIGHWAY SYSTEM; AUTHORIZING THE TRANSPORTATION COMMISSION TO ENTER INTO CONTRACTS WITH LOCAL GOVERNMENTS TO USE FEDERAL URBAN FUND APPORTIONMENT TO SECURE THE PAYMENT OF THE BONDS; AMENDING SECTION 60-2-127, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1136

337 *(House Bill No. 470; Clark)* REQUIRING APPLICANTS TO PAY COSTS AND FEES FOR PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS; AMENDING SECTIONS 75-1-202, 75-1-205, 75-1-207, 75-1-208, 75-2-104, 75-2-211, 75-10-922, 75-20-201, 75-20-216, 75-20-401, 75-20-406, 76-4-125, 82-4-122, 82-4-231, 82-4-337, 82-4-349, 82-4-427,

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| | 82-4-436, 85-2-124, AND 85-2-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . | 1138 |
| 338 | <i>(House Bill No. 513; Raser)</i> EXTENDING THE TERMINATION DATE FOR THE TAX CREDIT FOR CONTRIBUTIONS TO AN ACCOUNT TO BE USED FOR PROVIDING SERVICES TO INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES; AND AMENDING SECTION 6, CHAPTER 590, LAWS OF 2003 | 1165 |
| 339 | <i>(House Bill No. 522; Jones)</i> PROVIDING AN APPROPRIATION TO THE BOARD OF REGENTS FOR DISTRIBUTION TO MONTANA STATE UNIVERSITY-BOZEMAN TO CONDUCT A FEASIBILITY STUDY CONCERNING THE TRAINING OF MONTANA DENTAL STUDENTS AT MONTANA STATE UNIVERSITY AND THE UNIVERSITY OF WASHINGTON. | 1166 |
| 340 | <i>(House Bill No. 591; Jopek)</i> CLARIFYING THE APPLICABILITY OF LOCAL ZONING REGULATIONS TO SAND AND GRAVEL OPERATIONS AND OPERATIONS THAT MIX CONCRETE OR BATCH ASPHALT; AMENDING SECTION 76-2-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. | 1167 |
| 341 | <i>(House Bill No. 666; Bergren)</i> RELATING TO COUNTY WATER AND SEWER DISTRICTS; AUTHORIZING PETITIONS BY ALL PROPERTY OWNERS FOR THE CREATION OF A DISTRICT, APPOINTMENT OF DIRECTORS, AND THE INCURRENCE OF INDEBTEDNESS; CLARIFYING THE EFFECT OF PROTESTS AGAINST A METHOD OF LEVYING SPECIAL ASSESSMENTS; CLARIFYING PROTEST REQUIREMENTS AND ASSESSMENT PROCEDURES FOR CONDOMINIUM PROPERTY; AUTHORIZING THE ISSUANCE OF REVENUE BOND AND SPECIAL ASSESSMENT BOND INDEBTEDNESS WITHOUT AN ELECTION; CLARIFYING THE AUTHORITY TO ESTABLISH SUBDISTRICTS; AMENDING SECTIONS 7-13-2204, 7-13-2208, 7-13-2212, 7-13-2215, 7-13-2231, 7-13-2282, 7-13-2302, 7-13-2321, 7-13-2328, AND 7-13-2329, MCA; AND PROVIDING AN EFFECTIVE DATE | 1167 |
| 342 | <i>(House Bill No. 684; Maedje)</i> EXEMPTING VEHICLES TRAVELING ON U.S. HIGHWAY 93 WITHIN 10 MILES OF THE BORDER BETWEEN MONTANA AND CANADA FROM THE WEIGHT LIMITS DETERMINED BY THE FEDERAL BRIDGE FORMULA; VOIDING THE ACT IF THE EXEMPTION WOULD RESULT IN A SANCTION OF FEDERAL HIGHWAY FUNDS; AND AMENDING SECTION 61-10-107, MCA . . . | 1174 |
| 343 | <i>(House Bill No. 698; Lange)</i> ESTABLISHING A WARM WATER FISHERY ENHANCEMENT ACCOUNT; DIRECTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ALLOW INDIVIDUALS TO MAKE VOLUNTARY CONTRIBUTIONS TO THE ACCOUNT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE | 1175 |
| 344 | <i>(House Bill No. 759; Koopman)</i> ALLOWING REGISTRATION OF CERTAIN FLEETS FOR A 9-MONTH PERIOD; AND AMENDING SECTION 61-3-318, MCA | 1176 |
| 345 | <i>(House Bill No. 772; Facey)</i> CREATING THE CATASTROPHICALLY INJURED WORKER'S TRAVEL ASSISTANCE ACT; ESTABLISHING A PROGRAM TO MATCH FUNDS RAISED BY NONPROFIT ORGANIZATIONS WITH UP TO \$2,500 FROM INSURERS TO ASSIST CATASTROPHICALLY INJURED WORKERS; PROVIDING THAT THE DEPARTMENT OF LABOR AND INDUSTRY SHALL ADMINISTER THE PROGRAM; PROVIDING RULEMAKING AUTHORITY; PROVIDING AN APPROPRIATION; AMENDING SECTION 39-71-704, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. | 1176 |

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| 346 | (<i>Senate Bill No. 33; Cobb</i>) DELETING THE REQUIREMENT THAT THE INTERAGENCY COORDINATING COUNCIL FOR STATE PREVENTION PROGRAMS PREPARE AND PRESENT A UNIFIED BUDGET TO THE LEGISLATURE AND STANDING AND INTERIM COMMITTEES; AND AMENDING SECTION 2-15-225, MCA | 1180 |
| 347 | (<i>Senate Bill No. 62; Perry</i>) REQUIRING THAT DISPOSITIONS OF CONTESTED CASES UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT BE IN WRITING; AND AMENDING SECTIONS 2-4-603, 2-4-614, 2-4-623, AND 2-4-702, MCA | 1182 |
| 348 | (<i>Senate Bill No. 80; Perry</i>) PROHIBITING UNLAWFUL POSSESSION OF AN OPEN ALCOHOLIC BEVERAGE CONTAINER BY A PERSON IN A MOTOR VEHICLE | 1185 |
| 349 | (<i>Senate Bill No. 86; Smith</i>) DEFINING TERMS RELATED TO IMPLEMENTATION OF THE FEDERAL INDIAN CHILD WELFARE ACT; CLARIFYING THE ROLE OF A QUALIFIED EXPERT WITNESS IN CASES INVOLVING INDIAN CHILDREN IN PROCEEDINGS SUBJECT TO THE INDIAN CHILD WELFARE ACT; AND AMENDING SECTIONS 41-3-102, 41-3-205, 41-3-432, 41-3-437, AND 41-3-609, MCA | 1186 |
| 350 | (<i>Senate Bill No. 110; Cobb</i>) IMPLEMENTING CERTAIN RECOMMENDATIONS OF THE MONTANA PUBLIC HEALTH CARE REDESIGN PROJECT TO PROVIDE FOR IMPROVED COVERAGE OF THE HEALTH CARE AND RELATED NEEDS OF PARTICULAR GROUPS OF PERSONS; PROVIDING AUTHORITY FOR THE ESTABLISHMENT OF HEALTH INSURANCE FLEXIBILITY AND ACCOUNTABILITY DEMONSTRATION INITIATIVES AND OTHER DEMONSTRATION PROJECTS UPON APPROVAL OF WAIVER OF FEDERAL LAW; AMENDING SECTIONS 53-2-101 AND 53-4-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. | 1198 |
| 351 | (<i>Senate Bill No. 122; Wheat</i>) REGULATING THE TRANSFER OF A BENEFICIARY'S STRUCTURED SETTLEMENT PAYMENT RIGHTS; REQUIRING DISCLOSURE AND APPROVAL OF A COURT OR RESPONSIBLE ADMINISTRATIVE AUTHORITY PRIOR TO TRANSFER; OUTLINING OBLIGATIONS AFTER A TRANSFER; PLACING A CONDITION ON ADDITIONAL TRANSFERS; PROVIDING FOR JURISDICTION AND NOTICE; PROHIBITING WAIVER OF PROVISIONS; PROVIDING CONDITIONS FOR CONTINGENT PAYMENTS; ASSIGNING RESPONSIBILITY FOR COMPLIANCE; AND PROVIDING AN APPLICABILITY DATE | 1205 |
| 352 | (<i>Senate Bill No. 124; Roush</i>) ALLOWING MONEY IN THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT TO BE USED TO PAY THE COSTS OF ELIGIBLE PROJECTS ON AN INTERIM BASIS; AMENDING SECTION 90-6-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE | 1210 |
| 353 | (<i>Senate Bill No. 127; Keenan</i>) FACILITATING THE IMPLEMENTATION OF CERTAIN RECOMMENDATIONS OF THE MONTANA PUBLIC HEALTH CARE REDESIGN PROJECT REGARDING PROGRAMS OF HOME AND COMMUNITY-BASED SERVICES FUNDED WITH MEDICAID MONEY; REVISING THE STATUTES AUTHORIZING PROGRAMS FOR HOME AND COMMUNITY-BASED SERVICES FUNDED WITH MEDICAID MONEY; AUTHORIZING THE LONG-TERM CARE PREADMISSION SCREENING PROCESS; REMOVING AN INAPPROPRIATE APPLICATION OF MEDICAID STATE PLAN AUTHORITY TO THE PROGRAMS OF HOME AND COMMUNITY-BASED SERVICES AND A REQUIREMENT FOR REPORTING COSTS OF PROVIDING HOME AND | |

COMMUNITY-BASED SERVICES TO PERSONS CURRENTLY LIVING IN ASSISTED LIVING FACILITIES; AMENDING SECTIONS 53-6-101, 53-6-401, AND 53-6-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1211

354 (*Senate Bill No. 140; Gebhardt*) ESTABLISHING AN INTRASTATE MUTUAL AID SYSTEM TO AID IN REQUESTING ASSISTANCE FOR AND RESPONDING TO LOCAL EMERGENCIES AND DISASTERS; ALLOWING A POLITICAL SUBDIVISION OF THE STATE TO WITHDRAW FROM PARTICIPATION IN THE INTRASTATE MUTUAL AID SYSTEM; CREATING THE MONTANA INTRASTATE MUTUAL AID COMMITTEE AND DESCRIBING ITS MEMBERSHIP, DUTIES, AND AUTHORITY; ALLOWING FEDERALLY RECOGNIZED INDIAN TRIBES WITHIN MONTANA TO PARTICIPATE IN THE INTRASTATE MUTUAL AID SYSTEM; PROVIDING FOR ADMINISTRATION OF THE INTRASTATE MUTUAL AID SYSTEM; PROVIDING FOR GOVERNMENTAL IMMUNITY FROM LIABILITY UNDER CERTAIN CONDITIONS; AMENDING SECTION 10-3-1204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES 1218

355 (*Senate Bill No. 143; Laible*) PROVIDING FOR CONTINGENT TRANSFERS AND AN APPROPRIATION FROM THE ORPHAN SHARE STATE SPECIAL REVENUE ACCOUNT TO THE HAZARDOUS WASTE/CERCLA SPECIAL REVENUE ACCOUNT AND TO THE ENVIRONMENTAL QUALITY PROTECTION FUND ACCOUNT; PROVIDING FOR REPAYMENT OF CONTINGENT FUND TRANSFERS; AMENDING SECTIONS 75-10-704 AND 75-10-743, MCA; AND PROVIDING AN EFFECTIVE DATE 1225

356 (*Senate Bill No. 145; Harrington*) REVISING LAWS RELATED TO THE REGULATION OF PETROLEUM TANKS; REVISING THE MEMBERSHIP OF THE PETROLEUM TANK RELEASE COMPENSATION BOARD; REVISING REIMBURSEMENT ELIGIBILITY CRITERIA AND PROCEDURES; REQUIRING THE BOARD TO ANALYZE AND REPORT ON THE VIABILITY OF THE PETROLEUM TANK RELEASE CLEANUP FUND; AMENDING SECTIONS 2-15-2108, 75-11-308, 75-11-309, 75-11-312, AND 75-11-318, MCA; AND PROVIDING AN EFFECTIVE DATE 1229

357 (*Senate Bill No. 160; Wheat*) ELIMINATING THE STATUTORY AUTHORITY OF THE LEGISLATURE TO ASSIGN HOLDOVER SENATORS TO DISTRICTS FOR THE REMAINDER OF THOSE SENATORS' TERMS IN IMPLEMENTING A REDISTRICTING PLAN; AND REPEALING SECTION 5-1-116, MCA 1235

358 (*Senate Bill No. 174; Kitzenberg*) REQUIRING THE DEPARTMENT OF JUSTICE TO PROVIDE AN EXAMINER TO ADMINISTER MOTOR VEHICLE DRIVER'S LICENSE EXAMINATIONS THAT ARE PREVIOUSLY SCHEDULED; AND AMENDING SECTION 61-5-101, MCA. 1235

359 (*Senate Bill No. 182; Gillan*) PROVIDING THAT AN ABSENTEE BALLOT CAST AND RETURNED BY AN ELECTOR WHO DIES BEFORE ELECTION DAY MUST BE COUNTED; AND AMENDING SECTIONS 13-13-204 AND 13-13-243, MCA. 1236

360 (*Senate Bill No. 207; Perry*) REQUIRING AS A CONDITION OF SENTENCE THAT SEXUAL OFFENDERS DESIGNATED AS LEVEL 3 OFFENDERS PARTICIPATE IN A PROGRAM FOR CONTINUOUS, SATELLITE-BASED MONITORING; REQUIRING THE DEPARTMENT OF CORRECTIONS TO ESTABLISH A PROGRAM FOR THE

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| | CONTINUOUS SATELLITE-BASED MONITORING OF LEVEL 3 SEXUAL OFFENDERS; REQUIRING PROGRESS REPORTS; AMENDING SECTION 46-23-1031, MCA; AND PROVIDING AN EFFECTIVE DATE | 1237 |
| 361 | (<i>Senate Bill No. 208; Perry</i>) INCREASING FROM \$25 TO \$50 THE CHARGE IMPOSED UPON CONVICTION OF A MISDEMEANOR OR FELONY UNDER TITLE 45, 61-8-401, OR 61-8-406 AND USED TO FUND CRIME VICTIM AND WITNESS ADVOCATE PROGRAMS; AND AMENDING SECTION 46-18-236, MCA | 1240 |
| 362 | (<i>Senate Bill No. 304; Kitzenberg</i>) ESTABLISHING THE RAWHIDE STAMPEDE RUSTLERS AND RENDEZVOUS TRADE CORRIDOR ALONG STATE HIGHWAY 16 BETWEEN GLENDIVE AND THE PORT OF RAYMOND | 1241 |
| 363 | (<i>Senate Bill No. 311; Grimes</i>) REGULATING THE USE OF CREDIT INFORMATION IN PERSONAL INSURANCE; PROVIDING THE PURPOSE, SCOPE, AND DEFINITIONS FOR THE ACT; ESTABLISHING CRITERIA FOR THE USE OF CREDIT INFORMATION IN INSURANCE UNDERWRITING; LISTING CONDITIONS FOR UNDERWRITING OR RATING EXCEPTIONS; PROVIDING FOR DISPUTE RESOLUTION AND ERROR CORRECTION; PROVIDING FOR NOTICE TO CONSUMERS OF THE USE OF CREDIT INFORMATION AND ADVERSE ACTION BASED ON THE USE OF CREDIT INFORMATION; REQUIRING INSURERS TO FILE THEIR CREDIT SCORING MODELS WITH THE COMMISSIONER OF INSURANCE; PROVIDING FOR THE INDEMNIFICATION OF INSURANCE PRODUCERS USING SCORING INFORMATION; PROHIBITING CONSUMER REPORTING AGENCIES FROM PROVIDING OR SELLING CERTAIN DATA PERTAINING TO A CONSUMER'S CREDIT; AMENDING SECTION 33-18-210, MCA; AND PROVIDING AN APPLICABILITY DATE | 1242 |
| 364 | (<i>Senate Bill No. 381; Moss</i>) DEFINING "CHILD" OR "CHILDREN" FOR PURPOSES OF THE CRIMINAL LAWS; REVISING THE OFFENSE OF SEXUAL ABUSE OF CHILDREN; PROVIDING THAT THE LURING OF CHILDREN TO ENGAGE IN ANY SEXUAL CONDUCT AND NOT JUST FOR PURPOSES OF CHILD PORNOGRAPHY IS A CRIME; AND AMENDING SECTIONS 45-2-101 AND 45-5-625, MCA. | 1249 |
| 365 | (<i>Senate Bill No. 440; Harrington</i>) REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO LICENSE SPECIALTY HOSPITALS; PROVIDING A DEFINITION; PROVIDING REQUIREMENTS FOR LICENSURE; ENACTING A MORATORIUM ON LICENSURE OF SPECIALTY HOSPITALS UNTIL JUNE 1, 2007; AMENDING SECTION 50-5-101, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE. | 1258 |
| 366 | (<i>Senate Bill No. 459; Tropila</i>) TRANSFERRING THE MOTOR CARRIER SAFETY ASSISTANCE PROGRAM FROM THE DEPARTMENT OF JUSTICE TO THE DEPARTMENT OF TRANSPORTATION; ASSIGNING RESPONSIBILITY FOR THE ADOPTION OF MOTOR CARRIER SAFETY STANDARDS AND PRIMARY RESPONSIBILITY FOR MOTOR CARRIER INSPECTION TO THE DEPARTMENT OF TRANSPORTATION; REQUIRING THE MONTANA HIGHWAY PATROL TO COORDINATE WITH THE DEPARTMENT OF TRANSPORTATION FOR MOTOR CARRIER SAFETY AND ENFORCEMENT OF CERTAIN LAWS; AND AMENDING SECTIONS 15-70-233, 15-70-357, 19-8-101, 44-1-1005, 44-4-301, 44-4-302, 61-9-512, 61-10-141, 61-12-205, 61-12-206, 61-12-208, AND 76-13-601, MCA | 1264 |

367 (*Senate Bill No. 500; Cobb*) GENERALLY REVISING ELECTION LAWS TO FACILITATE VOTING BY DISABLED ELECTORS; PROVIDING THAT A DISABLED ELECTOR MAY USE A FINGERPRINT OR IDENTIFYING MARK INSTEAD OF A SIGNATURE; PROVIDING THAT A DISABLED ELECTOR MAY DESIGNATE ANOTHER PERSON AS THE ELECTOR'S AGENT; PROVIDING THAT AN ELECTION ADMINISTRATOR OR ELECTION JUDGE MAY SIGN FOR A DISABLED ELECTOR; DIRECTING THE SECRETARY OF STATE TO ADOPT RULES; REQUIRING NEW POLLING PLACES TO CONFORM TO THE ACCESSIBILITY STANDARDS UNDER THE AMERICANS WITH DISABILITIES ACT; REQUIRING ELECTION JUDGES TO ASK A DISABLED ELECTOR ENTERING A POLLING PLACE IF ASSISTANCE IS DESIRED; AND AMENDING SECTIONS 13-3-205, 13-13-114, 13-13-119, AND 13-13-213, MCA 1277

368 (*House Bill No. 71; Lake*) PROVIDING THAT AN INDIVIDUAL WHO IS SEEKING LICENSURE AS A MORTGAGE BROKER AND WHO IS THE SOLE OWNER OF AN ENTITY SEEKING LICENSURE AS A MORTGAGE BROKER SHALL PAY A SINGLE LICENSE APPLICATION FEE AND A SINGLE LICENSE RENEWAL FEE; CLARIFYING THAT A DESIGNATED MANAGER MUST BE AN INDIVIDUAL LICENSED AS A MORTGAGE BROKER; AMENDING SECTIONS 32-9-117 AND 32-9-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1280

369 (*House Bill No. 587; Bergren*) PROVIDING THAT BENEFITS UNDER THE HIGHWAY PATROL OFFICERS', MUNICIPAL POLICE OFFICERS', OR FIREFIGHTERS' RETIREMENT SYSTEMS THAT ARE PAYABLE TO A DEPENDENT CHILD MUST BE PAID TO A TRUST IN CERTAIN CIRCUMSTANCES; AMENDING SECTION 19-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1281

370 (*Senate Bill No. 384; Gebhardt*) CLARIFYING THE AUTHORITY OF THE SECRETARY OF STATE TO ADOPT RULES FOR THE EFFECTIVE ADMINISTRATION OF THE SECRETARY OF STATE'S DUTIES RELATING TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND AMENDING SECTIONS 2-4-306 AND 2-15-401, MCA 1282

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| 414 | (<i>Senate Bill No. 472; Perry</i>) ALLOWING COUNTY COMMISSIONERS TO DESIGNATE PUBLIC PROJECTS FOR PURPOSES OF COUNTY JAIL WORK PROGRAMS; ALLOWING 2 DAYS' CREDIT AGAINST INCARCERATION FOR EACH DAY'S PARTICIPATION IN A COUNTY JAIL WORK PROGRAM; AMENDING SECTION 7-32-2226, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE | 1401 |
| 415 | (<i>Senate Bill No. 480; Cromley</i>) ELIMINATING THE COAL SEVERANCE TAX RATE INCENTIVE FOR IN-STATE ELECTRICAL PRODUCTION; AMENDING SECTION 15-35-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. | 1402 |
| 416 | (<i>Senate Bill No. 481; Cocchiarella</i>) MERGING OCCUPATIONAL DISEASES INTO THE WORKERS' COMPENSATION ACT; ESTABLISHING LEGISLATIVE INTENT TOWARD OCCUPATIONAL DISEASES AS PUBLIC POLICY; DEFINING "OCCUPATIONAL DISEASE"; PROVIDING FOR THE LIABILITY OF INSURERS AND COMPENSATION FOR OCCUPATIONAL DISEASES UNDER THE WORKERS' COMPENSATION ACT; PROVIDING FOR TIME FOR CLAIMS TO BE PRESENTED; AMENDING SECTIONS 2-15-2015, 30-9A-109, 37-1-131, 39-71-105, 39-71-106, 39-71-107, 39-71-116, 39-71-201, 39-71-206, 39-71-211, 39-71-315, 39-71-316, 39-71-317, 39-71-403, 39-71-407, 39-71-416, 39-71-525, 39-71-601, 39-71-603, 39-71-612, 39-71-743, 39-71-915, 39-71-1105, 39-71-2401, 39-71-2406, 39-71-2408, 39-71-2411, 39-73-104, 39-73-107, 45-6-301, 71-3-1118, AND 85-5-101, MCA; REPEALING SECTIONS 39-72-101, 39-72-102, 39-72-103, 39-72-201, 39-72-202, 39-72-203, 39-72-204, 39-72-206, 39-72-301, 39-72-302, 39-72-303, 39-72-305, 39-72-310, 39-72-401, 39-72-402, 39-72-403, 39-72-404, 39-72-405, 39-72-408, 39-72-509, 39-72-601, 39-72-602, 39-72-606, 39-72-607, 39-72-608, 39-72-701, 39-72-703, 39-72-704, 39-72-705, 39-72-706, 39-72-707, 39-72-708, 39-72-709, | |

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| | 39-72-711, 39-72-712, AND 39-72-714, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE | 1404 |
| 417 | <i>(Senate Bill No. 487; Pease)</i> REVISING LAWS ON SCHOOL BUS SAFETY; INCREASING THE FOOTAGE REQUIREMENT IN WHICH A MOTOR VEHICLE MUST STOP BEFORE REACHING A SCHOOL BUS WHEN BUS LIGHTS ARE FLASHING; PROVIDING THAT A PERSON WHO OBSERVES A VIOLATION MAY PREPARE A VIOLATION REPORT; AMENDING SECTIONS 61-8-351 AND 61-8-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE | 1433 |
| 418 | <i>(Senate Bill No. 498; Black)</i> INCREASING THE LIMIT TO \$400,000 FOR A LOAN TO A PRIVATE PERSON THAT IS NOT A WATER USERS' ASSOCIATION OR DITCH COMPANY AND \$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; AMENDING SECTION 85-1-613, MCA; AND PROVIDING A TERMINATION DATE. | 1435 |
| 419 | <i>(Senate Bill No. 503; Tropila)</i> ELIMINATING AUTHORIZATION FOR THE TETON-SPRING CREEK BIRD PRESERVE AND ITS SPECIAL ARCHERY SEASON; AND REPEALING SECTION 87-5-405, MCA . . . | 1436 |
| 420 | <i>(Senate Bill No. 504; Laible)</i> SPECIFYING THE USE OF THE ANNUAL ATTORNEY LICENSE TAX; AMENDING SECTION 37-61-211, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE | 1436 |
| 421 | <i>(House Bill No. 35; Jent)</i> PROVIDING FOR AN INCREASE IN THE BASE SALARY FOR THE NUMBER OF HIGHWAY PATROL OFFICER POSITIONS EXISTING ON JUNE 30, 2006; PROVIDING FOR BIENNIAL SALARY INCREASES AFTER THAT DATE; PROVIDING FOR AN INCREASE IN THE BASE SALARY FOR NEW HIGHWAY PATROL OFFICER POSITIONS CREATED AFTER THAT DATE; PROVIDING A FUNDING MECHANISM FOR THE INCREASES BY RAISING CERTAIN VEHICLE REGISTRATION FEES; EXEMPTING THE HIGHWAY PATROL FROM VACANCY SAVINGS; PROVIDING FOR A STATUTORY APPROPRIATION; AMENDING SECTIONS 2-18-303, 17-7-502, AND 61-3-321, MCA; AND PROVIDING EFFECTIVE DATES | 1437 |
| 422 | <i>(Senate Bill No. 308; O'Neil)</i> REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO INFORM A PARENT OR OTHER PERSON RESPONSIBLE FOR A CHILD'S WELFARE OF THE RIGHT TO HAVE A SUPPORT PERSON PRESENT DURING AN IN-PERSON MEETING WITH A SOCIAL WORKER CONCERNING EMERGENCY PROTECTIVE SERVICES; AND AMENDING SECTIONS 41-3-301 AND 41-3-427, MCA | 1449 |
| 423 | <i>(Senate Bill No. 426; Stapleton)</i> GENERALLY REVISING LAWS PERTAINING TO CONFIDENTIALITY AND INFORMATION SHARING OF YOUTH COURT RECORDS TO PROTECT YOUTH; DEFINING FORMAL AND INFORMAL YOUTH COURT RECORDS; PROVIDING FOR ELECTRONIC TRANSFER OF INFORMATION BETWEEN YOUTH COURTS AND THE DEPARTMENT OF CORRECTIONS; REQUIRING THAT APPROPRIATE CONTROL METHODS BE USED BY THE YOUTH COURT AND THE DEPARTMENT OF CORRECTIONS TO ENSURE ADEQUATE INTEGRITY, SECURITY, AND CONFIDENTIALITY OF ANY ELECTRONIC RECORDS; REQUIRING YOUTH COURT INFORMATION TO BE MAINTAINED SEPARATELY FROM ADULT RECORDS; PROVIDING A PENALTY FOR UNAUTHORIZED DISCLOSURE OF OR ACCESS TO RECORDS; AND AMENDING SECTIONS 41-5-103, 41-5-215, 41-5-216, 41-5-1524, AND 41-5-2510, MCA | 1451 |

- 424 (*Senate Bill No. 186; Balyeat*) ALLOWING NONMONETARY, LOW-VALUE PRIZE CONTESTS BASED ON THE SIZE OF GAME ANIMALS TAKEN BY HUNTERS; AMENDING SECTION 87-3-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE

1461
- 425 (*Senate Bill No. 489; Lind*) AUTHORIZING THE USE OF THE ORPHAN SHARE FUND FOR EVALUATING THE EXTENT OF CONTAMINATION AND FORMULATING REMEDIATION ALTERNATIVES FOR RELEASES AT CERTAIN FACILITIES UNDER THE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; AMENDING SECTIONS 75-10-621, 75-10-704, AND 75-10-743, MCA; AND PROVIDING AN EFFECTIVE DATE

1461
- 426 (*House Bill No. 46; Parker*) CREATING THE OFFENSE OF VEHICULAR HOMICIDE WHILE UNDER THE INFLUENCE; PROVIDING THAT ON THE FIRST THROUGH THIRD CONVICTION FOR DRIVING UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONCENTRATION, IF THE PERSON HAS A PRIOR CONVICTION OF VEHICULAR HOMICIDE WHILE UNDER THE INFLUENCE, THE PERSON SHALL BE PUNISHED AS PROVIDED IN 61-8-731 FOR A FOURTH OR SUBSEQUENT OFFENSE OF DRIVING UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONCENTRATION; AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE

1468
- 427 (*House Bill No. 179; Lake*) REQUIRING THE SMALL BUSINESS LICENSING COORDINATION CENTER TO INFORM EACH BUSINESS ENTERPRISE APPLYING FOR A BUSINESS LICENSE THAT THE BUSINESS ENTERPRISE IS REQUIRED TO OBTAIN A BUSINESS NAME FROM THE SECRETARY OF STATE BEFORE ANY OTHER STATE LICENSE APPLICATION MAY BE PROCESSED; ELIMINATING THE REQUIREMENT THAT THE SECRETARY OF STATE PARTICIPATE IN THE MONTANA SMALL BUSINESS LICENSING COORDINATION PROGRAM AND ON THE BOARD OF REVIEW; AND AMENDING SECTIONS 30-16-201, 30-16-302, AND 30-16-303, MCA

1471
- 428 (*House Bill No. 192; Waitschies*) REVISING LAWS GOVERNING COMMERCIAL DRIVER'S LICENSES TO COMPLY WITH REGULATIONS ISSUED BY THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION OF THE DEPARTMENT OF TRANSPORTATION AND THE TRANSPORTATION SECURITY ADMINISTRATION OF THE DEPARTMENT OF HOMELAND SECURITY; PROHIBITING THE DEPARTMENT OF JUSTICE FROM ISSUING, TRANSFERRING, OR RENEWING A HAZARDOUS MATERIALS ENDORSEMENT UNLESS CERTAIN CONDITIONS ARE MET; REQUIRING A SEPARATE APPLICATION AND FINGERPRINT-BASED BACKGROUND CHECK FOR A HAZARDOUS MATERIALS ENDORSEMENT; REQUIRING REVOCATION OR REMOVAL OF A PERSON'S HAZARDOUS MATERIALS ENDORSEMENT TO A COMMERCIAL DRIVER'S LICENSE UNDER CERTAIN CIRCUMSTANCES; REQUIRING A PERSON WHOSE HAZARDOUS MATERIALS ENDORSEMENT IS REVOKED TO SURRENDER THE PERSON'S COMMERCIAL DRIVER'S LICENSE AND OBTAIN A REPLACEMENT LICENSE WITHOUT THE ENDORSEMENT; REQUIRING THE DEPARTMENT TO KEEP RECORDS OF REVOCATIONS AND DISQUALIFICATIONS; PROHIBITING AN EMPLOYER FROM PERMITTING THE OPERATION OF A COMMERCIAL MOTOR VEHICLE IN VIOLATION OF STATE LAW OR FEDERAL REGULATION AND PROVIDING PENALTIES; SPECIFYING WHEN SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE OR DISQUALIFICATION COMMENCES; REQUIRING THE

DEPARTMENT TO NOTIFY OTHER STATES OF TRAFFIC VIOLATIONS; SPECIFYING THAT A VEHICLE USED FOR MILITARY PURPOSES IS NOT A COMMERCIAL MOTOR VEHICLE; REVISING THE DEFINITION OF "HAZARDOUS MATERIALS"; REVISING THE CONDITIONS UNDER WHICH THE DEPARTMENT MAY ISSUE A COMMERCIAL DRIVER'S LICENSE TO A NONRESIDENT; PROHIBITING THE DEPARTMENT FROM ISSUING A NONCOMMERCIAL DRIVER'S LICENSE TO A NONRESIDENT; REVISING THE CONDITIONS UNDER WHICH THE DEPARTMENT MAY RENEW A DRIVER'S LICENSE BY MAIL; PROVIDING SEPARATE EXPIRATION PROVISIONS FOR COMMERCIAL DRIVER'S LICENSES; REVISING THE PENALTIES FOR OPERATION OF AN OUT-OF-SERVICE VEHICLE; REQUIRING THAT CERTAIN VIOLATIONS APPEAR ON THE DRIVING RECORD OF A PERSON WHO HOLDS A COMMERCIAL DRIVER'S LICENSE; AMENDING SECTIONS 15-1-501, 19-6-401, 19-6-404, 44-1-1005, 61-1-134, 61-1-137, 61-1-505, 61-5-103, 61-5-104, 61-5-105, 61-5-107, 61-5-110, 61-5-111, 61-5-112, 61-5-114, 61-5-119, 61-5-121, 61-5-125, 61-5-201, 61-5-213, 61-8-725, 61-8-802, 61-8-803, 61-8-807, 61-8-812, 61-11-101, 61-11-102, AND 61-11-203, MCA; REPEALING SECTIONS 61-8-809, 61-8-810, AND 61-8-811, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE. 1474

429 (*House Bill No. 197; Jayne*) AMENDING THE MONTANA ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE PREVENTION ACT; MAKING IT A FELONY TO PURPOSELY OR KNOWINGLY ABUSE, SEXUALLY ABUSE, OR NEGLECT AN OLDER PERSON OR A PERSON WITH A DEVELOPMENTAL DISABILITY; MAKING IT A MISDEMEANOR FOR A FIRST OFFENSE OF NEGLIGENTLY ABUSING AN OLDER PERSON OR A PERSON WITH A DEVELOPMENTAL DISABILITY; AND AMENDING SECTION 52-3-825, MCA. 1499

430 (*House Bill No. 208; Kaufmann*) AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS, THROUGH ITS DIRECTOR, TO GRANT OR ACQUIRE RIGHTS-OF-WAY FOR CERTAIN PURPOSES WITHOUT THE APPROVAL OF THE FISH, WILDLIFE, AND PARKS COMMISSION; ALLOWING THE DEPARTMENT, WITH THE CONSENT OF THE COMMISSION, TO MAKE LIMITED PROPERTY BOUNDARY AND WATER RIGHTS ADJUSTMENTS WITH ADJACENT LANDOWNERS; AMENDING SECTIONS 87-1-209 AND 87-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 1500

431 (*House Bill No. 216; Caferro*) REVISING THE LAWS REGARDING THE CHILD SUPPORT ENFORCEMENT PROGRAM TO IMPROVE EFFICIENCY AND EFFECTIVENESS; CLARIFYING ACCESS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO A PARTY'S FINANCIAL AND EMPLOYMENT RECORDS; ALLOWING THE DEPARTMENT TO ESTABLISH A MEDICAL SUPPORT ORDER INDEPENDENTLY OF A CHILD SUPPORT ORDER; EXTENDING THE LIFE OF A WARRANT FOR DISTRRAINT FROM 90 DAYS TO 120 DAYS; ALLOWING AN AGREEMENT FOR SERVICE BY ELECTRONIC MEANS OF AN ORDER REQUIRING ENROLLMENT; PROVIDING PRIORITY FOR WITHHOLDING CHILD SUPPORT AND MEDICAL SUPPORT; ALLOWING ATTACHMENT OF CRIME VICTIMS COMPENSATION FOR THE PAYMENT OF MAINTENANCE OR CHILD SUPPORT; AMENDING SECTIONS 40-5-206, 40-5-208, 40-5-225, 40-5-226, 40-5-247, 40-5-412, 40-5-810, 40-5-812, 40-5-813, AND 53-9-129, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1503

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| 432 | <p><i>(House Bill No. 220; Lake)</i> REQUIRING LOCAL GOVERNMENTS TO USE ELECTRONIC FUNDS TRANSFERS IN MAKING PAYMENTS TO THE STATE IF SO REQUESTED BY THE STATE TREASURER OR A STATE AGENCY AND IF THE LOCAL GOVERNMENTS HAVE THE TECHNOLOGY TO CONDUCT ELECTRONIC FUNDS TRANSFERS; AUTHORIZING A STATE AGENCY OR THE STATE TREASURER TO MAKE PAYMENTS TO LOCAL GOVERNMENTS BY ELECTRONIC FUNDS TRANSFER IF THE LOCAL GOVERNMENTS HAVE THE TECHNOLOGY TO RECEIVE PAYMENTS BY ELECTRONIC FUNDS TRANSFER; AMENDING SECTIONS 7-6-2601, 7-6-4501, AND 17-8-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE</p> | 1520 |
| 433 | <p><i>(House Bill No. 230; Jacobson)</i> REQUIRING CERTIFIED NOTICE OF ADEQUATE STORM WATER DRAINAGE AND MUNICIPAL FACILITIES TO THE REVIEWING AUTHORITY PRIOR TO FINAL PLAT APPROVAL RATHER THAN WITHIN 20 DAYS AFTER PRELIMINARY PLAT APPROVAL; PROVIDING FOR CERTIFICATION THAT ADEQUATE MUNICIPAL FACILITIES FOR THE SUPPLY OF WATER AND DISPOSAL OF SEWAGE AND SOLID WASTE WILL BE PROVIDED; AND AMENDING SECTION 76-4-127, MCA</p> | 1521 |
| 434 | <p><i>(House Bill No. 236; Jackson)</i> MAKING PERMANENT THE CLARK FORK RIVER BASIN TASK FORCE; PROVIDING DIRECTION ON TASK FORCE RESPONSIBILITIES IN THE FUTURE; AMENDING SECTION 85-2-350, MCA; REPEALING SECTION 6, CHAPTER 447, LAWS OF 2001, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE</p> | 1523 |
| 435 | <p><i>(House Bill No. 250; Becker)</i> PROVIDING THAT A HEALTH CARE FACILITY OR GOVERNMENT AGENCY THAT DEALS WITH HEALTH CARE DOES NOT COMMIT THE CRIME OF VIOLATING PRIVACY IN COMMUNICATIONS IF IT RECORDS A HEALTH CARE EMERGENCY TELEPHONE COMMUNICATION MADE TO THE FACILITY OR AGENCY; AND AMENDING SECTION 45-8-213, MCA.</p> | 1525 |
| 436 | <p><i>(House Bill No. 254; Harris)</i> MAKING IT A CIVIL OFFENSE FOR A MEDICAL PRACTITIONER TO ISSUE A WRITTEN PRESCRIPTION ON WHICH THE NAME OF THE DRUG, DOSAGE, INSTRUCTIONS, OR IDENTIFIERS OF THE PRESCRIBING MEDICAL PRACTITIONER CANNOT BE DETERMINED; PROVIDING FOR ENFORCEMENT; REQUIRING ADOPTION OF RULES; AND PROVIDING AN APPLICABILITY DATE</p> | 1526 |
| 437 | <p><i>(House Bill No. 302; Driscoll)</i> INCLUDING THE DISSEMINATION OF INFORMATION BY A BOARD OF TRUSTEES OR A SCHOOL SUPERINTENDENT OR A DESIGNATED EMPLOYEE IN A DISTRICT WITH NO SUPERINTENDENT RELATED TO A BOND ISSUE OR LEVY SUBMITTED TO THE ELECTORS AS "PROPERLY INCIDENTAL TO ANOTHER ACTIVITY REQUIRED OR AUTHORIZED BY LAW"; AMENDING SECTIONS 2-2-121 AND 13-35-226, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE</p> | 1527 |
| 438 | <p><i>(House Bill No. 317; Hamilton)</i> ALLOWING A SCHOOL BOARD TO MEET IN ANY BUILDING THAT IS ACCESSIBLE TO THE PUBLIC; AND AMENDING SECTION 20-3-322, MCA.</p> | 1529 |
| 439 | <p><i>(House Bill No. 332; Buzzas)</i> APPROPRIATING MONEY FROM THE STATE GENERAL FUND TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO BE USED FOR THE LOW-INCOME ENERGY ASSISTANCE PROGRAM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE</p> | 1530 |
| 440 | <p><i>(House Bill No. 345; Gallik)</i> EXTENDING THE PERIOD OF TIME FOR WHICH A CAUSE OF ACTION FOR A FRAUDULENT TRANSFER MAY</p> | |

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| | BE FILED; AMENDING SECTION 31-2-341, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. | 1531 |
| 441 | <i>(House Bill No. 348; Buzzas)</i> RESTRICTING YOUTH ACCESS TO ALCOHOL; AND PROVIDING FOR REGISTRATION OF SALES OF KEGS OF BEER | 1531 |
| 442 | <i>(House Bill No. 349; Olson)</i> REVISING STATUTES CONCERNING PUBLIC INTOXICATION AND THE TREATMENT OF ALCOHOLISM; ELIMINATING THE REQUIREMENT THAT POLICE TAKE PERSONS INCAPACITATED BY ALCOHOL INTO PROTECTIVE CUSTODY; AMENDING SECTIONS 53-24-107 AND 53-24-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE | 1533 |
| 443 | <i>(House Bill No. 453; Furey)</i> PROVIDING FOR ADMINISTRATIVE PENALTIES UNDER THE SOLID WASTE, JUNK VEHICLE, UNDERGROUND STORAGE TANK LICENSING, AND SANITATION IN SUBDIVISION LAWS; AMENDING VENUE PROVISIONS FOR ENFORCEMENT ACTIONS; AMENDING SECTIONS 75-10-227, 75-10-228, 75-10-540, 75-10-542, 75-11-218, 75-11-223, 76-4-108, AND 76-4-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE | 1534 |
| 444 | <i>(House Bill No. 474; Buzzas)</i> ELIMINATING THE REQUIREMENT THAT A COUNTY LEGAL NOTICE BE PUBLISHED IN A NEWSPAPER WITH A PAID CIRCULATION AND A PERIODICALS MAILING PERMIT; AND AMENDING SECTION 7-1-2121, MCA. | 1539 |
| 445 | <i>(House Bill No. 536; Callahan)</i> REVISING THE LAWS RELATING TO THE USER SURCHARGE FOR COURT INFORMATION TECHNOLOGY; REMOVING THE TERMINATION OF THE SURCHARGE; PROVIDING FOR THE DEPOSIT OF THE SURCHARGE IN THE STATE GENERAL FUND TO BE USED FOR FUNDING COURT INFORMATION TECHNOLOGY; REQUIRING THE SUPREME COURT ADMINISTRATOR TO REPORT TO THE LEGISLATURE ON THE STATUS OF JUDICIAL BRANCH INFORMATION TECHNOLOGY AND TO COORDINATE WITH THE STATE STRATEGIC INFORMATION TECHNOLOGY PLAN; AMENDING SECTIONS 3-1-317 AND 3-1-702, MCA; REPEALING SECTION 3-5-904, MCA, AND SECTION 5, CHAPTER 498, LAWS OF 2003; AND PROVIDING AN EFFECTIVE DATE | 1540 |
| 446 | <i>(House Bill No. 590; Buzzas)</i> ALLOWING FOR THE REACTIVATION OF AN ELECTOR IF THE ELECTOR APPEARS IN ORDER TO VOTE OR VOTES BY ABSENTEE BALLOT IN ANY ELECTION; AND AMENDING SECTIONS 13-2-222 AND 13-2-512, MCA | 1541 |
| 447 | <i>(House Bill No. 742; Buzzas)</i> REQUIRING THE ATTORNEY GENERAL TO ESTABLISH AND MAINTAIN A HEALTH CARE DECLARATION REGISTRY FOR DECLARATIONS RELATING TO THE USE OF LIFE-SUSTAINING TREATMENT; ESTABLISHING METHODS FOR FILING DECLARATIONS AND FOR ACCESSING THE REGISTRY BY CERTAIN PERSONS AND HEALTH CARE PROVIDERS; PROVIDING AN APPROPRIATION TO BE USED IN ESTABLISHING AND MAINTAINING THE REGISTRY; AND PROVIDING AN EFFECTIVE DATE | 1542 |
| 448 | <i>(Senate Bill No. 108; Lewis)</i> REVISING REQUIREMENTS FOR CERTIFICATION OF INDEPENDENT CONTRACTORS; PROVIDING A CONCLUSIVE PRESUMPTION THAT AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE VERIFIES AN INDEPENDENT CONTRACTOR'S STATUS FOR PURPOSES OF WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; PROVIDING AUTHORITY TO SUSPEND OR REVOKE | |

CERTIFICATION; SPECIFYING VIOLATIONS AND A PENALTY; CLARIFYING THE DEFINITION OF "INDEPENDENT CONTRACTOR"; DECLARING LEGISLATIVE INTENT FOR A CONCLUSIVE PRESUMPTION REGARDING AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE; ALLOWING AN INDEPENDENT CONTRACTOR TO OPT OUT OF WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; PROVIDING AN EXEMPTION TO THE GENERAL PROHIBITION AGAINST A WAIVER OF STATUTES; REVISING THE DISPUTE APPEAL PERIOD AND PROCESS; REPEALING A REQUIREMENT TO REPORT TO THE STATE COMPENSATION INSURANCE FUND; AMENDING SECTIONS 39-8-102, 39-51-201, 39-51-204, 39-71-105, 39-71-117, 39-71-401, 39-71-409, 39-71-415, AND 39-72-102, MCA; REPEALING SECTIONS 39-51-604 AND 39-71-120, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE

1545

449 (Senate Bill No. 146; McGee) ESTABLISHING THE MONTANA PUBLIC DEFENDER ACT; PROVIDING PURPOSES AND DEFINITIONS; ESTABLISHING A STATEWIDE PUBLIC DEFENDER SYSTEM TO DELIVER ASSIGNED COUNSEL SERVICES IN STATE, COUNTY, MUNICIPAL, AND CITY COURTS; SPECIFYING THE SCOPE OF PUBLIC DEFENDER SERVICES IN CRIMINAL AND CIVIL PROCEEDINGS TO BE DELIVERED BY THE SYSTEM; REPLACING THE APPELLATE DEFENDER COMMISSION WITH A PUBLIC DEFENDER COMMISSION; ESTABLISHING AN OFFICE OF STATE PUBLIC DEFENDER; ESTABLISHING AN OFFICE OF APPELLATE DEFENDER AND PROVIDING FOR A CHIEF APPELLATE DEFENDER; SPECIFYING DUTIES AND RESPONSIBILITIES; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR REGIONAL OFFICES; PROVIDING FOR A CONTRACTED SERVICES PROGRAM; PROVIDING CERTAIN EXEMPTIONS FROM THE MONTANA PROCUREMENT ACT; PROVIDING FOR DETERMINATIONS OF ELIGIBILITY AND INDIGENCE; REALLOCATING PAYMENT RESPONSIBILITIES FOR CERTAIN COSTS PAYABLE BY THE OFFICE OF COURT ADMINISTRATOR AND THE NEW OFFICE OF STATE PUBLIC DEFENDER; ESTABLISHING A SPECIAL REVENUE ACCOUNT; CHANGING THE LOCAL GOVERNMENT ENTITLEMENT SHARE PAYMENT LAW TO COMPENSATE THE STATE FOR LOCAL GOVERNMENT'S SHARE OF THE COSTS OF THE STATEWIDE PUBLIC DEFENDER SYSTEM; CLARIFYING PROVISIONS RELATED TO WITNESS FEES, TRANSCRIPT FEES, AND PSYCHIATRIC EVALUATION AND EXAMINATION COSTS; PROVIDING THAT A PUBLIC DEFENDER BE ASSIGNED AT THE BEGINNING OF ANY CHILD ABUSE AND NEGLECT PROCEEDING; PROVIDING FOR THE TRANSFER OF EMPLOYEES IN COUNTY AND CITY PUBLIC DEFENDER OFFICES TO STATE EMPLOYMENT; PROVIDING FOR AN IMPLEMENTATION AND TRANSITION PERIOD; REQUIRING A LEGISLATIVE AUDIT SO THAT FUNDING RESPONSIBILITIES FOR CERTAIN COUNTIES CAN BE CALCULATED BASED ON ACTUAL COSTS; AMENDING SECTIONS 2-18-103, 3-5-511, 3-5-604, 3-5-901, 7-6-2426, 15-1-121, 18-4-132, 26-2-501, 26-2-506, 26-2-508, 26-2-510, 40-5-236, 40-6-119, 41-3-205, 41-3-422, 41-3-423, 41-3-432, 41-3-607, 41-3-1010, 41-3-1012, 41-5-111, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-8-113, 46-8-114, 46-8-115, 46-12-210, 46-14-202, 46-14-221, 46-15-115, 46-15-116, 46-17-203, 46-18-101, 46-18-201, 46-21-201, 50-20-212, 53-9-104, 53-20-125, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 53-30-110, 61-8-731, 72-5-225, 72-5-234, 72-5-315, 72-5-322, AND 72-5-408, MCA; REPEALING SECTIONS 2-15-1020, 7-6-4023,

46-8-111, 46-8-201, 46-8-202, 46-8-210, 46-8-211, 46-8-212, AND 46-8-213, MCA; AND PROVIDING EFFECTIVE DATES 1564

450 (*Senate Bill No. 261; Perry*) REVISING THE PROCEDURES FOR DECLARING A MANUFACTURED HOME TO BE AN IMPROVEMENT TO REAL PROPERTY FOR TAX PURPOSES; REVISING THE PROCEDURES FOR REVERSING THE DECLARATION THAT A MANUFACTURED HOME IS AN IMPROVEMENT TO REAL PROPERTY FOR TAX PURPOSES; AMENDING SECTIONS 15-1-116 AND 70-1-106, MCA; AND REPEALING SECTION 15-1-117, MCA. 1632

451 (*Senate Bill No. 292; Barkus*) GENERALLY REVISING LOCAL GOVERNMENT AND STATE FINANCE LAWS; CHANGING THE START OF THE PERIOD TO CONTEST THE VALIDITY OF CERTAIN BONDS; CLARIFYING THE LAWS RELATING TO LOCAL GOVERNMENT ISSUANCE OF BOND OR GRANT ANTICIPATION NOTES; PROVIDING A BOND COMMENCEMENT DATE FOR CERTAIN BONDS; PROVIDING THAT CERTAIN REFUNDING BONDS NEED NOT BE SUBJECT TO REDEMPTION AFTER ONE-HALF OF THE BOND'S TERM; CLARIFYING THE TERM "SERIAL BONDS"; AUTHORIZING THE SUBMISSION OF BIDS ELECTRONICALLY AT A PUBLIC SALE OF BONDS; CLARIFYING THAT VARIABLE RATE REFUNDING BONDS MAY BE ISSUED BY A LOCAL GOVERNING BODY; CLARIFYING THE PROTEST PERIOD FOR RURAL SPECIAL IMPROVEMENT DISTRICTS; CLARIFYING THE ISSUANCE OF REFUNDING BONDS FOR SPECIAL IMPROVEMENT DISTRICTS; AUTHORIZING DELINQUENT WATER SERVICE CHARGES TO BECOME LIENS UPON THE PROPERTY SERVED OR TO BE COLLECTED AS A DEBT OF THE PROPERTY OWNER; CLARIFYING THE AUTHORITY OF CITIES TO ISSUE SIDEWALK, CURB, GUTTER, OR ALLEY APPROACH BONDS; CLARIFYING THE SECURITY OF BONDS FOLLOWING THE DISSOLUTION OF A COUNTY PARK DISTRICT; CLARIFYING THE MAXIMUM INTEREST RATE ON SPECIAL ASSESSMENTS SECURING BONDS; CLARIFYING THE AUTHORITY OF IRRIGATION DISTRICTS AND DRAINAGE DISTRICTS TO LEVY TAXES AND ASSESSMENTS; AUTHORIZING THE POOLING OF SPECIAL IMPROVEMENT DISTRICT BONDS AND SIDEWALK, CURB, GUTTER, OR ALLEY APPROACH BONDS; AMENDING SECTIONS 7-7-104, 7-7-109, 7-7-2206, 7-7-2207, 7-7-2211, 7-7-2304, 7-7-4206, 7-7-4210, 7-7-4304, 7-7-4502, 7-12-2113, 7-12-2193, 7-12-4194, 7-13-4309, 7-14-4109, 7-16-2443, 17-5-103, 20-9-408, 20-9-410, AND 20-9-464, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1635

452 (*Senate Bill No. 293; Black*) REVISING LAWS RELATED TO ALTERNATIVE FUELS AND PETROLEUM PRODUCTS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT STANDARDS AND SPECIFICATIONS ENSURING THAT CERTAIN TYPES OF GASOLINE SOLD TO CONSUMERS FOR USE IN MOTOR VEHICLES TO BE OPERATED ON PUBLIC ROADS IS BLENDED WITH ETHANOL AND PROVIDING THAT THE GASOLINE MAY NOT CONTAIN MORE THAN TRACE LEVELS OF METHYL TERTIARY BUTYL ETHER; REDUCING THE TAX INCENTIVE FROM 30 CENTS TO 20 CENTS PER GALLON; REVISING THE TIME IN WHICH TAX CREDITS MAY BE PAID; REDUCING THE AMOUNT OF PAYMENTS THAT MAY BE MADE TO AN ALCOHOL DISTRIBUTOR IN A CALENDAR YEAR FROM \$3 MILLION TO \$2 MILLION; PROVIDING FOR CONTRACTS FOR ETHANOL PRODUCERS ELIGIBLE FOR TAX INCENTIVES; REQUIRING AN ETHANOL PRODUCER TO USE AT LEAST A CERTAIN PERCENTAGE OF MONTANA PRODUCT IN ITS

TOTAL PRODUCTION TO QUALIFY FOR THE TAX INCENTIVE; PROVIDING THAT AN ETHANOL FACILITY IS NOT ELIGIBLE FOR THE TAX INCENTIVE UNLESS THE FACILITY PAID A PREVAILING RATE OF WAGES DURING CONSTRUCTION; REVISING REQUIREMENTS FOR BUSINESS PLANS; REMOVING THE REQUIREMENT FOR LOSS OF PRIORITY; REVISING THE CONDITIONS FOR AN IN-STATE INVESTMENT FOR ALCOHOL PRODUCTION TO BE USED FOR FUEL; ALLOWING THE PAYMENT OF DIVIDENDS AND BONUSES UNDER CERTAIN CONDITIONS; CREATING CERTAIN EXCEPTIONS TO THE REQUIREMENT TO USE ETHANOL-BLENDED GASOLINE; REVISING THE CONTINGENCIES ELIMINATING THE PROVISIONS TAXING GASOHOL AT 85 PERCENT OF THE GASOLINE LICENSE TAX AND SPECIAL FUEL TAX RATES; PROVIDING FOR ENFORCEMENT BY THE DEPARTMENT OF LABOR AND INDUSTRY AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY; REQUIRING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES ESTABLISHING ALLOWABLE TRACE LEVELS OF METHYL TERTIARY BUTYL ETHER AND ESTABLISHING REPORTING AND SAMPLING REQUIREMENTS; AMENDING SECTIONS 15-70-201, 15-70-204, 15-70-503, 15-70-522, 17-6-317, 82-15-101, 82-15-102, 82-15-103, 82-15-104, 82-15-106, 82-15-110, AND 82-15-111, MCA, AND SECTIONS 12 AND 13, CHAPTER 568, LAWS OF 2001; REPEALING SECTION 15-70-245, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND TERMINATION DATES

1647

453 *(Senate Bill No. 301; Story)* REVISING THE LAWS GOVERNING LOCAL GOVERNMENT MILL LEVIES; ALLOWING LOCAL GOVERNMENTS TO IMPOSE MILL LEVIES FOR PUBLIC OR GOVERNMENTAL PURPOSES RATHER THAN FOR STATUTORILY ENUMERATED PURPOSES; REMOVING RESTRICTIONS ON THE COUNTY ALL-PURPOSE LEVY; REMOVING CERTAIN REFERENCES TO MAXIMUM MILL LEVIES; CHANGING THE CONTENTS OF THE PROPERTY TAX NOTICE; AMENDING SECTIONS 7-1-2103, 7-1-4123, 7-6-2501, 7-6-2521, 7-6-2522, 7-6-2524, 7-6-4401, 7-6-4421, 7-7-4104, 7-13-144, 7-13-3027, 7-21-3410, 15-16-101, 15-16-117, 22-1-304, 50-2-111, 53-21-1010, 67-10-402, AND 81-8-504, MCA; REPEALING SECTIONS 7-6-2523, 7-6-2526, 7-6-4023, 7-14-2504, AND 50-2-114, MCA; AND PROVIDING AN EFFECTIVE DATE.

1664

454 *(Senate Bill No. 323; Black)* ALLOWING A 5-YEAR CARRYFORWARD OF THE INCOME AND CORPORATE TAX CREDIT FOR THE PUBLIC CONTRACTOR'S GROSS RECEIPTS TAX; AMENDING SECTION 15-50-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE

1673

455 *(Senate Bill No. 340; Essmann)* ALLOWING THE CREDIT FOR GEOTHERMAL SYSTEMS INSTALLED IN RESIDENCES TO BE CLAIMED BY A PERSON CONSTRUCTING A RESIDENCE; ALLOWING THE CREDIT TO BE USED FOR CORPORATE LICENSE OR INCOME TAXES; AMENDING SECTION 15-32-115, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE

1674

456 *(Senate Bill No. 380; Tester)* PROVIDING FOR REGULATION OF MEDICAL CARE DISCOUNT CARDS AND PHARMACY DISCOUNT CARDS; PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS APPLICABLE TO CARDS AND PERSONS WHO SUPPLY CARDS; SPECIFYING UNLAWFUL ACTS; PROVIDING A RIGHT TO RETURN AND REQUIRING NOTICE OF THE RIGHT TO RETURN MEDICAL CARE DISCOUNT CARDS AND PHARMACY DISCOUNT CARDS; REQUIRING REGISTRATION OF SUPPLIERS OF MEDICAL CARE DISCOUNT CARDS; REQUIRING FINANCIAL RESPONSIBILITY OF

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| | SUPPLIERS OF MEDICAL CARE DISCOUNT CARDS; PROVIDING CERTAIN EXCEPTIONS, INCLUDING A WAIVER FOR PREFERRED PROVIDER ORGANIZATIONS; REQUIRING A CARD EDUCATION PROGRAM; PROHIBITING FRAUD CONCERNING CARDS; AMENDING SECTIONS 33-1-318, 33-1-1301, AND 33-1-1302, MCA; REPEALING SECTION 33-1-107, MCA; AND PROVIDING AN APPLICABILITY DATE | 1675 |
| 457 | <i>(Senate Bill No. 415; Tester)</i> CREATING THE MONTANA RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT; PROVIDING LEGISLATIVE FINDINGS; DEFINING TERMS; PROVIDING A GRADUATED RENEWABLE ENERGY STANDARD; AUTHORIZING ADMINISTRATIVE PENALTIES; PROVIDING A WAIVER PROCESS FOR PUBLIC UTILITIES; ESTABLISHING A PROCUREMENT PROCESS; AUTHORIZING ADVANCE APPROVAL OF CERTAIN PROCUREMENT CONTRACTS BY THE PUBLIC SERVICE COMMISSION; REQUIRING THE SUBMISSION OF PROCUREMENT PLANS; AUTHORIZING THE COMMISSION TO IMPLEMENT AND ENFORCE THE PROVISIONS OF THIS ACT; PROVIDING THE COMMISSION WITH RULEMAKING AUTHORITY; EXEMPTING COOPERATIVE UTILITIES FROM THE GRADUATED RENEWABLE ENERGY STANDARD; REQUIRING CERTAIN COOPERATIVE UTILITIES TO IMPLEMENT AND ENFORCE THEIR OWN RENEWABLE ENERGY STANDARD; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE | 1683 |
| 458 | <i>(Senate Bill No. 507; Brueggeman)</i> GENERALLY REVISING MOTOR VEHICLE LAWS; PROVIDING DEFINITIONS; CLARIFYING THE ISSUING OF CERTIFICATES OF TITLE, REGISTRATION, AND LICENSE PLATE REQUIREMENTS FOR STREET RODS, SPECIALLY CONSTRUCTED VEHICLES, KIT VEHICLES, AND CUSTOM VEHICLES; AUTHORIZING CERTAIN CUSTOM VEHICLES AND STREET RODS NOT USED FOR GENERAL TRANSPORTATION PURPOSES TO DISPLAY ONLY A REAR LICENSE PLATE UPON PAYMENT OF A FEE; AMENDING SECTIONS 61-3-301, 61-3-411, 61-9-204, 61-9-407, AND 61-9-430, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. | 1689 |
| 459 | <i>(House Bill No. 4; Musgrove)</i> APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2005; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEARS 2005, 2006, AND 2007; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. | 1696 |
| 460 | <i>(House Bill No. 18; Juneau)</i> EXTENDING THE DURATION OF THE STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION; REDUCING THE REQUIRED QUORUM FOR THE COMMISSION FROM SEVEN TO SIX; PROVIDING AN APPROPRIATION; AMENDING SECTION 90-1-131, MCA, SECTION 19, CHAPTER 512, LAWS OF 1999, AND SECTION 5, CHAPTER 69, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. | 1704 |
| 461 | <i>(House Bill No. 60; Harris)</i> ESTABLISHING A DECONTAMINATION STANDARD FOR THE CLEANUP OF INDOOR PROPERTY CONTAMINATED BY THE CLANDESTINE MANUFACTURE OF METHAMPHETAMINE; PROVIDING FOR RULEMAKING AUTHORITY TO CHANGE THE STANDARD OR TO ADOPT SIMILAR STANDARDS FOR PRECURSORS TO METHAMPHETAMINE TO PROTECT HUMAN HEALTH; AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO PROVIDE MINIMUM STANDARDS AND | |

REQUIREMENTS FOR CERTIFYING PERSONS TO CONDUCT METHAMPHETAMINE LAB REMEDIATION ACTIVITIES; REQUIRING NOTICE TO SUBSEQUENT OCCUPANTS OF CONTAMINATED INHABITABLE PROPERTY UNDER CERTAIN CONDITIONS; PROVIDING REPORTING REQUIREMENTS; AND PROVIDING CIVIL IMMUNITY FOR A PROPERTY OWNER AND OWNER'S AGENT IN CERTAIN INSTANCES 1705

462 (House Bill No. 63; Villa) GENERALLY REVISING SCHOOL FINANCE LAWS; ALLOWING SCHOOL DISTRICTS TO LEASE PERSONAL PROPERTY; EXPANDING THE USES FOR CERTAIN SCHOOL DISTRICT FUNDS; CHANGING A BUDGET DEADLINE FOR JOINT DISTRICTS; INCREASING THE ENTITLEMENTS FOR PUBLIC SCHOOLS FOR SCHOOL FISCAL YEAR 2006 AND SCHOOL FISCAL YEAR 2007; PROVIDING FOR 3-YEAR AVERAGING OF ANB FOR SCHOOL DISTRICTS WITH DECLINING ENROLLMENT FOR SCHOOL FISCAL YEAR 2006 AND SCHOOL FISCAL YEAR 2007; ALLOWING A SCHOOL DISTRICT TO PERMISSIVELY LEVY UP TO THE SAME OVER-BASE PROPERTY TAX REVENUE LEVIED IN THE PREVIOUS FISCAL YEAR; REVISING CERTAIN CALCULATIONS FOR GUARANTEED TAX BASE FUNDING; REVISING THE LIMITATIONS ON SCHOOL DISTRICT BONDED INDEBTEDNESS; CONFORMING CERTAIN STATUTES TO CURRENT LAW; REMOVING A REFERENCE TO A ONE-TIME-ONLY STATE PAYMENT TO SCHOOL DISTRICTS; TEMPORARILY EXTENDING SCHOOL ELECTION DEADLINES; PROVIDING FOR INTERDISTRICT AGREEMENTS FOR FUND TRANSFERS BY FEBRUARY 1 OF THE CURRENT FISCAL YEAR; AMENDING SECTIONS 20-5-323, 20-6-607, 20-7-102, 20-9-130, 20-9-131, 20-9-142, 20-9-151, 20-9-152, 20-9-306, 20-9-308, 20-9-311, 20-9-314, 20-9-321, 20-9-353, 20-9-366, 20-9-406, AND 20-9-443, MCA; REPEALING SECTION 20-9-375, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND TERMINATION DATES. 1708

463 (House Bill No. 83; Campbell) REVISING THE SCHOOL DISTRICT TUITION LAWS; REQUIRING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO PAY TUITION FOR CHILDREN WHO ATTEND SCHOOL OUTSIDE OF THE DISTRICT OF RESIDENCE BECAUSE OF PLACEMENT IN FOSTER CARE OR A GROUP HOME; ELIMINATING THE REQUIREMENT THAT A SCHOOL DISTRICT REPORT THE NUMBER OF OUT-OF-DISTRICT STUDENTS ATTENDING SCHOOL IN THE DISTRICT BECAUSE OF GEOGRAPHIC CONDITIONS; ELIMINATING THE REQUIREMENT FOR THE COUNTY SUPERINTENDENT TO PAY TUITION ON BEHALF OF THE STATE UNDER CERTAIN CONDITIONS; ESTABLISHING A TUITION PAYMENT SCHEDULE FOR DISTRICTS THAT PAY TUITION; CLARIFYING WHERE A DISTRICT MUST CREDIT TUITION RECEIPTS; REQUIRING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO PAY TUITION AND TRANSPORTATION COSTS FOR A CHILD WITH A DISABILITY; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 20-3-205, 20-5-321, 20-5-324, 20-7-420, 20-9-212, 20-9-335, AND 20-10-105, MCA; AND PROVIDING AN EFFECTIVE DATE 1726

464 (House Bill No. 102; Lenhart) DEPOSITING FEES FROM THE REGISTRATION OF CERTAIN VEHICLES AND DRIVER'S LICENSES TO THE STATE GENERAL FUND; STATUTORILY APPROPRIATING FROM THE STATE GENERAL FUND TO THE MONTANA HIGHWAY PATROL OFFICERS' RETIREMENT PENSION TRUST FUND THE AMOUNTS REQUIRED TO PAY CERTAIN SUPPLEMENTAL BENEFITS UNDER THE HIGHWAY PATROL OFFICERS'

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| | RETIREMENT SYSTEM; AMENDING SECTIONS 15-1-122, 17-7-502, 19-6-401, 19-6-404, 19-6-709, 61-3-527, 61-3-530, 61-3-562, AND 61-5-121, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE | 1735 |
| 465 | (<i>House Bill No. 146; Gallik</i>) PROVIDING FOR A CIVIL ACTION AGAINST A PERSON MAKING A FALSE CLAIM AGAINST A GOVERNMENTAL ENTITY; REPEALING SECTION 17-8-231, MCA; AND PROVIDING AN APPLICABILITY DATE | 1744 |
| 466 | (<i>House Bill No. 159; McKenney</i>) GENERALLY REVISING UNEMPLOYMENT INSURANCE LAWS; EXCLUDING SUBSIDIES RECEIVED PURSUANT TO THE ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE FOR OLDER WORKERS PROGRAM FROM THE DEFINITION OF "WAGES"; CLARIFYING ALIEN SERVICES AND DESCRIBING ELECTION JUDGE SERVICES THAT ARE EXCLUDED FROM THE DEFINITION OF "EMPLOYMENT"; REVISING LAWS RELATING TO THE TRANSFER OF UNEMPLOYMENT INSURANCE CONTRIBUTION FUNCTIONS FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF LABOR AND INDUSTRY; SPECIFYING PROGRAMS TO BE SUPPORTED BY MONEY FROM THE EMPLOYMENT SECURITY ACCOUNT; REVISING THE TIME PERIOD FOR CONTESTING CLASSIFICATION AND CONTRIBUTION RATES; REVISING RATE SCHEDULES; REVISING PROCEDURES FOR THE TRANSFER OF EXPERIENCE RATINGS FROM A PREDECESSOR TO A SUCCESSOR EMPLOYER AND PROVIDING PENALTIES FOR WRONGFULLY OBTAINING A LOWER EXPERIENCE RATING; ESTABLISHING PENALTY AND INTEREST ASSESSMENTS FOR LATE FILINGS AND FAILURE TO RESPOND TO DEPARTMENT SUBPOENAS; REVISING PROCEDURES FOR ELIGIBILITY AND FOR FILING UNEMPLOYMENT INSURANCE BENEFIT CLAIMS; AMENDING SECTIONS 39-51-201, 39-51-204, 39-51-301, 39-51-302, 39-51-409, 39-51-1110, 39-51-1206, 39-51-1218, 39-51-1219, 39-51-1301, 39-51-1303, 39-51-2102, 39-51-2104, AND 39-51-2402, MCA; AND PROVIDING EFFECTIVE DATES. | 1748 |
| 467 | (<i>House Bill No. 182; Roberts</i>) GENERALLY REVISING AND CONSOLIDATING PROFESSIONAL AND OCCUPATIONAL LICENSING LAWS; DISTINGUISHING BETWEEN DEPARTMENT AND BOARD OR PROGRAM DUTIES REGARDING LICENSURE, EXAMINATION, AND FEES; CLARIFYING THE DETERMINATION AND DISTRIBUTION OF FEES FOR LICENSURE, EXAMINATION, AND ADMINISTRATIVE COSTS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO HANDLE CERTAIN TASKS RELATED TO BOARDS, INCLUDING MONITORING OF LICENSING BOARDS' CASH BALANCES AND HIRING SERVICES FOR BOARDS; ALLOWING FOR FEE ADJUSTMENTS; REQUIRING STANDARDIZATION OF FORMS; INCLUDING DEPARTMENT PROGRAMS UNDER CERTAIN PROVISIONS APPLICABLE TO BOARDS; SETTING UNIFORM STANDARDS FOR LICENSE RENEWALS, INCLUDING RENEWAL PERIODS; REVISING CERTAIN NOTIFICATION PERIODS; REMOVING SPECIFIC BOARD OR PROGRAM REFERENCES IF DUTIES ARE ASSIGNED TO THE DEPARTMENT OR PROVIDED GENERALLY TO ALL BOARDS; REMOVING THE REQUIREMENT TO PUBLISH AN ANNUAL LIST OF SOCIAL WORKERS AND PROFESSIONAL COUNSELORS; REMOVING CERTAIN SPECIFIED LICENSING PERIODS; REMOVING THE PUBLICATION REQUIREMENT FOR OUTFITTERS' NAMES AND ADDRESSES; REPEALING CERTAIN BOARD-SPECIFIC OR PROGRAM-SPECIFIC REFERENCES TO LICENSURE, EXAMINATIONS, AND FEES; | |

AMENDING SECTIONS 23-3-501, 23-4-105, 23-4-201, 27-12-206, 33-30-1013, 37-1-101, 37-1-104, 37-1-105, 37-1-121, 37-1-130, 37-1-131, 37-1-134, 37-1-141, 37-1-302, 37-1-306, 37-1-307, 37-2-101, 37-3-203, 37-3-211, 37-3-301, 37-3-305, 37-3-306, 37-3-307, 37-3-309, 37-3-311, 37-3-313, 37-3-341, 37-3-342, 37-3-343, 37-3-344, 37-3-347, 37-4-301, 37-4-307, 37-4-402, 37-4-406, 37-6-304, 37-7-104, 37-7-302, 37-7-321, 37-7-605, 37-7-606, 37-8-102, 37-8-202, 37-8-204, 37-9-304, 37-9-305, 37-10-302, 37-10-304, 37-11-201, 37-11-304, 37-12-201, 37-12-302, 37-13-302, 37-14-306, 37-16-202, 37-16-405, 37-17-302, 37-18-202, 37-19-401, 37-19-702, 37-19-807, 37-20-301, 37-20-302, 37-22-201, 37-22-301, 37-22-302, 37-23-101, 37-23-202, 37-23-203, 37-23-206, 37-24-202, 37-24-303, 37-24-310, 37-25-201, 37-26-201, 37-26-403, 37-27-105, 37-27-210, 37-28-104, 37-28-202, 37-29-306, 37-31-203, 37-31-302, 37-31-303, 37-31-304, 37-31-305, 37-31-308, 37-31-311, 37-31-312, 37-31-323, 37-34-201, 37-34-305, 37-35-103, 37-40-302, 37-42-304, 37-42-308, 37-47-101, 37-47-201, 37-47-304, 37-50-304, 37-51-204, 37-51-303, 37-51-305, 37-51-603, 37-53-104, 37-60-304, 37-66-304, 37-67-303, 37-67-321, 37-68-201, 37-68-304, 37-68-305, 37-68-307, 37-68-310, 37-68-312, 37-69-304, 37-69-305, 37-69-306, 37-69-401, 37-72-102, 37-72-202, 37-72-305, 37-76-109, 50-16-201, 50-74-312, AND 80-8-207, MCA; REPEALING SECTIONS 37-3-346, 37-4-203, 37-4-303, 37-4-403, 37-6-303, 37-7-303, 37-8-431, 37-10-307, 37-11-305, 37-11-308, 37-11-309, 37-12-307, 37-13-306, 37-13-307, 37-14-303, 37-14-309, 37-14-310, 37-15-304, 37-15-306, 37-15-308, 37-15-312, 37-16-403, 37-16-404, 37-16-407, 37-17-303, 37-17-305, 37-17-306, 37-17-307, 37-17-308, 37-18-203, 37-18-303, 37-18-307, 37-19-306, 37-22-303, 37-22-304, 37-23-103, 37-23-205, 37-24-304, 37-24-308, 37-25-307, 37-28-203, 37-29-304, 37-29-305, 37-31-321, 37-31-322, 37-35-203, 37-40-304, 37-40-305, 37-47-312, 37-50-308, 37-50-317, 37-51-310, 37-53-103, 37-54-210, 37-54-211, 37-54-311, 37-60-312, 37-65-304, 37-65-306, 37-66-307, 37-67-315, 37-67-316, 37-67-318, 37-69-307, 37-72-303, 37-72-306, 50-39-105, 50-39-106, 50-74-309, 50-74-313, AND 50-76-105, MCA; AND PROVIDING AN EFFECTIVE DATE

1766

468 (House Bill No. 186; Bergren) REGULATING THE OPERATION OF VARIOUS TYPES OF VEHICLES; DEFINING "MOTORIZED NONSTANDARD VEHICLE" AND "ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE"; PROHIBITING THE OPERATION OF MOTORIZED NONSTANDARD VEHICLES ON CERTAIN WAYS OF THIS STATE OPEN TO THE PUBLIC UNLESS AUTHORIZED BY THE LOCAL GOVERNING BODY; AUTHORIZING THE OPERATION OF ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES ON CERTAIN SIDEWALKS, ROADS, AND STREETS; REVISING THE DEFINITIONS OF "MOTOR VEHICLE", "MOTORCYCLE", AND "MOTOR-DRIVEN CYCLE"; CLARIFYING THAT LOCAL AUTHORITIES MAY REGULATE MOTORIZED NONSTANDARD VEHICLES ON SIDEWALKS, STREETS, AND HIGHWAYS UNDER THEIR JURISDICTION; AMENDING SECTIONS 33-23-204, 61-1-102, 61-1-105, 61-1-106, AND 61-12-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

1832

469 (House Bill No. 188; Bergren) GENERALLY REVISING THE SECURITIES AND INSURANCE LAWS ADMINISTERED BY THE STATE AUDITOR; CLARIFYING A DEPOSITORY FOR SECURITIES EXAMINATION COSTS; CLARIFYING VARIOUS ACCOUNT, MORTALITY TABLE, AND MANUAL REFERENCES; REVISING THE APPLICABILITY OF CERTAIN REPORTING PENALTY PROVISIONS; EXPANDING REINSURANCE OPTIONS FOR FARM MUTUAL INSURERS; EXCLUDING CERTAIN UNALLOCATED ANNUITY CONTRACTS FROM THE LIFE AND HEALTH INSURANCE GUARANTY

ASSOCIATION ACCOUNT; CHANGING A REFERENCE TO SURPLUS LINES PRODUCER FEE; ADDING A PRIME RATE FACTOR TO CERTAIN INTEREST RATE PAYMENTS; ALLOWING INCLUSION OF THE HIGHWAY TRAFFIC SAFETY FEE IN A PREMIUM REDUCTION; REVISING THE DEFINITION OF "CONSULTANT"; CHANGING REFERENCES TO APPLICATION FORMS; SPECIFYING HOW CRIMINAL BACKGROUND CHECKS MAY BE HANDLED; CLARIFYING APPLICATION OF CONTINUING EDUCATION PROVISIONS TO INDIVIDUALS AND REMOVING A CARRYFORWARD PROVISION; ADDING REPORTING AND COMPLIANCE REQUIREMENTS FOR RENTAL VEHICLE ENTITIES; LIMITING INTEREST DUE ON CLAIMS; REVISING THE DATE FOR AN EXEMPTION RELATED TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY PRIVACY REGULATIONS; CLARIFYING INCONTESTABILITY OF CERTAIN LIFE INSURANCE EXCHANGE OR CONVERSION POLICIES; INCLUDING INTENT NOTIFICATION IN CHARITABLE GIFT ANNUITY REQUIREMENTS; REVISING DOWNWARD THE NUMBER OF EMPLOYEES NECESSARY FOR CERTAIN GROUP INSURANCE POLICIES; CLARIFYING POLICY COVERAGE OF NEWBORNS; CLARIFYING THE DEFINITION OF "CREDITABLE COVERAGE"; EXCLUDING EXCEPTED BENEFIT PLANS FROM CONVERSION REQUIREMENTS; DEFINING RESIDENCY FOR THE COMPREHENSIVE HEALTH ASSOCIATION; CLARIFYING RULEMAKING AUTHORITY RELATED TO THE COMPREHENSIVE HEALTH ASSOCIATION; CLARIFYING REFERENCES TO THE COMPREHENSIVE HEALTH ASSOCIATION PORTABILITY PLAN; CLARIFYING PERMISSIBLE OFFSET FOR PERSONAL PROPERTY LOSS; CLARIFYING PROVISIONS THAT APPLY JOINTLY TO A CAPTIVE INSURANCE COMPANY FORMED AS A RECIPROCAL INSURER; REPEALING VALUATION PROVISIONS FOR BONDS, CERTAIN SECURITIES, PROPERTY, AND PURCHASE MONEY MORTGAGES; AMENDING SECTIONS 30-10-115, 30-10-209, 33-2-305, 33-2-523, 33-2-701, 33-3-431, 33-4-101, 33-4-503, 33-10-203, 33-12-107, 33-16-222, 33-17-102, 33-17-211, 33-17-220, 33-17-301, 33-17-401, 33-17-503, 33-17-1203, 33-17-1205, 33-17-1502, 33-18-232, 33-19-105, 33-20-105, 33-20-704, 33-20-1101, 33-22-101, 33-22-140, 33-22-508, 33-22-1501, 33-22-1502, 33-22-1513, 33-22-1514, 33-22-1515, 33-22-1516, 33-22-1517, 33-22-1803, 33-24-103, 33-28-105, AND 33-28-202, MCA; REPEALING SECTIONS 33-2-532, 33-2-533, 33-2-534, AND 33-2-535, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES

1836

470 *(House Bill No. 214; Sales)* CREATING A CLASS B-13 NONRESIDENT YOUTH BIG GAME COMBINATION LICENSE; PROVIDING TERMS, CONDITIONS, AND SALE CRITERIA FOR THE LICENSE; LIMITING THE NUMBER OF AVAILABLE CLASS B-13 LICENSES AND PROVIDING THAT B-13 LICENSES ARE NOT INCLUDED IN THE LIMIT ON AVAILABLE CLASS B-10 NONRESIDENT BIG GAME COMBINATION LICENSES; PROVIDING THAT THE HOLDER OF A CLASS B-13 LICENSE MAY ALSO APPLY FOR A NONRESIDENT ANTLERLESS ELK B TAG; AMENDING SECTIONS 87-2-104 AND 87-2-511, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . .

1873

471 *(House Bill No. 235; Lange)* IMPLEMENTING CERTAIN 2004 RECOMMENDATIONS OF THE PRIVATE LANDS AND PUBLIC WILDLIFE ADVISORY COUNCIL; ALLOWING THE FISH, WILDLIFE, AND PARKS COMMISSION TO ISSUE CERTAIN BIG GAME LICENSES THROUGH AN ANNUAL LOTTERY AND DEDICATING LOTTERY PROCEEDS TO HUNTING ACCESS ENHANCEMENT PROGRAMS AND LAW ENFORCEMENT; ALLOWING A HUNTER MANAGEMENT

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| | PROGRAM COOPERATOR TO DESIGNATE AN IMMEDIATE FAMILY MEMBER TO RECEIVE THE COOPERATOR'S COMPLIMENTARY LICENSE; ALLOWING ANY LANDOWNER WHO IS ENROLLED IN THE BLOCK MANAGEMENT PROGRAM TO RECEIVE BENEFITS PROVIDED UNDER THE HUNTER MANAGEMENT PROGRAM AND THE HUNTING ACCESS ENHANCEMENT PROGRAM; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO PROVIDE FISCAL ANALYSES OF HUNTING AND FISHING ACCESS ENHANCEMENT PROGRAM FUNDING SOURCES TO THE REVIEW COMMITTEE; AMENDING SECTIONS 87-1-266, 87-1-267, 87-1-269, AND 87-2-702, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. | 1878 |
| 472 | <i>(House Bill No. 266; Rice)</i> IMPLEMENTING THE NOXIOUS WEED MANAGEMENT TRUST FUND CONSTITUTIONAL AMENDMENT; AMENDING SECTIONS 60-3-201, 80-7-508, 80-7-801, 80-7-811, 80-7-814, AND 80-7-815, MCA; AND PROVIDING EFFECTIVE DATES | 1883 |
| 473 | <i>(House Bill No. 288; Noennig)</i> PROVIDING FOR THE DEPARTMENT OF CORRECTIONS INSTEAD OF THE CLERKS OF COURT TO COLLECT FEES CHARGED FOR SUPERVISION BY THE DEPARTMENT; AND AMENDING SECTIONS 45-9-202 AND 46-23-1031, MCA | 1887 |
| 474 | <i>(House Bill No. 327; Groesbeck)</i> 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 | 1889 |
| 475 | <i>(House Bill No. 331; Wanzenried)</i> PROVIDING FOR MEDICAL MALPRACTICE INSURANCE WHEN THE INSURANCE IS NOT REASONABLY AVAILABLE; CREATING AN ASSOCIATION CONSISTING OF CERTAIN CASUALTY INSURERS TO PROVIDE THE INSURANCE; PROVIDING A PROCESS FOR DETERMINING AVAILABILITY OF MEDICAL MALPRACTICE INSURANCE; CREATING A STABILIZATION RESERVE FUND; AND AMENDING SECTION 33-11-105, MCA | 1890 |
| 476 | <i>(House Bill No. 351; Butcher)</i> REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO EXPLAIN THE REQUIREMENTS OF FIXING VALUES OF IMPROVEMENTS BY ARBITRATION; REQUIRING A LESSEE TO PROVIDE A LIST OF IMPROVEMENTS AND THEIR REASONABLE VALUE PRIOR TO RENEWAL OF A LEASE AND REQUIRING THAT THE INFORMATION BE PROVIDED TO A PARTY REQUESTING TO BID ON THE LEASE; CHANGING COURT VENUE FOR CONTESTING VALUES; AMENDING SECTIONS 77-6-302 AND 77-6-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. | 1899 |
| 477 | <i>(House Bill No. 374; Harris)</i> INCREASING THE INCARCERATION AND FINE THAT MAY BE IMPOSED ON A PERSON FOR A FIRST THROUGH THIRD CONVICTION OF DRIVING WHILE UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONCENTRATION IF ONE OR MORE PASSENGERS UNDER 16 YEARS OF AGE WERE IN THE VEHICLE AT THE TIME OF THE OFFENSE; AND AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA | 1900 |
| 478 | <i>(House Bill No. 385; Wells)</i> REVISING THE LAW RELATING TO DRIVER'S LICENSE ELIGIBILITY; PROHIBITING THE ISSUANCE OF A LICENSE TO A PERSON WHO CANNOT PROVE THAT THE PERSON'S PRESENCE IN THE UNITED STATES IS AUTHORIZED | |

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| | UNDER FEDERAL LAW; PROVIDING FOR ISSUANCE OF A DRIVER'S LICENSE TO A FOREIGN NATIONAL WHOSE PRESENCE IN THE UNITED STATES IS TEMPORARILY AUTHORIZED UNDER FEDERAL LAW AND IMPOSING CERTAIN CONDITIONS ON RENEWAL AND EXPIRATION OF THAT LICENSE; AUTHORIZING THE DEPARTMENT OF JUSTICE TO ADOPT RULES REGARDING ISSUANCE OF A DRIVER'S LICENSE TO A FOREIGN NATIONAL; AMENDING SECTIONS 61-5-105, 61-5-107, 61-5-111, AND 61-5-125, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES . . . | 1902 |
| 479 | <i>(House Bill No. 386; Sinrud)</i> ESTABLISHING QUALIFICATIONS FOR AN INDIVIDUAL APPOINTED AS THE COMMISSIONER OF POLITICAL PRACTICES; ESTABLISHING RESTRICTIONS ON THE COMMISSIONER OF POLITICAL PRACTICES; PROVIDING DEFINITIONS THAT APPLY TO THE COMMISSIONER OF POLITICAL PRACTICES; REQUIRING THAT A GOVERNOR WHO REMOVES A COMMISSIONER OF POLITICAL PRACTICES FROM OFFICE STATE THE REASONS FOR REMOVAL IN WRITING; ELIMINATING THE PERIOD DURING WHICH AN INDIVIDUAL WHO SERVED AS COMMISSIONER OF POLITICAL PRACTICES WAS RESTRICTED FROM BECOMING A CANDIDATE FOR PUBLIC OFFICE; IDENTIFYING CONDITIONS REGARDING THE RECUSAL OF THE COMMISSIONER OF POLITICAL PRACTICES; REQUIRING THE APPOINTMENT OF AND SETTING THE QUALIFICATIONS FOR A DEPUTY TO SERVE WHEN THE COMMISSIONER OF POLITICAL PRACTICES IS RECUSED; AND AMENDING SECTIONS 13-27-111, 13-37-101, 13-37-102, 13-37-103, AND 13-37-111, MCA | 1907 |
| 480 | <i>(House Bill No. 395; Becker)</i> PROVIDING THAT A PRIVATE INSURER OR PUBLIC ASSISTANCE PROGRAM IS RESPONSIBLE FOR THE COSTS OF PRECOMMITMENT DETENTION, EXAMINATION, AND TREATMENT OF A RESPONDENT IN A MENTAL HEALTH COMMITMENT PROCEEDING BEFORE THE COUNTY OF RESIDENCE IS RESPONSIBLE FOR THOSE COSTS; AMENDING SECTION 53-21-132, MCA; AND PROVIDING AN EFFECTIVE DATE | 1910 |
| 481 | <i>(House Bill No. 411; Wells)</i> CLARIFYING THAT TOBACCO TAX REVENUE DEDICATED TO SUPPORT THE OPERATION AND MAINTENANCE OF VETERANS' HOMES IS RESTRICTED TO THAT USE; AMENDING SECTION 10-2-417, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. | 1911 |
| 482 | <i>(House Bill No. 414; Brown)</i> ESTABLISHING A YOUTH INTERVENTION AND PREVENTION ACCOUNT TO BE USED FOR THE YOUTH COURT INTERVENTION AND PREVENTION PROGRAMS; PROVIDING FOR FUND TRANSFERS TO THE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 41-5-130, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. | 1912 |
| 483 | <i>(House Bill No. 418; Keane)</i> CLARIFYING THE DEFINITION OF "SUPERVISORY EMPLOYEE" IN THE CONTEXT OF COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES; AMENDING SECTION 39-31-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE | 1914 |
| 484 | <i>(House Bill No. 421; Golie)</i> ALLOWING A QUALIFIED NONRESIDENT CHILD OF A RESIDENT TO PURCHASE CERTAIN NONRESIDENT HUNTING AND FISHING LICENSES AT A REDUCED RATE; CREATING A CLASS B-15 NONRESIDENT CHILD'S ELK LICENSE FOR USE ONLY BY A QUALIFIED NONRESIDENT CHILD OF A RESIDENT; ESTABLISHING THE CONDITIONS AND RATE OF THE | |

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| | LICENSES AVAILABLE TO A QUALIFIED NONRESIDENT CHILD OF A RESIDENT; AND PROVIDING A DELAYED EFFECTIVE DATE . . . | 1916 |
| 485 | <i>(House Bill No. 423; Stahl)</i> APPROPRIATING \$500,000 FROM THE STATE GENERAL FUND TO BE USED BY THE DEPARTMENT OF COMMERCE TO PROVIDE FUNDING FOR THE ACQUISITION OF LAND AND THE CONSTRUCTION OF A FACILITY FOR CREATION OF THE GREAT PLAINS DINOSAUR PARK IN MALTA; AND PROVIDING AN EFFECTIVE DATE | 1917 |
| 486 | <i>(House Bill No. 428; Gutsche)</i> GENERALLY REVISING THE LAWS RELATING TO ENFORCEMENT PROCEDURES OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY UNDER THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT, THE METAL MINE RECLAMATION LAWS, AND THE OPENCUT MINING ACT; PROVIDING STANDARD PROCEDURES FOR ISSUING AND APPEALING ADMINISTRATIVE ORDERS; PROHIBITING THE DEPARTMENT FROM WAIVING A PENALTY ASSESSED UNDER THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT IF A PERSON OR OPERATOR FAILS TO ABATE THE VIOLATION IN ACCORDANCE WITH A NOTICE OR ORDER; PROVIDING FOR A WRITTEN RELEASE OF LIABILITY UNDER THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT; PROVIDING PENALTIES FOR VIOLATIONS OF THE METAL MINE RECLAMATION LAWS AND THE OPENCUT MINING ACT; AMENDING VENUE PROVISIONS UNDER METAL MINE RECLAMATION LAWS AND THE OPENCUT MINING ACT; AND AMENDING SECTIONS 82-4-254, 82-4-361, AND 82-4-441, MCA. | 1918 |
| 487 | <i>(House Bill No. 429; Gutsche)</i> GENERALLY REVISING THE LAWS RELATING TO ENFORCEMENT PROCEDURES OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PROVIDING UNIFORM FACTORS FOR DETERMINING PENALTIES AND UNIFORM VENUE FOR PENALTY ACTIONS; AUTHORIZING THE DEPARTMENT TO USE PRIVATE SERVICES TO COLLECT PENALTIES, FEES, LATE FEES, AND INTEREST; REVISING THE STATUTE OF LIMITATIONS FOR ADMINISTRATIVE PENALTIES FOR AIR QUALITY VIOLATIONS; AMENDING SECTIONS 75-2-401, 75-2-413, 75-2-514, 75-2-515, 75-5-611, 75-5-631, 75-6-109, 75-6-114, 75-10-228, 75-10-417, 75-10-424, 75-10-542, 75-10-1222, 75-10-1223, 75-11-223, 75-11-516, 75-11-525, 75-20-408, 76-4-109, 82-4-141, 82-4-254, 82-4-361, AND 82-4-441, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE | 1926 |
| 488 | <i>(House Bill No. 431; Raser)</i> REVISING THE REQUIREMENTS FOR CREATING A RURAL IMPROVEMENT DISTRICT; REQUIRING THAT A RESOLUTION AND NOTICE OF INTENTION TO CREATE A DISTRICT IN WHICH RELATED IMPROVEMENTS COMPOSE A LARGER PROJECT INCLUDE THE FULL SCOPE, INCLUDING COSTS AND IMPACTS, OF THE RELATED OR LARGER PROJECT; REVISING THE REQUIREMENTS FOR A PROTEST OF THE CREATION OR EXTENSION OF A DISTRICT; REVISING WHEN A PROTEST OF THE CREATION OR EXTENSION OF A DISTRICT IS SUFFICIENT TO BAR THE PROCEEDINGS; RESTRICTING THE AUTHORITY OF THE COUNTY COMMISSIONERS TO OVERRULE THE PROTESTS; AND AMENDING SECTIONS 7-12-2103, 7-12-2105, 7-12-2109, AND 7-12-2112, MCA. | 1947 |
| 489 | <i>(House Bill No. 435; Branae)</i> ESTABLISHING THE GOVERNOR'S POSTSECONDARY SCHOLARSHIP PROGRAM TO ENCOURAGE MONTANA'S MOST TALENTED HIGH SCHOOL GRADUATES OR | |

MONTANA HIGH SCHOOL GRADUATES WITH FINANCIAL NEEDS TO ACQUIRE A POSTSECONDARY EDUCATION BY PROVIDING STUDENT SCHOLARSHIPS BASED ON MERIT OR FINANCIAL NEED TO STUDENTS ATTENDING IN-STATE POSTSECONDARY INSTITUTIONS AND CERTAIN OUT-OF-STATE PUBLIC COLLEGES OR UNIVERSITIES OR, WITH DONATIONS FROM PRIVATE SOURCES, TO STUDENTS ATTENDING MONTANA PRIVATE COLLEGES IF SO DESIGNATED BY THE DONOR; ESTABLISHING A GOVERNOR'S SCHOLARSHIP ADVISORY COUNCIL APPOINTED BY THE GOVERNOR TO ASSIST THE BOARD OF REGENTS OF HIGHER EDUCATION IN AWARDING AND ADMINISTERING THE SCHOLARSHIP PROGRAM; PROVIDING ANNUAL SCHOLARSHIPS BASED ON VARIOUS CRITERIA; PROVIDING FOR REALLOCATION OF MONEY TO OTHER SCHOLARSHIPS IF A HIGH SCHOOL DOES NOT HAVE AN ELIGIBLE STUDENT OR IF A RECIPIENT BECOMES INELIGIBLE; PROVIDING THAT SCHOLARSHIP FUNDING IS A STATE OBLIGATION; ESTABLISHING STUDENT ELIGIBILITY CRITERIA; AUTHORIZING THE BOARD OF REGENTS TO ADOPT PROCEDURES TO IMPLEMENT THE MERIT-BASED AND FINANCIAL NEED-BASED SCHOLARSHIPS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1949

490 (*House Bill No. 438; Buzzas*) PROVIDING BRAILLE SERVICES TO A BLIND OR VISUALLY IMPAIRED CHILD; DETERMINING THE NEED FOR BRAILLE INSTRUCTION; REQUIRING THE BOARD OF PUBLIC EDUCATION TO ADOPT STANDARDS FOR PERSONNEL WHO PROVIDE BRAILLE INSTRUCTION; REQUIRING A SCHOOL DISTRICT TO ENSURE THE AVAILABILITY OF TEXTBOOKS THAT COMPLY WITH FEDERAL LAW IN A TIMELY MANNER; REQUIRING THE MONTANA SCHOOL FOR THE DEAF AND BLIND TO ESTABLISH A BRAILLE ELECTRONIC EQUIPMENT LOAN PROGRAM; PROVIDING AN APPROPRIATION; AMENDING SECTION 20-7-602, MCA; AND PROVIDING AN EFFECTIVE DATE 1956

491 (*House Bill No. 457; Noennig*) REVISING LAWS GOVERNING LICENSING AND PROFESSIONAL PRACTICES OF RADIOLOGIC TECHNOLOGISTS AND RADIOLOGIST ASSISTANTS; REVISING DEFINITIONS; PROVIDING FOR INJECTIONS BY RADIOLOGIC TECHNOLOGISTS AND SUPERVISION OF THOSE INJECTIONS; PROVIDING FOR INJECTIONS BY RADIOLOGIST ASSISTANTS; REQUIRING ACTION BY THE BOARD OF RADIOLOGIC TECHNOLOGISTS UPON REQUESTS FOR LICENSURE BY RADIOLOGIC TECHNOLOGISTS; REQUIRING ADOPTION OF RULES BY THE BOARD OF RADIOLOGIC TECHNOLOGISTS; AMENDING SECTIONS 37-14-102, 37-14-301, AND 37-14-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1958

492 (*House Bill No. 473; Parker*) REVISING LAWS RELATED TO FIRE SEASONS; ALLOWING SMALL, RECREATIONAL FIRES WITHOUT A PERMIT OR PERMISSION; AND AMENDING SECTIONS 7-33-2205 AND 7-33-2206, MCA 1961

493 (*House Bill No. 476; McAlpin*) INCREASING THE MARRIAGE LICENSE FEE AND THE FEE FOR FILING A DECLARATION OF MARRIAGE WITHOUT SOLEMNIZATION TO FUND DOMESTIC AND SEXUAL VIOLENCE VICTIMS' SERVICES; ESTABLISHING A DOMESTIC VIOLENCE INTERVENTION PROGRAM; PROVIDING THAT THE BOARD OF CRIME CONTROL ADMINISTER GRANTS UNDER THE PROGRAM; ESTABLISHING A DOMESTIC VIOLENCE INTERVENTION ACCOUNT; AMENDING SECTIONS 25-1-201, 40-1-202, AND 40-1-311, MCA; AND PROVIDING AN EFFECTIVE DATE 1962

- 494 *(House Bill No. 484; Jones)* REQUIRING THE LICENSING OF A PERSON, FIRM, OR CORPORATION THAT OPERATES A MOBILE SLAUGHTER FACILITY; DEFINING "MOBILE SLAUGHTER FACILITY"; APPLYING THE SAME INSPECTION PROVISIONS AND REGULATIONS THAT ARE REQUIRED OF ALL OFFICIAL ESTABLISHMENTS TO MOBILE SLAUGHTER FACILITIES; PROVIDING A RESTRICTED APPROPRIATION; AMENDING SECTIONS 81-9-201, 81-9-217, 81-9-220, 81-9-227, AND 81-9-228, MCA; AND PROVIDING AN EFFECTIVE DATE

1968
- 495 *(House Bill No. 502; Wiseman)* REMOVING THE REQUIREMENT THAT FINGERPRINTS BE SUBMITTED AND A BACKGROUND CHECK BE CONDUCTED WITH RESPECT TO A MANAGER OF A FACILITY FOR WHICH AN APPLICATION FOR A BEER AND WINE LICENSE FOR OFF-PREMISES CONSUMPTION IS BEING SOUGHT; CLARIFYING THE REQUIREMENT FOR ADDITIONAL FINGERPRINTING AND BACKGROUND CHECKS WITH RESPECT TO A LICENSE FOR OFF-PREMISES CONSUMPTION; AMENDING SECTION 16-4-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE

1973
- 496 *(House Bill No. 512; Witt)* APPROPRIATING UP TO \$1.1 MILLION OF FEDERAL FUNDS TO THE DEPARTMENT OF TRANSPORTATION FOR LOCAL RAIL FREIGHT ASSISTANCE PROGRAMS; AMENDING SECTIONS 60-11-111 AND 60-11-120, MCA; AND PROVIDING AN EFFECTIVE DATE

1974
- 497 *(House Bill No. 530; Matthews)* DESIGNATING MILES CITY AS A CULTURAL HERITAGE AREA; AMENDING SECTION 60-2-220, MCA; AND PROVIDING AN EFFECTIVE DATE.

1976
- 498 *(House Bill No. 537; Wanzenried)* PROHIBITING THE ADVERSE USE OF INQUIRIES REGARDING INSURANCE COVERAGE; AMENDING SECTION 33-15-1105, MCA; AND PROVIDING AN EFFECTIVE DATE

1976
- 499 *(House Bill No. 540; Dickenson)* AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR CAPITAL PROJECTS FOR COLLEGES OF TECHNOLOGY AND OTHER CAPITAL PROJECTS; PROVIDING FOR MATTERS RELATING TO APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE

1978
- 500 *(House Bill No. 541; Glaser)* REVISING THE REGISTRATION OF CERTAIN MOTOR HOMES; ALLOWING MOTOR HOMES 11 YEARS OLD AND OLDER TO BE PERMANENTLY REGISTERED; ESTABLISHING THE PERMANENT REGISTRATION FEE; PROVIDING THAT CERTAIN FEES FOR PERMANENT REGISTRATION ARE FIVE TIMES THE EXISTING FEES; AMENDING SECTIONS 15-1-122, 19-6-709, 61-3-303, 61-3-321, 61-3-332, 61-3-479, AND 61-3-522, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE

1979
- 501 *(House Bill No. 550; Windy Boy)* APPROPRIATING MONEY TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR HOLDING A MONTANA YOUTH LEADERSHIP FORUM FOR STUDENTS WITH DISABILITIES, INCLUDING INDIAN STUDENTS ON MONTANA RESERVATIONS

1992
- 502 *(House Bill No. 552; Caferro)* PROHIBITING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FROM APPLYING FINANCIAL CRITERIA BELOW \$15,000 FOR RESOURCES OTHER THAN INCOME IN DETERMINING THE ELIGIBILITY OF CHILDREN UNDER THE POVERTY LEVEL-RELATED CHILDREN'S MEDICAID COVERAGE GROUPS; PROVIDING AN APPROPRIATION; AMENDING

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| | SECTION 53-6-113, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE | 1992 |
| 503 | <i>(House Bill No. 574; Branae)</i> AUTHORIZING THE BOARD OF TRUSTEES OF A SCHOOL DISTRICT TO ISSUE BONDS UPON APPROVAL OF A BOND PROPOSITION BY A MAJORITY VOTE OF THE ELECTORATE AT CERTAIN ELECTIONS; AMENDING SECTIONS 20-6-206, 20-6-318, AND 20-9-428, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE | 1994 |
| 504 | <i>(House Bill No. 577; McAlpin)</i> APPROPRIATING MONEY TO THE OFFICE OF RESTORATIVE JUSTICE IN THE DEPARTMENT OF JUSTICE TO BE USED FOR COSTS FOR SEXUAL ASSAULT FORENSIC EXAMS FOR SEXUAL ASSAULT VICTIMS; AMENDING SECTIONS 2-15-2014 AND 46-15-411, MCA; AND PROVIDING AN EFFECTIVE DATE | 1996 |
| 505 | <i>(House Bill No. 606; Gutsche)</i> REQUIRING CERTAIN SMALL MINERS WHO INTEND TO USE AN IMPOUNDMENT TO STORE WASTE FROM ORE PROCESSING TO OBTAIN APPROVAL FOR THE DESIGN, CONSTRUCTION, OPERATION, AND RECLAMATION OF AN IMPOUNDMENT FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO POST A PERFORMANCE BOND; AMENDING SECTION 82-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE | 1997 |
| 506 | <i>(House Bill No. 615; Harris)</i> CREATING AN ENVIRONMENTAL VIOLATIONS INVESTIGATION AND PROSECUTION AUTHORITY IN THE DEPARTMENT OF JUSTICE; AND PROVIDING AN EFFECTIVE DATE | 2001 |
| 507 | <i>(House Bill No. 645; Clark)</i> REVISING LAWS GOVERNING SPECIAL LICENSE PLATES FOR PERMANENTLY DISABLED PERSONS; ALLOWING A PERSON WHO HAS A PERMANENT DISABILITY THAT MEETS CERTAIN CRITERIA TO CONTINUE TO DISPLAY A SPECIAL LICENSE PLATE BEARING THE SYMBOL OF A WHEELCHAIR UPON VEHICLE REREGISTRATION WITHOUT SUBMITTING AN ADDITIONAL APPLICATION; AMENDING SECTIONS 49-4-301 AND 61-3-332, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE | 2001 |
| 508 | <i>(House Bill No. 652; Cohenour)</i> ALLOWING A SCHOOL DISTRICT TO EXTEND A BUS ROUTE ACROSS ANOTHER SCHOOL DISTRICT IN ORDER TO PROVIDE TRANSPORTATION TO STUDENTS WITHIN ITS OWN DISTRICT; AMENDING SECTION 20-10-126, MCA; AND PROVIDING AN EFFECTIVE DATE | 2007 |
| 509 | <i>(House Bill No. 678; Cohenour)</i> REVISING LENGTH LIMITS ON TRIPLE-TRAILER TRUCK CONFIGURATIONS; AND AMENDING SECTION 61-10-124, MCA | 2008 |
| 510 | <i>(House Bill No. 681; Raser)</i> REVISING THE LAWS ON SCHOOL DISTRICT CONSOLIDATION AND ANNEXATION; ESTABLISHING A SINGLE PROCEDURE FOR THE ANNEXATION AND CONSOLIDATION OF SCHOOL DISTRICTS; PROVIDING FOR AN INTERIM BOARD OF TRUSTEES FOLLOWING PASSAGE OF A CONSOLIDATION ELECTION; CLARIFYING THAT DISTRICTS MAY CONSOLIDATE OR ANNEX ACROSS COUNTY LINES; REQUIRING A RESOLUTION OR PETITION FOR CONSOLIDATION OR ANNEXATION TO STATE WHETHER OR NOT THE CONSOLIDATION OR ANNEXATION WILL OCCUR WITH ASSUMPTION OF BONDED INDEBTEDNESS; REQUIRING A CONSOLIDATION ELECTION TO BE HELD NO LATER THAN DECEMBER 31 PRECEDING THE SCHOOL FISCAL YEAR IN WHICH THE CONSOLIDATION IS TO BECOME | |

EFFECTIVE; CLARIFYING THAT A CONSOLIDATION OR ANNEXATION IS EFFECTIVE JULY 1 FOLLOWING AN ELECTION; CLARIFYING THAT CONSOLIDATION OR ANNEXATION MUST OCCUR WITH CONTIGUOUS DISTRICTS; CLARIFYING THE PROCEDURE FOR DETERMINING APPROVAL OF A CONSOLIDATION OR ANNEXATION WITH THE ASSUMPTION OF BONDED INDEBTEDNESS; ALLOWING AN ABANDONED DISTRICT TO ATTACH TO A CONTIGUOUS DISTRICT IN AN ADJACENT COUNTY; ALLOWING FOR THE CONSOLIDATION AND ANNEXATION OF K-12 DISTRICTS; ALLOWING DISTRICTS TO CONSOLIDATE ACROSS COUNTY LINES WITH THE ASSUMPTION OF BONDED INDEBTEDNESS; ELIMINATING THE SPECIAL PROCEDURES FOR THE CONSOLIDATION, ABANDONMENT, AND DISSOLUTION OF JOINT DISTRICTS; ELIMINATING THE SEPARATE PROCEDURES FOR THE ANNEXATION AND CONSOLIDATION OF ELEMENTARY AND HIGH SCHOOL DISTRICTS; AMENDING SECTIONS 20-3-205, 20-3-302, 20-3-312, 20-6-209, 20-6-307, 20-6-704, AND 20-9-311, MCA; REPEALING SECTIONS 20-6-203, 20-6-204, 20-6-205, 20-6-206, 20-6-207, 20-6-208, 20-6-210, 20-6-211, 20-6-315, 20-6-316, 20-6-317, 20-6-318, 20-6-319, AND 20-6-321, MCA; AND PROVIDING AN EFFECTIVE DATE.

2013

511 (House Bill No. 687; Mendenhall) GENERALLY REVISING THE TOBACCO LAWS; REQUIRING ANY PERSON WHO REGULARLY AND SYSTEMATICALLY SOLICITS BUSINESS IN THIS STATE TO COMPLY WITH ALL TOBACCO PRODUCT LAWS; APPOINTING THE SECRETARY OF STATE AS AGENT FOR SERVICE OF PROCESS FOR ANY PERSON WHO REGULARLY AND SYSTEMATICALLY SOLICITS BUSINESS IN THIS STATE; PROVIDING DEFINITIONS; CLARIFYING THAT THE DEPARTMENT OF REVENUE MAY CONTRACT WITH THE DEPARTMENT OF JUSTICE FOR ENFORCEMENT OF CIGARETTE AND OTHER TOBACCO PRODUCT TAXES; REVISING LAWS FOR CIGARETTE LICENSING TO INCLUDE LICENSING FOR SELLERS OF ALL TOBACCO PRODUCTS; REQUIRING COMMON CARRIERS TO REPORT SHIPMENTS OF TOBACCO PRODUCTS TO THE DEPARTMENT OF REVENUE; ALLOWING DEPARTMENT OF JUSTICE AGENTS TO ENFORCE BOTH TOBACCO TAX LAWS AND LAWS RELATED TO THE MASTER SETTLEMENT AGREEMENT; REQUIRING SUBJOBBER, TOBACCO PRODUCT VENDORS, AND RETAILERS TO MAINTAIN RECORDS RELATED TO TOBACCO PRODUCTS; ALLOWING THE DEPARTMENT OF REVENUE AND THE DEPARTMENT OF JUSTICE TO EXAMINE RECORDS RELATED TO TOBACCO PRODUCTS; PROVIDING FOR INDIVIDUAL LIABILITY FOR OFFICERS AND DIRECTORS OF ENTITIES THAT SELL TOBACCO PRODUCTS IN VIOLATION OF TOBACCO LAWS; REQUIRING TOBACCO PRODUCT SELLERS TO REPORT SALES TO MONTANA TAX AUTHORITIES; REQUIRING LABELING OF TOBACCO PRODUCTS SHIPPED INTO MONTANA; REVISING THE PENALTY FOR USING, CONSUMING, OR SELLING A PACK OF CIGARETTES THAT DOES NOT BEAR THE REQUIRED TAX INSIGNIA; ALLOWING SEIZURE OF CONTRABAND TOBACCO PRODUCTS BY DEPARTMENT OF JUSTICE AGENTS; REVISING THE FORFEITURE AND DESTRUCTION PROCEDURES FOR CONTRABAND; AUTHORIZING THE DEPARTMENT OF REVENUE TO ADOPT RULES THAT RELATE TO CIGARETTE AND OTHER TOBACCO PRODUCT TAXES; GENERALLY REVISING THE PENALTIES FOR VIOLATIONS OF THE TOBACCO PRODUCT TAX LAWS; REQUIRING RETAILERS WHO PURCHASE TOBACCO PRODUCTS ON WHICH THE MONTANA TAXES HAVE NOT BEEN

PAID TO PAY THE TAXES; PROVIDING FOR A RIGHT TO HEARING ON ACTIONS TAKEN TO ENFORCE THE TOBACCO PRODUCTS TAX LAWS; PROVIDING FOR JURISDICTION FOR TAX VIOLATIONS; AMENDING SECTIONS 16-10-306, 16-11-102, 16-11-103, 16-11-104, 16-11-111, 16-11-114, 16-11-118, 16-11-119, 16-11-120, 16-11-122, 16-11-131, 16-11-132, 16-11-133, 16-11-141, 16-11-142, 16-11-143, 16-11-144, 16-11-145, 16-11-146, 16-11-147, 16-11-148, 16-11-149, 16-11-150, 16-11-155, 16-11-158, 16-11-507, AND 53-6-1201, MCA; REPEALING SECTIONS 16-11-157, 16-11-201, 16-11-202, 16-11-203, 16-11-204, 16-11-205, AND 16-11-206, MCA; AND PROVIDING AN EFFECTIVE DATE 2028

512 *(House Bill No. 696; Jayne)* PROVIDING THAT AN EXPRESS PURPOSE OF THE MONTANA YOUTH COURT ACT IS TO PROVIDE THAT WHENEVER A YOUTH IS REMOVED FROM THE HOME, THE YOUTH IS ENTITLED TO MAINTAIN ETHNIC, CULTURAL, OR RELIGIOUS HERITAGE WHEN APPROPRIATE; AMENDING SECTION 41-5-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2046

513 *(House Bill No. 701; Noennig)* GENERALLY REVISING LAWS RELATING TO DECEDENTS' ESTATES, PRINCIPAL AND INCOME ALLOCATIONS, AND TRUSTS; AMENDING SECTIONS 30-10-909, 72-3-1101, 72-4-303, 72-16-906, AND 72-34-442, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2047

514 *(House Bill No. 704; Windy Boy)* PROVIDING TIMEFRAMES FOR THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR THE RESULTS OF SURVEYS AND INFORMAL DISPUTE RESOLUTION FOR LONG-TERM CARE FACILITIES; AMENDING SECTION 53-6-109, MCA; AND PROVIDING AN EFFECTIVE DATE. 2049

515 *(House Bill No. 707; Groesbeck)* INCREASING THE COMPENSATION PAID TO FISH, WILDLIFE, AND PARKS LICENSE AGENTS; ALLOWING LICENSE AGENTS TO CHARGE A CONVENIENCE FEE FOR PURCHASES MADE WITH A CREDIT CARD OR A DEBIT CARD; REVISING THE DEFINITION OF "TRANSACTION" TO INCLUDE THE COLLECTION OF ANY DATA OR FEE; AMENDING SECTION 87-2-903, MCA; AND PROVIDING AN EFFECTIVE DATE 2050

516 *(House Bill No. 720; Sinrud)* REQUIRING LOCAL GOVERNMENTS TO REVIEW APPLICATIONS FOR DEVELOPMENT AND USE OF PROPERTY UNDER REGULATIONS IN EFFECT AT THE TIME THAT A COMPLETE SITE-SPECIFIC DEVELOPMENT PLAN IS SUBMITTED; AND PROVIDING EXCEPTIONS. 2051

517 *(House Bill No. 726; Gutsche)* ALLOWING THE DEPARTMENT OF CORRECTIONS TO CONTRACT WITH MONTANA CORPORATIONS TO OPERATE DAY REPORTING PROGRAMS TO PROVIDE AN ALTERNATE SENTENCING OPTION AND TO SANCTION PROBATION VIOLATORS; PROVIDING THAT A CONVICTED PERSON PAY A \$50 PRESENTENCE REPORT FEE TO FUND THE ALTERNATE SENTENCING OPTION; AMENDING SECTIONS 46-18-111, 46-18-201, 46-18-225, 46-23-1015, 53-1-203, AND 53-1-501, MCA; AND PROVIDING EFFECTIVE DATES. 2053

518 *(House Bill No. 732; Roberts)* ADOPTING AND REVISING LAWS TO IMPLEMENT INDIVIDUAL PRIVACY AND TO PREVENT IDENTITY THEFT; REQUIRING A CONSUMER REPORTING AGENCY TO BLOCK INFORMATION ON A REPORT THAT RESULTS FROM A THEFT OF IDENTITY; PROVIDING PRIVACY PROTECTION PROVISIONS FOR CREDIT CARD SOLICITATIONS AND RENEWALS AND TELEPHONE

ACCOUNTS; PROVIDING PRIVACY PROTECTION FOR BUSINESS RECORDS BY REQUIRING DESTRUCTION OF RECORDS; REQUIRING BUSINESSES TO REPORT A BREACH OF COMPUTER SECURITY; PROVIDING PENALTIES FOR VIOLATIONS; AMENDING SECTION 31-3-115, MCA; AND PROVIDING EFFECTIVE DATES . . . 2059

519 *(House Bill No. 737; McNutt)* CHANGING THE NAME OF A “PHYSICIAN ASSISTANT-CERTIFIED” TO “PHYSICIAN ASSISTANT” AND THE NAME OF A PLAN FOR THE USE OF A PHYSICIAN ASSISTANT BY A PHYSICIAN FROM “UTILIZATION PLAN” TO “SUPERVISION AGREEMENT”; REVISING REQUIREMENTS FOR A SUPERVISING PHYSICIAN; PROHIBITING THE PRACTICE OF MEDICINE BY A PHYSICIAN ASSISTANT WITHOUT A SUPERVISION AGREEMENT; REVISING PROVISIONS FOR RULEMAKING BY THE BOARD OF MEDICAL EXAMINERS; REVISING THE TYPES OF LICENSES ISSUED TO PHYSICIAN ASSISTANTS; REQUIRING A DUTIES AND DELEGATION AGREEMENT AND PROVIDING FOR THE CONTENT OF A SUPERVISION AGREEMENT AND A DUTIES AND DELEGATION AGREEMENT; REVISING AUTHORITY FOR ISSUANCE OF PHYSICIAN ASSISTANT LICENSES AND LICENSE RENEWALS; PROVIDING FOR EXEMPTIONS FROM LICENSURE; REVISING THE CRITERIA FOR LICENSURE OF PHYSICIAN ASSISTANTS; REVISING THE AUTHORITY FOR THE AGENCY RELATIONSHIP BETWEEN A PHYSICIAN ASSISTANT AND THE ASSISTANT’S SUPERVISING PHYSICIAN; REVISING THE DEGREE OF SUPERVISION REQUIRED OF THE SUPERVISING PHYSICIAN; REVISING THE PRESCRIPTION AND DISPENSING AUTHORITY OF A PHYSICIAN ASSISTANT; REMOVING THE PROHIBITION AGAINST A PHYSICIAN ASSISTANT PERFORMING AN ABORTION; PROVIDING FOR THE PRACTICE OF A PHYSICIAN ASSISTANT AND A SUPERVISING PHYSICIAN DURING A DISASTER OR EMERGENCY; AMENDING SECTIONS 2-15-1731, 33-22-111, 33-22-114, 37-3-103, 37-8-103, 37-20-101, 37-20-103, 37-20-104, 37-20-202, 37-20-203, 37-20-301, 37-20-302, 37-20-303, 37-20-401, 37-20-402, 37-20-403, 37-20-404, 37-20-405, 37-20-406, 39-71-116, 41-1-401, 46-4-114, 50-5-101, 50-5-216, 50-16-201, 50-19-101, 50-20-109, 52-5-108, AND 53-6-101, MCA; AND REPEALING SECTION 37-20-201, MCA. 2065

520 *(House Bill No. 738; Kaufmann)* REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CREATE AN ADVISORY COMMISSION ON PROVIDER RATES AND SERVICES; PROVIDING LEGISLATIVE FINDINGS, PURPOSE, AND INTENT; PROVIDING DEFINITIONS; PROVIDING FOR THE DUTIES, MEMBERSHIP, AND ADMINISTRATION OF THE COMMISSION; REQUIRING THE COMMISSION TO REVIEW AND MAKE RECOMMENDATIONS CONCERNING SERVICES PROVIDED BY CONTRACT TO CHILDREN AND ADULTS IN A COMMUNITY SETTING BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, THE COSTS OF THOSE SERVICES, AND REIMBURSEMENT RATES PAID TO THE CONTRACT PROVIDERS OF THOSE SERVICES; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ASSIST THE COMMISSION; PROVIDING FOR THE PRIVACY OF CERTAIN CONTRACT INFORMATION; AND REQUIRING THE COMMISSION TO MAKE FINDINGS, RECOMMENDATIONS, AND REPORTS 2091

521 *(House Bill No. 747; Driscoll)* LIMITING SCHOOL DISTRICT AND PUBLIC POSTSECONDARY INSTITUTION LIABILITY FOR CIVIL DAMAGES RESULTING FROM STUDENT LABOR ON A CONSTRUCTION PROJECT AS PART OF A PUBLIC EDUCATION

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| | PROGRAM IF NOTICE OF THE STUDENT LABOR IS GIVEN AT THE TIME OF TRANSFER OF THE PROPERTY; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE | 2094 |
| 522 | <i>(House Bill No. 748; Wells)</i> AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR STATE MATCHING FUNDS FOR FEDERAL WATER RESOURCE PROJECTS; PROVIDING FOR DEBT SERVICE PAYMENTS FROM AVAILABLE AMOUNTS IN THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM SPECIAL REVENUE ACCOUNT; PROVIDING FOR MATTERS RELATING TO APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE | 2095 |
| 523 | <i>(House Bill No. 749; Ripley)</i> INCREASING, IN BOTH FISCAL YEAR 2006 AND FISCAL YEAR 2007, THE UTILIZATION FEE ON NURSING FACILITY BED DAYS; PROVIDING AN APPROPRIATION; AMENDING SECTION 15-60-102, MCA; AND PROVIDING AN EFFECTIVE DATE | 2096 |
| 524 | <i>(House Bill No. 756; Gutsche)</i> ENCOURAGING THE PRODUCTION AND USE OF BIODIESEL THROUGH TAX INCENTIVES; PROVIDING A TAX CREDIT FOR INVESTMENTS IN DEPRECIABLE PROPERTY TO CRUSH OILSEED CROPS FOR PURPOSES OF BIODIESEL PRODUCTION; PROVIDING A TAX CREDIT TO A FACILITY PRODUCING BIODIESEL BASED UPON THE COST OF CONSTRUCTING AND EQUIPPING THE FACILITY; PROVIDING A TAX INCENTIVE FOR THE PRODUCTION OF BIODIESEL BASED UPON GALLONS OF PRODUCTION; PROVIDING THAT THE TAX INCENTIVE BE PAID OUT OF THE GENERAL FUND; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE. | 2097 |
| 525 | <i>(House Bill No. 776; Raser)</i> PROVIDING TAX INCENTIVES FOR BIODIESEL FUEL; PROVIDING A TAX CREDIT FOR INVESTMENTS IN DEPRECIABLE PROPERTY TO BLEND BIODIESEL MADE FROM MONTANA PRODUCTS WITH DIESEL; PROVIDING FOR THE RECAPTURE OF THE CREDIT UNDER CERTAIN CONDITIONS; REQUIRING THE DEPARTMENT OF REVENUE TO REPORT TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE ON THE AMOUNT OF TAX CREDITS CLAIMED; PROVIDING A TAX REFUND TO DISTRIBUTORS AND OWNERS OR OPERATORS OF MOTOR FUEL OUTLETS FOR SPECIAL FUEL TAXES PAID ON BIODIESEL; PROVIDING THAT THE SPECIAL FUEL TAX REFUNDS BE REIMBURSED FROM THE STATE GENERAL FUND; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO REPORT TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE ON THE AMOUNT OF REFUNDS CLAIMED; ELIMINATING THE PROVISION TAXING BIODIESEL AT 85 PERCENT OF THE SPECIAL FUEL TAX RATE; REMOVING THE REQUIREMENT THAT TAX LABELS BE PLACED ON BIODIESEL PUMPS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 15-70-301, 15-70-304, 15-70-341, AND 17-7-502, MCA, AND SECTIONS 12 AND 13, CHAPTER 568, LAWS OF 2001; REPEALING SECTION 15-70-370, MCA, AND SECTIONS 7 AND 9, CHAPTER 568, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES. | 2101 |
| 526 | <i>(House Bill No. 782; McNutt)</i> PROVIDING THAT ISSUE REMARKS MUST BE FINALLY RESOLVED BEFORE ISSUANCE OF A FINAL DECREE; PROVIDING THAT THE ATTORNEY GENERAL MAY INTERVENE IN THE PROCEEDINGS BEFORE THE WATER COURT ON ISSUE REMARKS THAT HAVE NOT BEEN OTHERWISE | |

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| | RESOLVED; PROVIDING THAT ISSUE REMARKS ARE EVIDENCE TO BE WEIGHED AGAINST THE PRIMA FACIE STATUS OF A WATER RIGHT CLAIM; PROVIDING THAT RESOLVING OBJECTIONS IS OF HIGHER IMPORTANCE THAN RESOLVING ISSUE REMARKS UNLESS OTHERWISE DETERMINED BY THE CHIEF WATER JUDGE; AMENDING SECTIONS 85-2-232, 85-2-233, 85-2-234, AND 85-2-235, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE | 2118 |
| 527 | <i>(House Bill No. 790; Peterson)</i> REQUIRING THE ENVIRONMENTAL QUALITY COUNCIL TO CONDUCT A STUDY ON SPLIT ESTATES OF PROPERTY BETWEEN MINERAL OWNERS AND SURFACE OWNERS RELATED TO OIL AND GAS DEVELOPMENT AND COAL BED METHANE RECLAMATION AND BONDING; PROVIDING FOR A SUBCOMMITTEE OF THE ENVIRONMENTAL QUALITY COUNCIL; PROVIDING THAT THE SUBCOMMITTEE SHALL, IF APPROPRIATE, SEPARATE THE STUDY INTO TWO STUDIES; PROVIDING FOR AT-LARGE MEMBERS ON THE SUBCOMMITTEE; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 5-5-211 AND 15-36-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. | 2125 |
| 528 | <i>(House Bill No. 802; Olson)</i> ELIMINATING THE ANNUAL PERMIT SURCHARGE FEE FOR VIDEO GAMBLING MACHINES; AMENDING SECTION 23-5-612, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE | 2130 |
| 529 | <i>(Senate Bill No. 40; McGee)</i> ALLOWING A BOARD OF COUNTY COMMISSIONERS TO CREATE A RURAL SPECIAL IMPROVEMENT DISTRICT UPON RECEIPT OF A PETITION CONTAINING THE CONSENT OF ALL OWNERS OF PROPERTY TO BE INCLUDED IN THE DISTRICT; EXEMPTING THE RESOLUTION OF INTENTION TO CREATE THE DISTRICT AND THE RESOLUTION TO CREATE THE DISTRICT FROM NOTICE, HEARING, AND PROTEST PROVISIONS IF CREATION OF THE DISTRICT IS THE RESULT OF THE PETITION; AND AMENDING SECTIONS 7-12-2102, 7-12-2105, 7-12-2109, AND 7-12-2113, MCA | 2131 |
| 530 | <i>(Senate Bill No. 41; Keenan)</i> INCORPORATING FUNDING PRINCIPLES FOR THE PURPOSES OF THE MONTANA MEDICAID PROGRAM; AND AMENDING SECTIONS 53-6-101 AND 53-21-139, MCA | 2133 |
| 531 | <i>(Senate Bill No. 48; Harrington)</i> REMOVING THE CLASS EIGHT PROPERTY TAX PROVISION THAT WOULD HAVE PHASED OUT THE TAXATION OF CLASS EIGHT PROPERTY CONTINGENT ON A CERTAIN INCREASE IN STATE WAGES AND SALARIES; INCREASING THE CAP ON THE EXEMPT AGGREGATE MARKET VALUE OF CLASS EIGHT PROPERTY FROM \$5,000 TO \$20,000; AMENDING SECTIONS 15-6-138 AND 15-6-201, MCA, SECTION 27, CHAPTER 285, LAWS OF 1999, SECTION 31, CHAPTER 285, LAWS OF 1999, AND SECTION 5, CHAPTER 577, LAWS OF 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE | 2136 |
| 532 | <i>(Senate Bill No. 68; Balyeat)</i> GENERALLY RECODIFYING THE LAWS EXEMPTING CERTAIN PROPERTY FROM TAXATION; AND AMENDING SECTIONS 15-6-134, 15-6-138, 15-6-201, 15-6-204, 15-6-205, 15-6-207, 15-6-220, 15-7-102, 15-8-111, 15-32-405, 61-3-560, AND 61-10-214, MCA | 2143 |
| 533 | <i>(Senate Bill No. 75; Harrington)</i> CLARIFYING THE PROCEDURE WHEN AN APPLICANT BEFORE A COUNTY TAX APPEAL BOARD HAS THE APPLICATION AUTOMATICALLY GRANTED BECAUSE OF THE COUNTY TAX APPEAL BOARD'S REFUSAL OR FAILURE TO HEAR | |

THE APPEAL; PROVIDING NOTICE OF THE ACTION TO THE DEPARTMENT OF REVENUE, STATE TAX APPEAL BOARD, AND AFFECTED MUNICIPAL CORPORATIONS; AUTHORIZING AN APPEAL TO THE STATE TAX APPEAL BOARD BY THE DEPARTMENT OF REVENUE OR A MUNICIPAL CORPORATION; AND AMENDING SECTIONS 15-15-103 AND 15-15-104, MCA 2159

534 (*Senate Bill No. 81; Stapleton*) REDUCING THE NUMBER OF DAYS THAT A MEMBER OF THE MONTANA NATIONAL GUARD MUST BE ON ACTIVE DUTY BEFORE BEING ELIGIBLE FOR RELIEF UNDER THE MONTANA NATIONAL GUARD CIVIL RELIEF ACT; AMENDING SECTION 10-1-902, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2160

535 (*Senate Bill No. 85; Squires*) PROVIDING FOR A VOLUNTARY INCOME TAX CHECKOFF TO FUND THE MONTANA END-STAGE RENAL DISEASE PROGRAM; ESTABLISHING AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND; AND PROVIDING AN APPLICABILITY DATE AND A CONTINGENT TERMINATION DATE 2161

536 (*Senate Bill No. 87; Elliott*) CLARIFYING THAT PROPERTY TAXES OR FEES ON CENTRALLY ASSESSED PROPERTY MUST BE PAID UNDER PROTEST IN ORDER FOR THE TAXPAYER TO RECEIVE A REFUND OR CREDIT OF THE PROPERTY TAXES; REQUIRING THAT THE PROTESTED PAYMENT BE REPORTED TO THE DEPARTMENT OF REVENUE; ESTABLISHING A CENTRALLY ASSESSED PROPERTY TAX STATE SPECIAL REVENUE FUND FOR THE DEPOSIT OF 50 PERCENT OF THE PROTESTED STATE PROPERTY TAXES HELD IN RESERVE; PROVIDING THAT THE DEPARTMENT OF REVENUE AND NOT THE STATE TREASURER RECEIVE AND DISBURSE PROTESTED PROPERTY TAX PAYMENTS; PROVIDING FOR THE DISBURSEMENT OF FUNDS UPON COMPLETION OF A PROTEST ACTION; TRANSFERRING FROM THE GENERAL FUND TO THE CENTRALLY ASSESSED PROPERTY TAX STATE SPECIAL REVENUE FUND 50 PERCENT OF THE MONEY RECEIVED BY THE DEPARTMENT OF REVENUE FROM PAYMENTS OF PROPERTY TAXES OR FEES UNDER PROTEST; AMENDING SECTIONS 15-1-402 AND 15-23-116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2162

537 (*Senate Bill No. 133; Mangan*) CREATING THE MONTANA EQUITY CAPITAL INVESTMENT ACT; PROVIDING CONTINGENT, DEFERRED TAX CREDITS TO INVESTORS OR THEIR ASSIGNEES; ESTABLISHING AND PROVIDING THE DUTIES OF A MONTANA EQUITY CAPITAL INVESTMENT BOARD; PROVIDING FOR PRIVATE SECTOR ORGANIZATION AND MANAGEMENT OF THE MONTANA EQUITY FUND; PROVIDING FOR REGISTRATION AND VERIFICATION OF TAX CREDIT USE OR TRANSFER; REQUIRING AN ANNUAL FEE FOR THE DESIGNATED INVESTOR GROUP; SETTING TERMS FOR TAX CREDIT REDEMPTION; SETTING CONTRACT TERMS FOR DESIGNATED INVESTOR GROUP INVESTMENTS AND THE DISTRIBUTION OF PROCEEDS; PROVIDING FOR TRANSFER AND TERMINATION OF THE MONTANA EQUITY FUND AND MONTANA EVERGREEN FUND; RESTRICTING CERTAIN INVESTMENTS; REQUIRING AN ANNUAL AUDIT AND AN ANNUAL REPORT; MAKING INVESTMENT IN THE MONTANA EQUITY FUND A PERMISSIBLE INVESTMENT FOR CERTAIN ENTITIES; REQUIRING AN APPLICATION FOR A SECURITIES EXEMPTION; INCORPORATING EQUITY CAPITAL INVESTMENT INTO STATE POLICY; AMENDING SECTIONS 33-2-705 AND 90-1-112, MCA; AND PROVIDING AN EFFECTIVE DATE 2166

- 538 (*Senate Bill No. 217; Larson*) REVISING APPRENTICE TRAINING LAWS TO ESTABLISH AN APPRENTICE WAGE RATE TIED TO THE STANDARD PREVAILING WAGE RATE FOR CONSTRUCTION SERVICES FOR A PREVAILING WAGE RATE DISTRICT; EXCLUDING CERTAIN APPRENTICE WAGES; DEFINING “APPRENTICE”; AMENDING SECTIONS 18-2-411, 39-6-101, AND 39-6-106, MCA; REPEALING ARM 24.21.414; AND PROVIDING A DELAYED EFFECTIVE DATE 2174
- 539 (*Senate Bill No. 222; Barkus*) TRANSFERRING THE RESPONSIBILITY FOR COLLECTING AND ISSUING REFUNDS FOR LOCAL OPTION MOTOR FUEL EXCISE TAX FROM THE DEPARTMENT OF TRANSPORTATION TO COUNTY TREASURERS; REQUIRING RETAIL SELLERS OF GASOLINE IN COUNTIES IN WHICH THE TAX IS IMPOSED TO RENDER MONTHLY STATEMENTS TO THE COUNTY TREASURER; REQUIRING A COUNTY THAT IMPOSES THE TAX TO ESTABLISH A MOTOR FUEL EXCISE TAX ACCOUNT FOR DEPOSIT OF THE TAX REVENUE; PROVIDING METHODS FOR APPORTIONMENT OF THE REVENUE; AMENDING SECTIONS 7-14-301, 7-14-302, 7-14-303, AND 7-14-304, MCA; AND PROVIDING AN EFFECTIVE DATE 2177
- 540 (*Senate Bill No. 271; Elliott*) ALLOWING FOR AN ADJUSTMENT OF THE GUARANTEED TAX BASE AID PAYMENT TO A SCHOOL DISTRICT AFFECTED BY A TAX PROTEST IN THE EVENT THAT THE FINAL TAXABLE VALUATION OF THE SCHOOL DISTRICT IS REDUCED AS A RESULT OF THE RESOLUTION OF THE PROTEST; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2179
- 541 (*Senate Bill No. 278; Black*) CREATING A SPECIAL PRACTICE PERMIT FOR NONRESIDENT CERTIFIED PUBLIC ACCOUNTANTS; PROVIDING CRITERIA FOR OBTAINING THE SPECIAL PRACTICE PERMIT; REQUIRING REGISTRATION WITH THE BOARD OF PUBLIC ACCOUNTANTS; PROHIBITING THE PRACTICE OF PUBLIC ACCOUNTING BY NONRESIDENTS WITHOUT REGISTRATION; AND AUTHORIZING THE BOARD TO ADOPT RULES IMPLEMENTING PROCEDURES AND FEES FOR SPECIAL PRACTICE PERMITS AND REGISTRATION BY NONRESIDENT CERTIFIED PUBLIC ACCOUNTANTS 2180
- 542 (*Senate Bill No. 285; Story*) GENERALLY REVISING THE MOTOR VEHICLE LAWS; REORGANIZING AND RECODIFYING DEFINITIONS; REPLACING ALLOCATIONS OF MOTOR VEHICLE REVENUE TO SPECIAL ACCOUNTS WITH A PERCENTAGE OF THE REVENUE COLLECTED RATHER THAN AN AMOUNT PER VEHICLE; PROVIDING FOR THE DIRECT DEPOSIT OF THE OPTIONAL MOTOR VEHICLE REGISTRATION FEE FOR STATE PARKS; REVISING THE TRANSFER OF FUNDS BY COUNTY TREASURERS TO THE STATE; REQUIRING THE TRANSFER OF VEHICLE AND VESSEL TRANSACTION FEES TO THE DEPARTMENT OF JUSTICE BEGINNING ON JULY 1, 2006; REVISING AND CLARIFYING REGISTRATION FEES FOR WATERCRAFT, SNOWMOBILES, AND VEHICLES; COMBINING FEES IN LIEU OF TAX AND REGISTRATION FEES; AMENDING SECTIONS 10-2-112, 10-3-801, 15-1-101, 15-1-122, 15-1-504, 15-6-138, 15-6-201, 15-6-215, 15-8-201, 15-8-202, 15-15-201, 15-16-202, 15-24-301, 15-30-121, 15-50-207, 15-68-101, 20-9-331, 20-9-333, 20-9-360, 23-1-128, 23-2-512, 23-2-513, 23-2-515, 23-2-519, 23-2-601, 23-2-614, 23-2-616, 23-2-619, 23-2-631, 23-2-634, 23-2-641, 23-2-642, 23-2-644, 23-2-804, 23-2-809, 23-2-818, 30-11-701, 33-23-204, 37-72-101, 45-5-205, 61-1-101, 61-3-101, 61-3-103, 61-3-106, 61-3-107, 61-3-110,

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61-3-530, 61-3-560, AND 61-3-561, MCA; AND PROVIDING EFFECTIVE
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543 *(Senate Bill No. 296; Black)* PROVIDING AN ALTERNATIVE METHOD
FOR THE OWNER OF A PARCEL OF LAND OF 20 ACRES OR MORE
BUT LESS THAN 160 ACRES TO HAVE THE PARCEL VALUED,
ASSESSED, AND TAXED AS AGRICULTURAL LAND UNDER CERTAIN
CONDITIONS; AMENDING SECTION 15-7-202, MCA; AND PROVIDING
A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE. 2363

544 *(Senate Bill No. 326; Laslovich)* REVISING THE LAW ON EXCAVATION
NEAR UNDERGROUND FACILITIES; PROVIDING FOR SPECIFIC
DAMAGE FEES; SETTING A DEADLINE FOR PAYMENT OF FEES;
ALLOWING FOR JUDICIAL REVIEW OF FEES LEVIED;
DESIGNATING THE USE OF FEES COLLECTED; PROVIDING FOR

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- THE MAINTENANCE OF DAMAGE INCIDENT HISTORIES; AND AMENDING SECTIONS 69-4-501 AND 69-4-505, MCA. 2365
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- 574 *(Senate Bill No. 342; Laslovich)* CREATING AN ALTERNATIVE PROJECT DELIVERY CONTRACT PROCESS FOR CERTAIN CONSTRUCTION PROJECTS OF STATE AGENCIES AND CERTAIN LOCAL GOVERNMENTS; ESTABLISHING REQUIREMENTS THAT MUST BE MET IN ORDER TO USE AN ALTERNATIVE PROJECT DELIVERY CONTRACT; REQUIRING JUSTIFICATION FOR AN ALTERNATIVE PROJECT DELIVERY CONTRACT; REQUIRING A STATE AGENCY OR CERTAIN LOCAL GOVERNMENTS THAT USE AN ALTERNATIVE PROJECT DELIVERY CONTRACT TO STATE THE REASONS FOR SELECTING THE CONTRACTOR SELECTED; AND AMENDING SECTIONS 7-5-2301, 7-5-4302, 18-1-102, 18-2-103, 18-4-124, 20-6-606, 20-9-204, AND 67-11-201, MCA 2496

- 575 *(Senate Bill No. 401; Laslovich)* REVISING CHAPTER 1 AND CHAPTER 7 OF THE UNIFORM COMMERCIAL CODE; REVISING CHAPTER 1 TO REFLECT THE SCOPE OF THE CHAPTER, THE APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW, THE CONCEPT OF GOOD FAITH, CHOICE OF LAW, THE RELEVANCE OF COURSE OF PERFORMANCE BETWEEN THE PARTIES, AND THE EXISTENCE OF AN INDEPENDENT STATUTE OF FRAUDS; REVISING CHAPTER 7, CONCERNING DOCUMENTS OF TITLE, TO REFLECT THE DEVELOPMENT OF ELECTRONIC DOCUMENTS OF TITLE; REVISING OTHER PROVISIONS TO REFLECT THE REVISIONS TO CHAPTER 1 AND CHAPTER 7; AMENDING SECTIONS 30-1-101, 30-1-102, 30-1-107, 30-1-201, 30-1-204, 30-1-205, 30-1-208, 30-1-209, 30-2-104, 30-2-310, 30-2-323, 30-2-401, 30-2-503, 30-2-506, 30-2-509, 30-2-605, 30-2-705, 30-2A-103, 30-2A-514, 30-2A-518, 30-2A-519, 30-2A-526, 30-2A-527, 30-2A-528, 30-3-102, 30-4-104, 30-4A-105, 30-4A-106, 30-5-123, 30-7-102, 30-7-103, 30-7-104, 30-7-201, 30-7-202, 30-7-203, 30-7-204, 30-7-205, 30-7-206, 30-7-207, 30-7-208, 30-7-209, 30-7-210, 30-7-301, 30-7-302, 30-7-303, 30-7-304, 30-7-305, 30-7-307, 30-7-308, 30-7-309, 30-7-401, 30-7-402, 30-7-403, 30-7-404, 30-7-501, 30-7-502, 30-7-503, 30-7-504, 30-7-506, 30-7-507, 30-7-508, 30-7-509, 30-7-601, 30-7-602, 30-7-603, 30-8-113, 30-9A-102, 30-9A-203, 30-9A-207, 30-9A-208, 30-9A-301, 30-9A-310, 30-9A-312, 30-9A-313, 30-9A-314, 30-9A-317, 30-9A-338, 30-9A-601, 30-18-103, 30-18-115, 45-6-315, AND 71-3-125, MCA; REPEALING SECTIONS 30-1-105, 30-1-110, 30-1-111, 30-1-206, 30-7-105, 30-7-701, 30-7-702, 30-7-703, 30-7-704, 30-7-705, AND 30-7-706, MCA; AND PROVIDING AN APPLICABILITY DATE 2503

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SESSION LAWS
Enacted by the
FIFTY-NINTH LEGISLATURE
IN REGULAR SESSION

Held at Helena, the Seat of Government
January 3, 2005, through April 21, 2005

**Explanatory Note: Section 5-11-205, MCA, provides that
new parts of existing statutes be printed in italics and
that deleted provisions be shown as stricken.**

**COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION**

CHAPTER NO. 1

[HB 1]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Appropriations. The following amounts are appropriated from the general fund for fiscal years 2005, 2006, and 2007 for the operation of the 59th legislature and the costs of preparing for the 60th legislature:

LEGISLATIVE BRANCH (1104)

| | |
|---------------------------------------|-------------|
| 1. Senate (25) | \$2,383,047 |
| 2. House of Representatives (26) | 3,963,836 |
| 3. Legislative Services Division (22) | 552,839 |

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

Approved January 31, 2005

CHAPTER NO. 2

[HB 38]

AN ACT LIMITING THE EXEMPTION OF LAND BY A PURELY PUBLIC CHARITY TO 160 ACRES FOR EXEMPTIONS APPLIED FOR AFTER DECEMBER 31, 2004; REQUIRING THAT AN APPLICATION FOR EXEMPTION CONTAIN A LEGAL DESCRIPTION OF THE PROPERTY; AMENDING SECTION 15-6-201, 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 15-6-201, MCA, is amended to read:

“15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for

residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than \$500 and all agricultural implements and machinery with a market value of less than \$100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) (i) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(A) construct, repair, and maintain improvements to real property; or

(B) repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i);

(y) motorcycles and quadricycles;

(z) the following percentage of the market value of residential property described in 15-6-134(1)(e) and (1)(f):

(i) 31% for tax year 2003;

(ii) 31.4% for tax year 2004;

(iii) 32% for tax year 2005;

(iv) 32.6% for tax year 2006;

(v) 33.2% for tax year 2007;

(vi) 34% for tax year 2008 and succeeding tax years;

(aa) the following percentage of the market value of commercial property as described in 15-6-134(1)(g):

- (i) 13% for tax year 2003;
- (ii) 13.3% for tax year 2004;
- (iii) 13.8% for tax year 2005;
- (iv) 14.2% for tax year 2006;
- (v) 14.6% for tax year 2007;
- (vi) 15% for tax year 2008 and succeeding tax years;

(bb) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy;

(cc) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(i) the acquired cost of the personal property is less than \$15,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;

(dd) all manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the course of the construction of an ethanol manufacturing facility and for 10 years after completion of construction of the manufacturing facility;

(ee) light vehicles as defined in 61-1-139; and

(ff) the following property, except property included in 15-6-135, 15-6-137, 15-6-141, 15-6-145, and 15-6-156, if the tax rate in 15-6-138 reaches zero:

(i) all agricultural implements and equipment;

(ii) all mining machinery, fixtures, equipment, tools, and supplies;

(iii) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools, and supplies;

(iv) all manufacturing machinery, fixtures, equipment, tools, and supplies;

(v) all goods and equipment that are intended for rent or lease;

(vi) special mobile equipment as defined in 61-1-104;

(vii) furniture, fixtures, and equipment;

(viii) x-ray and medical and dental equipment;

(ix) citizens' band radios and mobile telephones;

(x) radio and television broadcasting and transmitting equipment;

(xi) cable television systems;

(xii) coal and ore haulers; and

(xiii) theater projectors and sound equipment.

(2) (a) For the purposes of subsection (1)(e):

(i) the term “institutions of purely public charity” includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(iii) *not more than 160 acres may be exempted by a purely public charity under any exemption originally applied for after December 31, 2004. An application for exemption under this section must contain a legal description of the property for which the exemption is requested.*

(b) For the purposes of subsection (1)(g), the term “public museums, art galleries, zoos, and observatories” means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) For the purposes of subsection (1)(bb):

(a) “industrial dairy” means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

(b) “industrial milk processor” means a facility and integral machinery used solely to process milk into milk products for export from the state.

(4) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) \$20,000 in the case of a single-family residential dwelling;

(b) \$100,000 in the case of a multifamily residential dwelling or a nonresidential structure.”

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 exemption applications made after December 31, 2004.

Approved February 23, 2005

CHAPTER NO. 3

[HB 84]

AN ACT CLARIFYING THE DATA USED BY THE DEPARTMENT OF REVENUE TO CALCULATE THE PERCENTAGE GROWTH OF INFLATION-ADJUSTED MONTANA WAGE AND SALARY INCOME FOR DETERMINING WHETHER THE CLASS EIGHT PROPERTY TAX RATE IS TO BE REDUCED; AMENDING SECTION 15-6-138, 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 15-6-138, MCA, is amended to read:

“15-6-138. (Temporary) Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment that are not exempt under 15-6-201(1)(bb);

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as provided in 15-6-201, and supplies except those included in class five;

(e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(f) special mobile equipment as defined in 61-1-104;

(g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

- (h) x-ray and medical and dental equipment;
- (i) citizens' band radios and mobile telephones;
- (j) radio and television broadcasting and transmitting equipment;
- (k) cable television systems;
- (l) coal and ore haulers;
- (m) theater projectors and sound equipment; and

(n) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at 3% of its market value.

(5) (a) If, in any year beginning with tax year 2004, the percentage growth in inflation-adjusted Montana wage and salary income is at least 2.85% from the year prior to the base year, then the tax rate for class eight property will be reduced by 1% each year until the tax rate reaches zero.

(b) For each tax year, the base year is the year 3 years before the applicable tax year and the target year is the year 2 years before the applicable tax year.

(c) The department shall calculate the percentage growth in subsection (5)(a) by October 30 of each target year by using the formula $(W/CPI) - 1$, where:

(i) W is the Montana wage and salary income for the calendar base year divided by the Montana wage and salary income for the calendar year prior to the base year; and

(ii) CPI is the consumer price index for the calendar base year used in subsection (5)(c)(i) divided by the consumer price index for the year prior to the most current calendar year prior to the base year used in subsection (5)(c)(i).

(d) For purposes of determining the percentage growth in subsection (5)(a), the department shall use the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements, fall SA07 SA07N (state annual) for the target year wage and salary data series. *If the fall state annual SA07N series is not available, the department shall use the most recent wage and salary data available. If the bureau of economic analysis changes the name of the SA07N series, the department shall use the series that replaces the SA07N series.*

(e) Inflation must be measured by the consumer price index, U.S. city average, all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(6) The class eight property of a person or business entity that owns an aggregate of \$5,000 or less in market value of class eight property is exempt from taxation. (Repealed on occurrence of contingency—secs. 27(2), 31(4), Ch. 285, L. 1999.)”

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

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to calculations of inflation-adjusted Montana wage and salary income growth made by the department of revenue before [the effective date of this act].

Approved February 23, 2005

CHAPTER NO. 4

[HB 193]

AN ACT PROVIDING FOR THE RECAPTURE OF A QUALIFIED ENDOWMENT TAX CREDIT IN THE TAX YEAR OF RECOVERY WHEN A CHARITABLE GIFT THAT GAVE RISE TO THE CREDIT IS RECOVERED BY THE TAXPAYER; INCLUDING AS INCOME IN THE YEAR THAT A CHARITABLE GIFT IS RECOVERED BY THE TAXPAYER THE AMOUNT DEDUCTED THAT IS ATTRIBUTABLE TO THE CHARITABLE GIFT; AMENDING SECTIONS 15-1-230, 15-30-166, 15-31-161, AND 15-31-162, 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 15-1-230, MCA, is amended to read:

“15-1-230. (Temporary) Report on income tax credit to committee. The department shall report to the revenue and transportation interim committee at least once each year the number and type of taxpayers claiming the credit under 15-30-166, the total amount of the credit claimed, *the total amount of the credit recaptured*, and the department’s cost associated with administering the credit. (Terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)”

Section 2. Section 15-30-166, MCA, is amended to read:

“15-30-166. (Temporary) Credit for contributions to qualified endowment — recapture of credit — deduction included as income. (1) A taxpayer is allowed a tax credit against the taxes imposed by 15-30-103 or 15-31-101 in an amount equal to 40% of the present value of the aggregate amount of the charitable gift portion of a planned gift made by the taxpayer during the year to any qualified endowment. The maximum credit that may be claimed by a taxpayer for contributions made from all sources in a year is \$10,000. The credit allowed under this section may not exceed the taxpayer’s income tax liability.

(2) The credit allowed under this section may not be claimed by an individual taxpayer if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-30-121(1) or 15-30-136(2).

(3) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

(4) *If during any tax year a charitable gift is recovered by the taxpayer, the taxpayer shall:*

(a) *include as income the amount deducted in any prior year that is attributable to the charitable gift to the extent that the deduction reduced the taxpayer's individual income tax or corporation license tax; and*

(b) *increase the amount of tax due under 15-30-103 or 15-31-101 by the amount of the credit allowed in the tax year in which the credit was taken. (Terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)*

Section 3. Section 15-31-161, MCA, is amended to read:

“15-31-161. (Temporary) Credit for contribution by corporations to qualified endowment — recapture of credit — deduction included as income. (1) A corporation is allowed a credit in an amount equal to 20% of a charitable gift against the taxes otherwise due under 15-31-101 for charitable contributions made to a qualified endowment, as defined in 15-30-165. The maximum credit that may be claimed by a corporation for contributions made from all sources in a year under this section is \$10,000. The credit allowed under this section may not exceed the corporate taxpayer's income tax liability. The credit allowed under this section may not be claimed by a corporation if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-31-114. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

(2) *If during any tax year a charitable gift is recovered by the corporation, the corporation shall:*

(a) *include as income the amount deducted in any prior year that is attributable to the charitable gift to the extent that the deduction reduced the taxpayer's corporation license tax or corporation income tax; and*

(b) *increase the amount of tax due under 15-31-101 by the amount of the credit allowed in the tax year in which the credit was taken. (Terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)*

Section 4. Section 15-31-162, MCA, is amended to read:

“15-31-162. (Temporary) Small business corporation, partnership, and limited liability company credit for contribution to qualified endowment — recapture of credit — deduction included as income. (1) A contribution to a qualified endowment, as defined in 15-30-165, by a small business corporation, as defined in 15-30-1101, a partnership, or a limited liability company, as defined in 35-8-102, carrying on any trade or business for which deductions would be allowed under section 162 of the Internal Revenue Code, 26 U.S.C. 162, or carrying on any rental activity qualifies for the credit provided in 15-31-161. The credit must be attributed to shareholders, partners, or members ~~or managers~~ of a limited liability company in the same proportion used to report the corporation's, partnership's, or limited liability company's income or loss for Montana income tax purposes. The maximum credit that a shareholder of a small business corporation, a partner of a partnership, or a member ~~or manager~~ of a limited liability company may claim in a year is \$10,000, subject to the limitations in 15-30-166(2). The credit allowed under this section may not exceed the taxpayer's income tax liability. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

(2) (a) *If during any tax year a charitable gift is recovered by the small business corporation, partnership, or limited liability company, the entity shall*

include as income the amount deducted in any prior year that is attributable to the charitable gift.

(b) In the tax year that a charitable gift is recovered, each shareholder, partner, or member shall increase the amount of tax due under 15-30-103 or 15-31-101 by the amount of the credit allowed in the tax year in which the credit was taken. (Terminates December 31, 2007—sec. 5, Ch. 226, L. 2001.)”

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

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2004.

Section 7. Termination. [This act] terminates December 31, 2007.

Approved February 23, 2005

CHAPTER NO. 5

[HB 194]

AN ACT CLARIFYING THE REPORTING REQUIREMENTS FOR THE QUARTERLY PAYMENT OF OIL AND NATURAL GAS PRODUCTION TAXES; CLARIFYING THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES ALLOCATED TO EACH COUNTY; AMENDING SECTIONS 15-36-311 AND 15-36-331, 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 15-36-311, MCA, is amended to read:

“15-36-311. Quarterly payment of tax — statement — failure to pay penalty. (1) The oil and natural gas production tax must be paid in quarterly installments for the quarterly periods ending, respectively, March 31, June 30, September 30, and December 31 of each year, and the amount of the tax for each quarterly period must be paid to the department within 60 days after the end of each quarterly period.

(2) The operator shall complete on forms prescribed by the department a statement showing the total number of barrels of merchantable or marketable oil or cubic feet of natural gas produced and sold ~~from pre-1985 wells and post-1985 wells~~ by the person in the state during each month of the quarter and during the whole quarter, the average value of the production sold during each month, and the total value of the production sold for the whole quarter, together with the total amount due as taxes for the quarter. The statement must be filed within the time provided in subsection (1). The statement must be accompanied by the tax due. The statement must be signed by the individual or the president, vice president, treasurer, assistant treasurer, or authorized agent of the association, corporation, joint-stock company, or syndicate making the statement. A person engaged in carrying on business at more than one place in this state or owning, leasing, controlling, or operating more than one oil or gas well in this state may include all operations in one statement.

(3) If the tax is not paid on or before the due date, there must be assessed penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.”

Section 2. 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) The amount of oil and natural gas production taxes collected for the privilege and license tax pursuant to 82-11-131 must be deposited, in accordance with the provisions of 15-1-501, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(3) (a) For tax year ~~2003~~ 2004 and succeeding tax years, the amount of oil and natural gas production taxes determined under subsection (1)(b) ~~plus the phased-out amount distributed pursuant to 15-36-324(12)(b) as that section read on December 31, 2002,~~ is allocated to each county according to the following schedule:

| | 2003 | 2004 | 2005 | 2006 and succeeding tax years |
|---------------|--------------------|--------|--------|-------------------------------------|
| Big Horn | 45.03% | 45.04% | 45.04% | 45.05% |
| Blaine | 57.56% | 57.84% | 58.11% | 58.39% |
| Carbon | 50.24% | 49.59% | 48.93% | 48.27% |
| Chouteau | 56.67% | 57.16% | 57.65% | 58.14% |
| Custer | 103.63% | 92.27% | 80.9% | 69.53% |
| Daniels | 48.31% | 49.15% | 49.98% | 50.81% |
| Dawson | 56.32% | 53.48% | 50.64% | 47.79% |
| Fallon | 39.89% | 40.52% | 41.15% | 41.78% |
| Fergus | 112.2% | 97.86% | 83.52% | 69.18% |
| Garfield | 54.51% | 51.66% | 48.81% | 45.96% |
| Glacier | 76.56% | 70.65% | 64.74% | 58.83% |
| Golden Valley | 55.5% | 56.45% | 57.41% | 58.37% |
| Hill | 66.97% | 66.15% | 65.33% | 64.51% |
| Liberty | 63.32% | 61.53% | 59.73% | 57.94% |
| McCone | 58.75% | 55.81% | 52.86% | 49.92% |
| Musselshell | 57.06% | 54.25% | 51.44% | 48.64% |
| Petroleum | 67.8% | 61.21% | 54.62% | 48.04% |
| Phillips | 53.3% | 53.54% | 53.78% | 54.02% |
| Pondera | 104.14% | 87.51% | 70.89% | 54.26% |
| Powder River | 64.7% | 63.44% | 62.17% | 60.9% |
| Prairie | 38.43% | 39.08% | 39.73% | 40.38% |
| Richland | 45.23% | 45.97% | 46.72% | 47.47% |
| Roosevelt | 46.75% | 46.4% | 46.06% | 45.71% |

| | | | | |
|--------------------|---------------------------|--------|--------|--------|
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| Rosebud | 37.41% | 38.05% | 38.69% | 39.33% |
| Sheridan | 46.64% | 47.09% | 47.54% | 47.99% |
| Stillwater | 56.05% | 55.2% | 54.35% | 53.51% |
| Sweet Grass | 58.23% | 59.24% | 60.24% | 61.24% |
| Teton | 53.01% | 50.71% | 48.4% | 46.1% |
| Toole | 56.2% | 56.67% | 57.14% | 57.61% |
| Valley | 59.82% | 57.02% | 54.22% | 51.43% |
| Wibaux | 47.71% | 48.19% | 48.68% | 49.16% |
| Yellowstone | 50.69% | 49.37% | 48.06% | 46.74% |
| All other counties | 50.15% | 50.15% | 50.15% | 50.15% |

(b) The oil and natural gas production taxes allocated to each county must be deposited in the state special revenue fund and transferred to each county for distribution, as provided in 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 the fiscal year ending June 30, 2003, to be distributed as follows:~~

(i) ~~a total of \$400,000 to the coal bed methane protection account established in 76-15-904; and~~

(ii) ~~all remaining proceeds to the state general fund;~~

(b) ~~for the fiscal year beginning July 1, 2003~~ 2004, through the fiscal year ending June 30, 2011, to be distributed as follows:

(i) 1.23% to the coal bed methane protection account established in 76-15-904;

(ii) 2.95% to the reclamation and development grants special revenue account established in 90-2-1104;

(iii) 2.95% to the orphan share account established in 75-10-743;

(iv) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and

(v) all remaining proceeds to the state general fund;

(e)(b) for fiscal years beginning after June 30, 2011, to be distributed as follows:

(i) 4.18% to the reclamation and development grants special revenue account established in 90-2-1104;

(ii) 2.95% to the orphan share account established in 75-10-743;

(iii) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and

(iv) all remaining proceeds to the state general fund.”

Section 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 oil and natural gas production occurring in tax years beginning after December 31, 2004.

Approved February 23, 2005

CHAPTER NO. 6

[HB 447]

AN ACT PROVIDING FOR PAY AND BENEFITS FOR STATE EMPLOYEES; INCREASING THE STATE CONTRIBUTION TO THE EMPLOYEE GROUP BENEFITS PROGRAM; REPEALING STATUTORY TEACHERS' AND BLUE-COLLAR PAY SCHEDULES; APPROPRIATING FUNDS TO IMPLEMENT PAY AND BENEFIT REVISIONS, FOR PERSONAL SERVICES CONTINGENCIES, AND FOR A LABOR-MANAGEMENT TRAINING INITIATIVE; AMENDING SECTIONS 2-18-301, 2-18-303, 2-18-304, 2-18-312, AND 2-18-703, MCA; REPEALING SECTIONS 2-18-313 AND 2-18-315, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 2-18-301, MCA, is amended to read:

“2-18-301. Purpose and intent of part — rules. (1) The purpose of this part is to provide the market-based compensation necessary to attract and retain competent and qualified employees in order to perform the services that the state is required to provide to its citizens.

(2) It is the intent of the legislature that compensation plans for state employees, excluding those employees excepted under 2-18-103 or 2-18-104 ~~and excluding employees compensated under 2-18-313 and 2-18-315~~, be based on an analysis of the labor market as provided by the department in a salary survey. The salary survey must be submitted to the office of budget and program planning as a part of the information required by 17-7-111.

(3) Except as provided in 2-18-110, pay adjustments and pay schedules provided for in 2-18-303 and in 2-18-312, ~~2-18-313, and 2-18-315~~ supersede any other plan or systems established through collective bargaining after the adjournment of the ~~58th~~ 59th legislature.

(4) Pay levels provided for in 2-18-312, ~~2-18-313, and 2-18-315~~ may not be increased through collective bargaining after adjournment of the ~~58th~~ 59th legislature.

(5) Total funds required to implement the pay schedules provided for in 2-18-312, ~~2-18-313, and 2-18-315~~ for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the ~~58th~~ 59th legislature.

(6) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(7) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part.

(8) Nothing in this part prohibits the board of regents from engaging in negotiations with the collective bargaining units representing the classified staff of the university system.”

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

“2-18-303. Procedures for using pay schedules. (1) The pay schedule provided in 2-18-312 must be implemented as follows:

(a) The pay schedule provided in 2-18-312 indicates the entry salary and market salary for each grade for positions classified under the provisions of part 2 of this chapter.

(b) Each employee newly hired by the state of Montana must be hired at the entry rate, except as provided in subsections ~~(6) through (9)~~ (5) through (8).

(c) On the first day of the first complete pay period in fiscal year ~~2004~~ 2006, each employee is entitled to the amount of the employee’s base salary as it was on June 30, ~~2003~~ 2005.

(d) Effective on the first day of the first complete pay period that includes ~~January 1, 2005~~ an employee’s anniversary date during the fiscal year ending June 30, 2006, the base salary of each employee must be increased by ~~an amount equal to 25 cents an hour or by a lesser amount so that the employee’s base salary after the increase does not exceed the maximum salary of the pay grade as provided in subsection (1)(f) 3.5% or \$1,005, based upon 2,080 annual hours in a pay status, whichever is greater.~~ Effective on the first day of the first complete pay period that includes an employee’s anniversary date during the fiscal year ending June 30, 2007, the base salary of each employee must be increased by 4% or \$1,188, based upon 2,080 annual hours in a pay status, whichever is greater. For employees hired on or before September 30, 2005, the anniversary date is October 1.

(e) An employee’s base salary may be no less than the entry salary for the employee’s assigned grade.

~~(f) The maximum salary for each grade is determined by subtracting the entry salary from the market salary and adding that amount to the market salary.~~

(2) The pay schedule provided in 2-18-312 and the provisions of subsections (1)(a) through (1)(d) of this section do not apply to those teachers or blue-collar occupations compensated under the pay schedules provided in ~~2-18-313 and 2-18-315~~ employees who are members of collective bargaining units that have collectively bargained separate classification and pay plans or employees covered under subsections (5) and (6) of this section.

~~(3) The pay schedules provided in 2-18-313 and 2-18-315 must be implemented as follows:~~

~~(a) (i) The pay schedules provided for in 2-18-313 indicate the annual compensation for teachers employed under the authority of the department of corrections or the department of public health and human services for fiscal years 2004 and 2005.~~

~~(ii) The compensation of each teacher on July 1, 2003, is the same as it was on June 30, 2003.~~

~~(iii) Effective on the first day of the first complete pay period that includes January 1, 2005, the base salary of each teacher employed in the department of public health and human services and the department of corrections is the~~

amount provided for the teacher's step and education level under 2-18-313(2). This subsection (3)(a)(iii) does not provide for a step advancement.

~~(b) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, 2004, and June 30, 2005, for employees in apprentice trades and crafts and other blue collar occupations recognized in the state blue collar classification plan who are members of units that have collectively bargained separate classification and pay plans.~~

~~(c) The compensation of each employee on the first day of the first pay period in each fiscal year is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.~~

~~(4)(3) (a) (i) If the legislature authorizes a pay increase for state employees, a member of a bargaining unit may not receive a pay increase until the employer's collective bargaining representative receives written notice that the employee's bargaining unit has ratified a completely integrated collective bargaining agreement.~~

~~(ii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, retroactivity to that date may be negotiated.~~

~~(iii)(ii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i) (3)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, members of the bargaining unit must continue to receive the compensation that they were receiving until an agreement is ratified.~~

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules and adjustments provided in 2-18-312, ~~2-18-313, 2-18-315,~~ and this section may be provided for in collective bargaining agreements.

~~(5)(4) The current wage or salary of an employee may not be reduced by the implementation of the pay schedules provided for in 2-18-312, 2-18-313, and 2-18-315.~~

~~(6)(5) The department may authorize a separate pay schedule for classes of medical professionals if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified professionals.~~

~~(7)(6) (a) The department may develop and implement an alternative pay and classification plan for certain classes, occupations, and work units. Pay for employees in the alternative pay and classification plan may be established and changed based on demonstrated competencies and accomplishments, on the labor market, and on other situations defined by the department.~~

(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.

~~(8)(7) The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. To the extent that the program applies to employees within a collective bargaining unit, it is a negotiable subject under 39-31-305.~~

~~(9)(8) The department shall review the competitiveness of the compensation provided to all occupations under this part. If the department finds that~~

substantial problems exist with recruitment and retention because of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. To the extent that these adjustments apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305.”

Section 3. Section 2-18-304, MCA, is amended to read:

“2-18-304. Longevity allowance. (1) (a) In addition to the compensation provided for in 2-18-303; *or* 2-18-312, ~~2-18-313, or 2-18-315~~, each employee who has completed 5 years of uninterrupted state service must receive 1.5% of the employee’s base salary multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.

(b) ~~Beginning October 1, 1999, in~~ *In* addition to the longevity allowance provided under subsection (1)(a), each employee who has completed 15 years of uninterrupted state service or completed 20 years of uninterrupted state service must receive an additional 0.5% of the employee’s base salary for each of those additional 5 years of uninterrupted service.

(c) Service to the state is not interrupted by authorized leaves of absence.

(2) (a) For the purpose of determining years of service under this section, an employee must be credited with 1 year of service for each period of:

(i) 2,080 hours of service following the employee’s date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which the employee is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or

(ii) 12 uninterrupted calendar months following the employee’s date of employment in which the employee was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any month. An employee of a school at a state institution or the university system must be credited with 1 year of service if the employee is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, shall use the method provided in subsection (2)(a)(i) to calculate years of service under this section.

(3) For the purposes of calculating longevity, employment as a short-term worker does not apply toward years of service.”

Section 4. Section 2-18-312, MCA, is amended to read:

“2-18-312. Statewide pay schedule. (1) The statewide classification pay schedule for the period beginning on the first day of the first full pay period in fiscal year ~~2004~~ *2006* is as follows:

Annual Hours — 2080
 Pay Matrix — State
 Pay Range: Entry Salary to Market Salary

Note: Does Not Include Insurance
 Matrix Type — Annual

| GRADE | ENTRY SALARY | MARKET SALARY | MAXIMUM SALARY |
|-------|--------------|---------------|----------------|
| 1 | 9,703 | 11,415 | 13,128 |
| 2 | 10,452 | 12,324 | 14,196 |
| 3 | 11,257 | 13,308 | 15,358 |
| 4 | 12,131 | 14,375 | 16,619 |

| | | | |
|----|--------|---------|---------|
| 5 | 13,110 | 15,569 | 18,028 |
| 6 | 14,237 | 16,950 | 19,664 |
| 7 | 15,456 | 18,442 | 21,428 |
| 8 | 16,837 | 20,136 | 23,436 |
| 9 | 18,320 | 21,967 | 25,614 |
| 10 | 19,968 | 23,999 | 28,031 |
| 11 | 21,773 | 26,231 | 30,688 |
| 12 | 23,779 | 28,716 | 33,654 |
| 13 | 25,966 | 31,436 | 36,907 |
| 14 | 28,397 | 34,459 | 40,521 |
| 15 | 31,085 | 37,816 | 44,521 |
| 16 | 34,089 | 41,577 | 49,066 |
| 17 | 37,459 | 45,795 | 54,131 |
| 18 | 40,990 | 50,232 | 59,474 |
| 19 | 44,946 | 55,215 | 65,485 |
| 20 | 49,363 | 60,819 | 72,275 |
| 21 | 54,264 | 66,993 | 79,723 |
| 22 | 59,741 | 73,936 | 88,132 |
| 23 | 65,919 | 81,788 | 97,658 |
| 24 | 72,860 | 90,622 | 108,384 |
| 25 | 80,538 | 100,419 | 120,300 |

(2) *The statewide classification pay schedule beginning the first pay period that includes October 1, 2005, is as follows:*

| GRADE | ENTRY SALARY | MARKET SALARY | MAXIMUM SALARY |
|-------|--------------|---------------|----------------|
| 1 | 10,042 | 12,088 | 14,133 |
| 2 | 10,818 | 13,010 | 15,201 |
| 3 | 11,651 | 14,007 | 16,363 |
| 4 | 12,555 | 15,090 | 17,624 |
| 5 | 13,569 | 16,301 | 19,033 |
| 6 | 14,735 | 17,702 | 20,669 |
| 7 | 15,997 | 19,215 | 22,433 |
| 8 | 17,426 | 20,934 | 24,411 |
| 9 | 18,961 | 22,790 | 26,619 |
| 10 | 20,666 | 24,851 | 29,036 |
| 11 | 22,535 | 27,149 | 31,762 |
| 12 | 24,611 | 29,722 | 34,832 |
| 13 | 26,874 | 32,537 | 38,199 |
| 14 | 29,391 | 35,665 | 41,939 |
| 15 | 32,173 | 39,140 | 46,107 |

| | | | |
|----|--------|---------|---------|
| 16 | 35,282 | 43,033 | 50,783 |
| 17 | 38,770 | 47,398 | 56,026 |
| 18 | 42,425 | 51,990 | 61,556 |
| 19 | 46,519 | 57,148 | 67,777 |
| 20 | 51,091 | 62,948 | 74,805 |
| 21 | 56,163 | 69,338 | 82,513 |
| 22 | 61,832 | 76,524 | 91,216 |
| 23 | 68,226 | 84,651 | 101,076 |
| 24 | 75,410 | 93,793 | 112,177 |
| 25 | 83,357 | 103,934 | 124,511 |

(3) *The statewide classification pay schedule beginning the first pay period that includes October 1, 2006, is as follows:*

| GRADE | ENTRY SALARY | MARKET SALARY | MAXIMUM SALARY |
|-------|--------------|---------------|----------------|
| 1 | 10,444 | 12,883 | 15,321 |
| 2 | 11,251 | 13,820 | 16,389 |
| 3 | 12,117 | 14,834 | 17,551 |
| 4 | 13,057 | 15,935 | 18,812 |
| 5 | 14,112 | 17,166 | 20,221 |
| 6 | 15,325 | 18,591 | 21,857 |
| 7 | 16,637 | 20,129 | 23,621 |
| 8 | 18,123 | 21,876 | 25,629 |
| 9 | 19,720 | 23,763 | 27,807 |
| 10 | 21,493 | 25,859 | 30,224 |
| 11 | 23,437 | 28,235 | 33,033 |
| 12 | 25,596 | 30,910 | 36,225 |
| 13 | 27,949 | 33,838 | 39,727 |
| 14 | 30,566 | 37,092 | 43,617 |
| 15 | 33,460 | 40,705 | 47,951 |
| 16 | 36,693 | 44,754 | 52,814 |
| 17 | 40,321 | 49,294 | 58,267 |
| 18 | 44,122 | 54,070 | 64,018 |
| 19 | 48,380 | 59,434 | 70,488 |
| 20 | 53,134 | 65,466 | 77,797 |
| 21 | 58,410 | 72,112 | 85,813 |
| 22 | 64,305 | 79,585 | 94,865 |
| 23 | 70,955 | 88,037 | 105,119 |
| 24 | 78,426 | 97,545 | 116,664 |
| 25 | 86,692 | 108,091 | 129,491" |

Section 5. Section 2-18-703, MCA, is amended to read:

“2-18-703. Contributions. (1) Each agency, as defined in 2-18-601, and the state compensation insurance fund shall contribute the amount specified in this section toward the group benefits cost.

(2) For employees defined in 2-18-701; *and for members of the legislature, and for employees of the Montana university system,* the employer contribution for group benefits is ~~\$410~~ \$460 a month for the period from July 2003 2005 through June 2004 December 2005, \$506 a month for the period from January 2006 through December 2006, and ~~\$460~~ \$557 a month for the period from July 2004 through June 2005 January 2007 and for each succeeding month. *For employees of the Montana university system, the employer contribution for group benefits is \$506 a month for the period from July 2005 through June 2006 and \$557 a month for July 2006 and for each succeeding month.* If a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion of the employer contribution for group benefits may be applied to an employee’s costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer’s premium contributions may exceed but may not be less than \$10 a month. Subject to the public hearing requirement provided in 2-9-212(2)(b), the increase in a local government’s property tax levy for premium contributions for group benefits beyond the amount of contributions in effect on the first day of the last fiscal year is not subject to the mill levy calculation limitation provided for in 15-10-420.

(4) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(5) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

(6) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents.”

Section 6. Appropriation. (1) The following money for the indicated fiscal years is appropriated to the listed agencies, from the designated state fund, to implement the adjustments provided for in 2-18-303:

| Fiscal Year 2006 | | | |
|--------------------|---------------|-----------------|-------------|
| General Fund | State Special | Federal Special | Proprietary |
| Legislative Branch | | | |
| \$209,282 | \$18,179 | \$0 | \$0 |

| | | | | |
|-------------------|--------------|-------------|-------------|-----------|
| Consumer Council | 0 | 11,734 | 0 | 0 |
| Judicial Branch | 599,262 | 23,565 | 2,033 | 0 |
| Executive Branch | 5,613,599 | 5,553,930 | 3,644,273 | 138,263 |
| University System | 3,820,187 | 0 | 125,024 | 0 |
| Total | \$10,242,330 | \$5,607,408 | \$3,771,330 | \$138,263 |

Fiscal Year 2007

| General Fund | State Special | Federal Special | Proprietary |
|--------------------|---------------|-----------------|-------------|
| Legislative Branch | \$538,330 | \$46,934 | \$0 |
| Consumer Council | 0 | 30,024 | 0 |
| Judicial Branch | 1,547,500 | 59,996 | 5,282 |
| Executive Branch | 14,700,424 | 14,466,134 | 9,491,019 |
| University System | 9,007,001 | 0 | 293,720 |
| Total | \$25,793,255 | \$14,603,088 | \$9,790,021 |

(2) The following money is appropriated for the biennium to the office of budget and program planning, from the designated state fund, to be distributed to agencies when personnel vacancies do not occur, retirement costs exceed agency resources, or other contingencies arise:

Fiscal Year 2006

| General Fund | State Special | Federal Special | Proprietary |
|-------------------------------|---------------|-----------------|-------------|
| Personal Services Contingency | \$1,500,000 | \$2,400,000 | \$500,000 |
| | | | \$100,000 |

(3) The following money is appropriated for the biennium to the department of administration for a labor-management training initiative:

Fiscal Year 2006

| General Fund | Other Funds |
|--------------------------------------|-------------|
| Labor-Management Training Initiative | \$ 75,000 |

Section 7. Repealer. Sections 2-18-313 and 2-18-315, MCA, are repealed.

Section 8. Effective date. [This act] is effective July 1, 2005.

Approved February 24, 2005

CHAPTER NO. 7

[SB 60]

AN ACT ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT BY RULE THE NUMBER OF BEDS THAT A CRITICAL ACCESS HOSPITAL MAY HAVE, NOT TO EXCEED THE NUMBER OF BEDS ALLOWED BY FEDERAL LAW; DELETING THE LIMITATION ON THE NUMBER OF ACUTE CARE INPATIENT BEDS THAT A CRITICAL ACCESS HOSPITAL MAY HAVE; AMENDING SECTION 50-5-233, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 50-5-233, MCA, is amended to read:

“50-5-233. Designation of critical access hospitals — adoption of rules. (1) The department may designate as a critical access hospital a facility that:

(a) is:

(i) located more than 35 road miles or, in the case of a facility located in mountainous terrain or where only secondary roads exist, more than 15 road miles from a hospital or another critical access hospital; or

(ii) a necessary provider of health care services to residents of the area where the facility is located;

(b) provides 24-hour emergency care that is necessary for ensuring access to emergency care services in the area served by the facility;

(c) ~~has no more than 15 acute care inpatient beds or, in the case of a facility with swing beds, 25 acute care inpatient beds, of which no more than 15 are used for acute care at any one time, for providing inpatient care for a period not exceeding 96 hours, as determined on an average, annual basis for each patient complies with the bed limitations adopted by rule, not to exceed the number specified in 42 U.S.C. 1395i-4(c)(2)(B), (c)(2)(E), and (f);~~

(d) *provides inpatient acute care for a period not exceeding 96 hours, as determined on an average, annual basis for each patient;*

~~(d)~~(e) complies with the staffing requirements of 42 U.S.C. 1395i-4(c)(2)(B)(iv); and

~~(e)~~(f) operates a quality assessment and performance improvement program and follows appropriate procedures for review of utilization of services as specified in 42 U.S.C. 1395x(aa)(2)(I).

(2) The department shall adopt rules to implement this section, including the following:

(a) standards for determining whether the facility qualifies as a necessary provider pursuant to subsection (1)(a)(ii);

(b) standards for determining whether the 24-hour emergency care provided is necessary to ensure that the area served by the facility has adequate access to emergency care services; ~~and~~

(c) procedures for applying for and receiving designation as a critical access hospital; *and*

(d) *designation of the maximum number of beds allowed pursuant to subsection (1)(c) and consistent with federal law.”*

Section 2. Effective date. [This act] is effective on passage and approval.
Approved February 23, 2005

CHAPTER NO. 8

[SB 240]

AN ACT REAUTHORIZING CERTAIN STATE AGENCY LOANS FROM THE INTERCAP PROGRAM; PROVIDING THAT THESE LOANS PREVIOUSLY AUTHORIZED BY THE LEGISLATURE CONSTITUTE STATE DEBT; RATIFYING THE TERMS OF AND SECURITY FOR THESE LOANS AS CURRENTLY EMBODIED IN THE LOAN AGREEMENTS WITH THE MONTANA BOARD OF INVESTMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature has previously authorized various state agencies to borrow from the INTERCAP program authorized under the Municipal Finance Consolidation Act of 1983; and

WHEREAS, some of these previously authorized loans may constitute state debt; and

WHEREAS, the Legislature has specified loan security for some of these loans and not for others; and

WHEREAS, the funding for these loans is obtained from proceeds of bonds purchased by private investors and the status of these loans should be clarified.

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

Section 1. Loan reauthorization. (1) All loans listed in subsection (2) are reauthorized. The amount shown for each loan represents the actual amount authorized by the legislature or, in the absence of a specified amount authorized by the legislature, the amount committed by the Montana board of investments in its loan agreements. The terms of and security for these loans, either as authorized by the legislature or embodied in loan agreements with the Montana board of investments, are ratified.

(2) The following loans are reauthorized in the original principal amount of:

(a) \$500,000 to the department of justice for the law enforcement academy to be paid from the state general fund as provided in Chapter 531, Laws of 1995;

(b) \$3,712,000 to the petroleum tank release compensation board to clean up leaking underground storage tanks to be paid from petroleum storage tank cleanup fees as provided in Chapter 115, Laws of 1997;

(c) \$600,000 to the department of natural resources and conservation for information technology to be paid from the state general fund instead of school trust land income as provided in Chapter 578, Laws of 1999;

(d) \$2,000,000 to the department of administration, public employees' retirement board, for the state defined contribution retirement system plan startup costs to be paid from employer and employee contributions as provided in Chapter 471, Laws of 1999;

(e) \$340,000 to the department of administration for the voluntary employees' beneficiary association startup costs to be paid from the state general fund as provided in Chapter 272, Laws of 2001;

(f) \$4,500,000 to the department of justice for information technology to be paid from motor vehicle fees as provided in Chapter 394, Laws of 2001; and

(g) \$18,000,000 to the department of justice for information technology to be paid from motor vehicle fees as provided in Chapter 562, Laws of 2003.

Section 2. Two-thirds vote required. Because [section 1] authorizes the creation of a state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 3. Remedial nature. [This act] is intended to be remedial in nature and should not be construed to affect or impair the validity of any of the loans listed in [section 1] before [the effective date of this act].

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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

Approved February 23, 2005

CHAPTER NO. 9

[HB 21]

AN ACT EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 17-5-205, MCA, is amended to read:

“17-5-205. Application. The application of the Bond Validating Act, Title 17, chapter 5, part 2, is extended to bonds issued and proceedings taken prior to ~~March 27, 2003~~ [the effective date of this act].”

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

Approved March 15, 2005

CHAPTER NO. 10

[HB 27]

AN ACT ALLOWING THE MONTANA HISTORICAL SOCIETY TO CONDUCT A BIENNIAL REVIEW RATHER THAN A QUARTERLY AUDIT OF THE FUNDS OF A NONPROFIT CORPORATION THAT MANAGES A STATE-OWNED HISTORIC SITE OR BUILDING; ALLOWING THE SOCIETY TO AUDIT THE FUNDS WHEN DETERMINED NECESSARY; AMENDING SECTION 22-3-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 22-3-603, MCA, is amended to read:

“22-3-603. Management of historic sites and buildings — contracts.

(1) The Montana historical society may accept gifts, grants, bequests, or contributions of money, property, labor, or materials for use in the operation, maintenance, repair, preservation, or renovation of any historic site or building owned by the state of Montana.

(2) The Montana historical society may contract with a local nonprofit corporation for the operation, maintenance, preservation, repair, or renovation of any historic site or building owned by the state. The nonprofit corporation may not be considered a public agency for purposes of Title 18, except for the provisions in chapter 2, part 2, or for the purposes of other statutes applicable to the historical society if 25% of the total annual expenses for all costs of operation, maintenance, repair, preservation, and renovation of the historic site or building is provided by in-kind or donated labor or materials by or on behalf of the contracting local nonprofit corporation. The nonprofit corporation ~~must~~ *shall* conform to the provisions of Title 18, chapter 2, part 2, and Title 35, chapter 2.

(3) A contract may not be entered into or any other obligation incurred for the purposes in subsection (1) until money has been appropriated by the legislature or is otherwise available. If funds are otherwise available, Title 18, chapter 2, parts 1, 3, and 4, are not applicable.

(4) The Montana historical society may require a corporation managing a property pursuant to subsection (2) to deposit in a local financial institution all profits, revenue, royalties, or fees received or all gifts, grants, bequests, or other contributions collected by the corporation for the benefit of the property. All funds must be accounted for pursuant to the management contract and ~~audited quarterly~~ *reviewed biennially* by the society or its designee, and expenditures of the funds may be used only for the operation, maintenance, preservation, repair, renovation, and management of the property. *The Montana historical society or its designee may conduct an audit of the funds when determined necessary by the society.*”

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

Approved March 15, 2005

CHAPTER NO. 11

[HB 29]

AN ACT REVISING THE DEFINITION OF SHORT-TERM WORKER FOR LEGISLATIVE BRANCH PURPOSES; AND AMENDING SECTIONS 2-18-601 AND 2-18-611, MCA.

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

Section 1. Section 2-18-601, MCA, is amended to read:

“2-18-601. Definitions. For the purpose of this part, except 2-18-620, the following definitions apply:

(1) (a) “Agency” means any legally constituted department, board, or commission of state, county, or city government or any political subdivision of the state.

(b) The term does not mean the state compensation insurance fund.

(2) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

(3) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(4) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, and persons contracted as independent contractors or hired under personal services contracts.

(5) "Full-time employee" means an employee who normally works 40 hours a week.

(6) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

(7) "Part-time employee" means an employee who normally works less than 40 hours a week.

(8) "Permanent employee" means a permanent employee as defined in 2-18-101.

(9) "Seasonal employee" means a seasonal employee as defined in 2-18-101.

(10) "Short-term worker" means:

(a) *for the executive and judicial branches*, a short-term worker as defined in 2-18-101; or

(b) *for the legislative branch, an individual who:*

(i) *is hired by a legislative agency for an hourly wage established by the agency;*

(ii) *may not work for the agency for more than 6 months in a continuous 12-month period;*

(iii) *is not eligible for permanent status;*

(iv) *may not be hired into another position by the agency without a competitive selection process; and*

(v) *is not eligible to earn the leave and holiday benefits provided in this part or the group insurance benefits provided in part 7.*

(11) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or a member of the employee's immediate family or for a permanent state employee who is eligible for parental leave under the provisions of 2-18-606.

(12) "Temporary employee" means a temporary employee as defined in 2-18-101.

(13) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

(14) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."

Section 2. Section 2-18-611, MCA, is amended to read:

"2-18-611. Annual vacation leave. (1) Each permanent full-time employee shall earn annual vacation leave credits from the first day of employment. Vacation leave credits earned must be credited at the end of each

pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of 6 calendar months.

(2) Seasonal employees earn vacation credits. However, seasonal employees must be employed for 6 qualifying months before they may use the vacation credits. In order to qualify, seasonal employees shall immediately report back for work when operations resume in order to avoid a break in service.

(3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have worked the qualifying period.

(4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

(5) Temporary employees earn vacation leave credits but may not use the credits until after working for 6 qualifying months.

(6) A short-term worker, as defined in ~~2-18-101~~ 2-18-601, may not earn vacation leave credits, and time worked as a short-term worker does not apply toward the person's rate of earning vacation leave credits."

Approved March 15, 2005

CHAPTER NO. 12

[HB 37]

AN ACT REQUIRING THAT INTEREST EARNED ON MONEY IN THE STATE LIVESTOCK PER CAPITA FEE ACCOUNT AND IN COUNTY PREDATORY ANIMAL CONTROL FUNDS BE DEPOSITED IN THE RESPECTIVE ACCOUNT OR FUNDS; AMENDING SECTIONS 15-24-925, 81-7-303, AND 81-7-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 15-24-925, MCA, is amended to read:

"15-24-925. Reimbursement to department — transmission of fees to state. (1) The department may withhold 2% of the money received under 15-24-921 as reimbursement for the collection of the fee on livestock unless a different percentage of money to be withheld is mutually agreed upon by the department and the department of livestock on an annual basis.

(2) The department shall designate the amount received from the fee imposed on sheep and the amount received from the fee imposed on all other livestock and shall specify the separate amounts in the report to the department of livestock. The money, when received by the department, must be deposited in an account in the special revenue fund to the credit of the department of livestock. The money in the account must be kept separate from other funds received by the department of livestock. *Interest earned on money in the account must be deposited in the account.*"

Section 2. Section 81-7-303, MCA, is amended to read:

"81-7-303. County commissioners permitted to require per capita license fee on sheep. (1) To defray the expense of protection, the board of county commissioners of a county may require all owners or persons in possession of a sheep 1 year of age or older in the county on the regular assessment date of each year as provided in 15-24-903 to pay a per capita license

fee in an amount to be determined by the board. All owners or persons in possession of a sheep 1 year of age or older coming into the county after the regular assessment date and subject to the per capita levy under the provisions of Title 15, chapter 24, part 9, are subject to payment of the license fee.

(2) Upon the order of the board of county commissioners, the license fees may be imposed by entering the name of the licensee upon the assessment record of the county by the department of revenue. The license fees are payable to and must be collected by the county treasurer. When levied, the fees are a lien upon the property, both real and personal, of the licensee. If the person against whom the license fee is levied does not own real estate against which the license fee is or may become a lien, then the license fee is payable immediately upon its levy and the treasurer shall collect the fee in the manner provided by law for the collection of personal property taxes that are not a lien upon real estate.

(3) When collected, the fees must be placed in the predatory animal control fund and the fund may be expended on order of the board of county commissioners of the county for predatory animal control only. *Interest earned on money in the fund must be deposited in the fund.*

Section 3. Section 81-7-603, MCA, is amended to read:

“81-7-603. County commissioners permitted to levy per capita license fee on cattle. (1) To defray the expense of protection, the board of county commissioners may require all owners or persons in possession of any cattle 9 months ~~old~~ *of age* or older in the county on the regular assessment date of each year as provided in 15-24-903 to pay a per capita license fee in an amount to be determined by the board. All owners or persons in possession of cattle 9 months ~~old~~ *of age* or older coming into the county after the regular assessment date and subject to the per capita levy under the provisions of Title 15, chapter 24, part 9, are subject to payment of the license fee.

(2) Upon the order of the board of county commissioners, the license fee may be imposed by entering the name of the licensee upon the assessment record of the county by the department of revenue. The license fee is payable to the county treasurer. When levied, the fee is a lien upon the property, both real and personal, of the licensee. If the person against whom the license fee is levied does not own real estate against which the license fee is or may become a lien, then the license fee is payable immediately upon its levy and the treasurer shall collect the fee in the manner provided by law for the collection of personal property taxes that are not a lien upon real estate.

(3) The fees must be placed in a predatory animal control fund separate from the fund provided for in 81-7-303. The money in the predatory animal control fund may be expended by the board of county commissioners only for the predatory animal control program. *Interest earned on money in the fund must be deposited in the fund.*

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

Approved March 15, 2005

CHAPTER NO. 13

[HB 66]

AN ACT CHANGING FROM MANDATORY TO DISCRETIONARY THE CREDIT, FOR EACH DAY OF INCARCERATION PRIOR TO CONVICTION,

GRANTED AGAINST THE FINE WHEN A FINE IS LEVIED IN ADDITION TO A TERM OF IMPRISONMENT ON CONVICTION OF AN OFFENSE; AND AMENDING SECTION 46-18-403, MCA.

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

Section 1. Section 46-18-403, MCA, is amended to read:

“46-18-403. Credit for incarceration prior to conviction. (1) ~~Any~~ A person incarcerated on a bailable offense ~~and~~ against whom a judgment of imprisonment is rendered must be allowed credit for each day of incarceration prior to or after conviction, except that the time allowed as a credit may not exceed the term of the prison sentence rendered.

(2) ~~Any~~ A person incarcerated on a bailable offense ~~who does not supply bail and who does not supply bail~~ and against whom a fine is levied on conviction of the offense ~~must~~ may be allowed a credit for each day of incarceration prior to conviction, ~~except that the~~, *except that the* amount allowed or credited may not exceed the amount of the fine. The daily rate of credit for incarceration must be established annually by the board of county commissioners by resolution. The daily rate must be equal to the actual cost incurred by the detention facility for which the rate is established.”

Approved March 15, 2005

CHAPTER NO. 14

[HB 108]

AN ACT REVISING THE DESIGNATION OF THE WAGE COLLECTION FUND; AMENDING SECTION 39-3-213, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 39-3-213, MCA, is amended to read:

“39-3-213. Disposition of wages. (1) The commissioner of labor shall deposit wages collected under parts 2 and 4 of this chapter into the ~~private purpose trust wage collection~~ fund and shall attempt to make payment of wages to the entitled person. Wages deposited into the ~~private purpose trust wage collection~~ fund do not bear interest. *The wage collection fund is an agency fund as provided in 17-2-102(3)(d).* The payment of wages collected may be made by means of state warrants.

(2) ~~Warrants~~ A warrant issued pursuant to subsection (1) that ~~remain~~ remains unclaimed for more than 6 months from the date of issuance must be returned to the state treasurer for cancellation in accordance with 17-8-303.”

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

Approved March 15, 2005

CHAPTER NO. 15

[HB 118]

AN ACT REVISING BANKING LAWS; ELIMINATING THE PROHIBITION ON OUT-OF-STATE BANKS AND BANK HOLDING COMPANIES FROM

ACQUIRING IN-STATE BANKS OR BRANCH BANKS BY CONSOLIDATION OR MERGER; AUTHORIZING CERTAIN ACTIVITIES AND ESTABLISHING REQUIREMENTS FOR A BANK RESULTING FROM CONSOLIDATION OR MERGER WITH RESPECT TO BRANCH BANKING; AUTHORIZING IN-STATE BANKS TO ESTABLISH OUT-OF-STATE BRANCH BANKS; REPEALING THE AUTHORIZATION OF OUT-OF-STATE BANKS TO DO BUSINESS IN MONTANA USING THEIR EXISTING CORPORATE NAME PROVIDED THEY DO NOT ENGAGE IN BANKING BUT ONLY LOAN MONEY; AMENDING SECTIONS 32-1-371, 32-1-372, AND 32-1-1001, MCA; AND REPEALING SECTION 32-1-103, MCA.

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

Section 1. Section 32-1-371, MCA, is amended to read:

“32-1-371. Consolidation or merger of banks. (1) (a) Any two or more banks doing business in this state may, with the approval of the department in the case of a resulting state bank, consolidate or merge into one bank, on terms and conditions lawfully agreed upon by a majority of the board of directors of each bank proposing to consolidate or merge. Except as otherwise expressly provided in this chapter, the consolidation or merger of a state bank is governed by Title 35, chapter 1.

~~(b) This section does not permit a bank or bank holding company located in another state to acquire by consolidation or merger any bank or branch bank in this state.~~

(e)(b) A bank organized under the laws of this state may, with the approval of the department in the case of a resulting bank, consolidate or merge with a savings association located in this state and may, upon the consolidation or merger, maintain the branch banks and other offices previously maintained by both the bank and the savings association.

(2) Upon consolidation or merger, the corporate franchise, the corporate life, being, and existence, and the corporate rights, powers, duties, privileges, franchises, and obligations, including the rights, powers, duties, privileges, and obligations as trustee, executor, administrator, and guardian and every right, power, duty, privilege, and obligation as fiduciary, together with title to every species of property, real, personal, and mixed, of the consolidating or merging banks, are, without the necessity of any instrument of transfer, consolidated or merged and continued in and held, enjoyed, and assumed by the consolidated or merged resulting bank. The consolidated or merged resulting bank has the right equal with any other applicant to appointment by the courts to the offices of executor, administrator, guardian, or trustee under any will or other instrument made prior to the consolidation or merger and by which will or instrument the consolidating or merging bank was nominated by the maker to the office.

(3) Upon consolidation or merger, the consolidated or merged resulting bank shall designate and operate one of the prior main banking houses of the consolidating or merging banks as its main banking house and the bank may maintain and continue to operate the main banking houses of each of the other consolidating or merging banks as a branch bank.

(4) (a) *Upon consolidation or merger, the resulting bank may:*

(i) *maintain the branch banks and other offices previously maintained by the consolidating or merging banks; and*

(ii) *establish, acquire, or operate additional branch banks at any location where any bank involved in the consolidation or merger could have established, acquired, or operated a branch bank under applicable federal or state law if that bank had not been a party to the consolidation or merger.*

(b) *A resulting bank that intends to establish, acquire, or operate a branch bank pursuant to subsection (4)(a) that is organized under the laws of this state must receive prior approval from the department as provided for in 32-1-372, whether or not the branch bank is to be located within or outside this state.*

(c) *A resulting bank organized under federal law or the laws of another state shall provide the department with copies of all applications or notices filed with any federal or other state regulatory agency seeking to establish, acquire, or operate a branch bank pursuant to subsection (4)(a) within this state. The copies must be filed with the department within 5 days of their filing with the federal or other state agency.*

(4)(5) Upon consolidation or merger, the resulting bank, including all depository institutions that are affiliates of the resulting bank, may not directly or indirectly control more than 22% of the total amount of deposits of insured depository institutions and credit unions located in this state.”

Section 2. Section 32-1-372, MCA, is amended to read:

“32-1-372. Branch bank. (1) A bank may establish and maintain branch banks, as provided in 32-1-371 and this section, ~~at any place within the state.~~ The formation and operation of a branch bank, *wherever located*, by a bank organized under the laws of this state require the prior approval of the department. *A bank organized under the laws of this state may establish, acquire, or operate a branch bank or other office outside this state if approved by the department and if permitted by the laws of the jurisdiction where the branch bank or office is to be located.*

(2) A branch bank may but is not required to offer all services and conduct all business authorized to be offered or conducted by the bank.

(3) A bank authorized to do banking business in this state may use a satellite terminal, as defined in ~~the Montana Electronic Funds Transfer Act 32-6-103,~~ at any location permitted by the Montana Electronic Funds Transfer Act.

(4) A bank may continue to maintain and operate all branch banks and other banking offices, including detached facilities, that are in existence or authorized on July 1, 1997, without further consent, authorization, or approval of the department or the board. All offices established and maintained by a bank, other than the main banking house, at which deposits are received, checks are paid, or money is lent must be considered branch banks for all purposes under this title.

(5) A bank located in this state may provide services for other banks located in this state, whether or not those banks are affiliates.

(6) ~~This~~ *A bank may establish and maintain branch banks, as provided in 32-1-371 and this section. However, this section may not be interpreted to authorize de novo interstate bank branching and may not be interpreted to authorize a bank not located in this state to establish, acquire, or operate, or maintain a branch bank in this state.”*

Section 3. Section 32-1-1001, MCA, is amended to read:

“32-1-1001. Definition of foreign trust company. (1) For the purposes of this part, the term “foreign trust company” includes each banking and trust association or corporation organized under the laws of any state other than

Montana that has the power to act as trustee, guardian, or conservator and each national banking association that maintains its principal office in any state other than Montana that has been granted permission by the comptroller of the currency to act in a fiduciary capacity under the provisions of 12 U.S.C. 92a, as amended.

(2) A foreign trust company acting pursuant to this part is not a foreign corporation regulated by ~~32-1-103~~ or 32-1-402.”

Section 4. Repealer. Section 32-1-103, MCA, is repealed.

Approved March 15, 2005

CHAPTER NO. 16

[SB 14]

AN ACT ELIMINATING THE CAPITOL RESTORATION COMMISSION; AND REPEALING SECTIONS 5-17-201, 5-17-202, 5-17-203, 5-17-204, 5-17-205, 5-17-206, AND 5-17-207, MCA.

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

Section 1. Repealer. Sections 5-17-201, 5-17-202, 5-17-203, 5-17-204, 5-17-205, 5-17-206, and 5-17-207, MCA, are repealed.

Approved March 15, 2005

CHAPTER NO. 17

[SB 20]

AN ACT REMOVING THE REQUIREMENT THAT A MUNICIPALITY DIVERT ITS WATER FROM AN A-CLOSED WATER BODY IN ORDER TO QUALIFY FOR THE CONSIDERATION FOR NONABANDONMENT OF A MUNICIPAL WATER RIGHT; INCLUDING A MUNICIPAL WATER SUPPLY THAT IS GOING TO BE USED AS APPROVED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AS A CRITERION FOR DETERMINING NONABANDONMENT; AND AMENDING SECTION 85-2-227, MCA.

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

Section 1. Section 85-2-227, MCA, is amended to read:

“85-2-227. Claim to constitute prima facie evidence — relevant evidence — abandonment — criteria for presumption of municipal nonabandonment. (1) For purposes of adjudicating rights pursuant to this part, a claim of an existing right filed in accordance with 85-2-221 or an amended claim of existing right constitutes prima facie proof of its content until the issuance of a final decree. For purposes of administering water rights, the provisions of a temporary preliminary decree or a preliminary decree, as modified after objections and hearings, supersede a claim of existing right until a final decree is issued.

(2) A water judge may consider all relevant evidence in the determination and interpretation of existing water rights. Relevant evidence under this part may include admissible evidence arising before or after July 1, 1973.

(3) Subject to the provisions of subsection (4), a water judge may determine all or part of an existing water right to be abandoned based on a consideration of all admissible evidence that is relevant, including, without limitation, evidence relating to acts or intent occurring in whole or in part after July 1, 1973.

(4) In a determination of abandonment made under subsection (3), the legislature finds that a water right that is claimed for municipal use ~~from a water classified by the board of environmental review before January 1, 1999, as A-Closed under administrative rule is a unique water suited to municipal water use and that such a claim~~ by a city, town, or other public or private entity that operates a public water supply system, as defined in 75-6-102, is presumed to not be abandoned if the city, town, or other private or public entity has used any part of the water right or municipal water supply and there is admissible evidence that the city, town, or other public or private entity also has:

(a) obtained a filtration waiver under the federal Safe Drinking Water Act, 42 U.S.C. 300(f), et seq.;

(b) acquired, constructed, or regularly maintained diversion or conveyance structures for the future municipal use of the water right;

(c) conducted a formal study, prepared by a registered professional engineer or qualified consulting firm, that includes a specific assessment that using the water right for municipal supply is feasible and that the amount of the water right is reasonable for foreseeable future needs; or

(d) maintained facilities connected to the municipal water supply system to apply the water right to:

(i) an emergency *municipal water supply*; ~~or~~

(ii) a supplemental municipal water supply; or

(iii) *any other use approved by the department under Title 85, chapter 2, part 4.*"

Approved March 15, 2005

CHAPTER NO. 18

[HB 77]

AN ACT INCREASING THE APPLICATION AND RENEWAL FEES FOR SEPTIC CLEANING AND DISPOSAL LICENSES; REVISING THE ALLOCATION OF LICENSE FEE REVENUE; AMENDING SECTIONS 75-10-1203 AND 75-10-1212, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 75-10-1203, MCA, is amended to read:

"75-10-1203. Special revenue account. There is an account in the state special revenue fund. Money in the account must be used to fund administration and enforcement of this part. *The department shall use \$50 of each license fee collected under 75-10-1212 to provide training and education for those licensed under this part.*"

Section 2. Section 75-10-1212, MCA, is amended to read:

"75-10-1212. License term, renewal, and fees. (1) A license expires on December 31 of each calendar year. A license is renewable in accordance with

procedures established in rules adopted pursuant to 75-10-1202 and upon receipt of the application provided for in subsection (2) of this section. A license is not transferable. If a person ceases to do business, the license terminates and the license must be returned to the department.

(2) An application for renewal of a license must be made on a form provided by the department. The application must contain:

- (a) the full name and address of the licensee;
- (b) a list of counties in which business is to be conducted during the renewal term;
- (c) a list of disposal sites that the licensee intends to use during the renewal term;
- (d) for each disposal site listed pursuant to subsection (2)(c) but not previously listed by the licensee for the year immediately preceding the renewal year:
 - (i) a certification by the local health officer or the local health officer's representative in the county in which the disposal site is located that the site meets all applicable state and local requirements; and
 - (ii) written permission to use the site signed by the owner, manager, or other person authorized to give permission to use the site; and
- (e) any additional information required by the department by rule.

(3) The fee for a license, including renewal of a license, is ~~\$125~~ \$300, payable to the department at the time of application for the license or renewal. A federal agency, city, town, county, or other political subdivision is not required to pay the license fee. A city, town, county, or other political subdivision, including a federal agency if allowed by federal law, shall comply with all other requirements of this part. The department shall annually return ~~40%~~ \$50 of the ~~fees each license fee~~ to the county where the ~~fees were~~ fee was collected. The state portion of the fee must be deposited in the account provided for in 75-10-1203. The county portion of the fee must be used to defer the cost of the county to enforce this part.

(4) In addition to the license fee required under subsection (3), the department shall collect a late fee from any person that has failed to submit a license fee between January 31 and April 1 of a renewal year and that operates a business governed by this part in the renewal year. The late fee is \$125 and must be deposited in the account provided for in 75-10-1203. The late fee is the exclusive remedy for the late payment of a renewal fee."

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 July 1, 2005.

Approved March 17, 2005

CHAPTER NO. 19

[HB 43]

AN ACT REQUIRING OIL AND GAS PRODUCERS TO ITEMIZE CHARGES ASSESSED TO THE OWNER OF A NATURAL GAS ROYALTY; AMENDING

SECTION 82-10-104, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 82-10-104, MCA, is amended to read:

“82-10-104. Payment of royalties — form of record required. (1) An oil and gas producer paying royalties by check, draft, or order shall include with every ~~such~~ payment a form showing the following matters relating to that payment:

- (a) the name of the royalty owner to whom the payment is made;
- (b) the date of the check, draft, or order;
- (c) any royalty owner identification number used by the producer for ~~such~~ *the* royalty owner;
- (d) the ~~month and year~~ *time period* during which production occurred for which payment is being made;
- (e) any number used to identify the lease under which production occurred;
- (f) the type of product produced;
- (g) barrels of oil ~~and/or~~ *and* cubic feet of gas for which payment is made;
- (h) the amount and type of all taxes withheld;
- (i) the net value of production; ~~and~~
- (j) the royalty owner’s net value; *and*
- (k) *contact information for obtaining additional information regarding the payment and answers to questions.*

(2) In addition to the information required in subsection (1), an oil and gas producer paying royalties to a royalty owner shall, at the time of payment, specify by line item every charge assessed against the royalty owner.

~~(2)~~(3) Any person purposely and knowingly violating the provisions of subsection (1) *or* (2) is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000.”

Section 2. Effective date. [This act] is effective July 1, 2006.

Approved March 18, 2005

CHAPTER NO. 20

[HB 78]

AN ACT ELIMINATING THE REQUIREMENT THAT PRIOR TO ISSUING OR RENEWING A PERMIT TO OPERATE AN UNDERGROUND STORAGE TANK, THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL MAKE A DETERMINATION OF FULL COMPLIANCE OR ISSUE A COMPLIANCE ORDER; AMENDING SECTION 75-11-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 75-11-509, MCA, is amended to read:

“75-11-509. Inspections — permits. (1) The owner or operator of an active underground storage tank must have the tank inspected for compliance with this part by January 1, 2002, and at least once every 3 years thereafter by an inspector who is licensed pursuant to Title 75, chapter 11, part 2, to perform underground storage tank inspections. The inspector may not be:

- (a) the owner or operator of the tank;
- (b) an employee of the owner or operator; or

(c) for the first inspection required by this subsection (1) and for a period of 3 years after the installation or modification of the tank was completed, the installer who installed or modified the tank and whose name or signature was on the permit required by 75-11-212.

(2) The owner or operator of an inactive underground storage tank shall comply with requirements for testing, inspection, recordkeeping, and reporting provided in rules adopted pursuant to this part.

(3) The department may by rule authorize temporary permits for the installation, testing, and operation of underground storage tanks. The requirements in subsection (8) for a 3-year permit term and for permit issuance only after inspection by a licensed inspector do not apply to temporary permits.

(4) The department shall by rule provide:

- (a) requirements for the scope and timing of inspections; and
- (b) requirements for testing, inspection, recordkeeping, and reporting for inactive tanks to ensure that these tanks do not pose a threat to public health, safety, or the environment while inactive or upon their return to active status.

(5) The inspector shall provide the owner or operator with an inspection report that meets the requirements of rules adopted by the department to ensure compliance with this part and rules adopted pursuant to this part.

(6) The owner or operator shall retain the original inspection report and mail a copy to the department.

(7) If the inspection report indicates violations, the owner or operator shall correct the violations and obtain a followup inspection. Followup inspection reports must be provided to the owner or operator and to the department.

(8) A person may not place a regulated substance in an underground storage tank unless the owner or operator has been issued a valid permit from the department for the tank. Permits must be issued for a term of 3 years. The department may not issue or renew a permit unless the owner or operator has filed with the department an inspection report by a licensed inspector. ~~Except as provided in subsection (9), prior to issuing or renewing a permit, the department shall determine, on the basis of the inspection report and other relevant information, that the operation and maintenance of the tank was in compliance with this part and rules adopted pursuant to this part on the date of inspection.~~

~~(9) The department may issue and renew permits for tanks that are not in full compliance with the operation and maintenance requirements of this part and rules adopted pursuant to this part only if the department requires, in a compliance order issued pursuant to 75-11-512 or 75-11-525, that the noncompliance be corrected at the earliest practicable time. The department may also take other enforcement actions, including actions for penalties under this chapter, and may pursue any other remedy available to the department to address noncompliance with this part or with rules, permits, or orders issued~~

~~pursuant to this part.~~ *Prior to issuing or renewing a permit, the department shall determine, on the basis of the inspection report and other relevant information, whether the operation and maintenance of the tank were in compliance with this part and rules adopted pursuant to this part on the date of inspection.*

(10)(9) The department may determine to not issue or not renew a permit for a tank if the department finds that there has been significant noncompliance with this part or with rules, permits, or orders issued pursuant to this part. If the department proposes to not issue or not renew a permit, it ~~shall~~ *must* have a written notice letter served personally or by certified mail on the owner or operator informing the owner or operator of the reason for the action. The owner or operator may request a hearing before the board. The hearing request must be in writing and must be filed with the board no later than 30 days after the service of the notice letter. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section.”

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

Approved March 18, 2005

CHAPTER NO. 21

[HB 80]

AN ACT REVISING LAWS RELATING TO ENFORCEMENT OF CHILD SUPPORT TO ALLOW REFERRALS TO AND FROM OTHER IV-D PROGRAMS, INCLUDING TRIBAL PROGRAMS; AMENDING SECTIONS 40-5-201, 40-5-202, 40-5-203, 40-5-206, 40-5-226, 40-5-263, 40-5-271, 40-5-403, 40-5-431, 40-5-432, 40-5-433, 40-5-434, 40-5-601, 40-5-701, 40-5-901, 40-5-906, 40-5-909, AND 40-5-923, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 40-5-201, MCA, is amended to read:

“40-5-201. Definitions. As used in this part, the following definitions apply:

(1) “Alleged father” means a person who is alleged to have engaged in sexual intercourse with a child’s mother during a possible time of conception of the child or a person who is presumed to be a child’s father under the provisions of 40-6-105.

(2) (a) “Child” means:

(i) a person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States;

(ii) a person under 19 years of age and still in high school;

(iii) a person who is mentally or physically incapacitated if the incapacity began prior to the person’s 18th birthday; or

(iv) in a IV-D case, a person for whom:

(A) support rights are assigned under 53-2-613;

(B) a public assistance payment has been made;

(C) the department is providing support enforcement services under 40-5-203; or

(D) the department has received a referral for interstate *IV-D* services from an agency of another state or an *Indian tribe* under the provisions of the Uniform Interstate Family Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Reciprocal Enforcement of Support Act, or Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support to extend beyond the child's 18th birthday.

(3) "Department" means the department of public health and human services.

(4) "Director" means the director of the department of public health and human services or the director's authorized representative.

(5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

(6) "Hearings officer" or "hearings examiner" means the hearings officer appointed by the department for the purposes of this chapter.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child or children.

(8) "Obligee" means:

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or

(b) a public agency of this or another state or an *Indian tribe* having the right to receive current or accrued support payments.

(9) "Obligor" means a person, including an alleged father, who owes a duty of support.

(10) "Parent" means the natural or adoptive parent of a child.

(11) "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. The genetic markers may be identified from a person's blood or tissue sample. The blood or tissue sample may be taken by blood drawing, buccal swab, or any other method approved by the American association of blood banks. Paternity blood tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.

(12) "Public assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

(13) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide for the medical, health, and support needs of a child under the laws of this or any other state or under a support order;

(b) a support order for spousal maintenance of the custodial parent; or

(c) fines, fees, penalties, interest, and other funds and costs that the department is authorized under this chapter to collect by the use of any

procedure available for the payment, enforcement, and collection of child support or spousal maintenance or support.

(14) "Support order" means an order, whether temporary or final, that:

(a) provides for the payment of a specific amount of money, expressed in periodic increments or as a lump-sum amount, for the support of the child, including an amount expressed in dollars for medical and health needs, child care, education, recreation, clothing, transportation, and other related expenses and costs specific to the needs of the child;

(b) is issued by:

(i) a district court of this state;

(ii) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

(iii) an administrative agency pursuant to proceedings under this part; or

(iv) an administrative agency of another state, Indian tribe, or foreign country with a hearing function and process similar to those of the department under this part; and

(c) when the context requires, includes:

(i) judgments and orders providing periodic payments for the maintenance or support of the custodial parent of a child receiving services under this chapter; and

(ii) amounts for the recovery of fines, fees, penalties, interest, and other funds and costs that the department is authorized under this chapter to collect by the use of any procedure available for the payment, enforcement, and collection of child support or spousal maintenance or support.

(15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated under the act."

Section 2. Section 40-5-202, MCA, is amended to read:

"40-5-202. Department of public health and human services — powers and duties regarding collection of support debt. (1) The department may take action under the provisions of this chapter, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part 1, and other appropriate state and federal statutes to provide IV-D services if the department:

(a) receives a referral on behalf of the child from an agency providing services to the child under the provisions of Title 41, Title 52, or Title 53;

(b) is providing services under 40-5-203; or

(c) receives ~~an interstate~~ a referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or an ~~interstate~~ action by a Title IV-D agency of ~~another state~~.

(2) A verified statement, filed by the department, that it is providing services is prima facie evidence of its authority to act. Upon filing, the department may, on behalf of itself or on behalf of the obligee, obligor, or child, initiate, participate in, intervene in, or exercise any remedy available in a judicial or an administrative action on the same basis as any other party.

(3) Whether acting on its own behalf or on behalf of the obligee, obligor, or child, the department and its attorneys serve the public interest in ensuring that children are supported by their parents, rather than maintained by public

assistance. The department does not represent the interests of any individual person, and its attorneys represent only the department. An attorney-client relationship is not created between department attorneys and any person or entity other than the department. The obligee, obligor, and child may obtain the services of a private attorney to represent their interests. The existence or appearance of a private attorney as counsel of record for the obligee, obligor, or child does not affect the department's right to act or provide services under this chapter. This chapter does not require the department to provide a private attorney for, or to pay for a private attorney for, an obligee, obligor, or child.

(4) The department has the power of attorney to act in the name of any obligee to endorse and cash any drafts, checks, money orders, or other negotiable instruments received by the department on behalf of a child.

(5) (a) If the department is providing IV-D services, the department must be afforded notice and an opportunity to participate as an independent party in any proceeding relating to paternity, to termination of parental rights, or to the establishment, enforcement, or modification of a support obligation, whether initiated by the obligee, the obligor, or the child.

(b) The notice must reasonably inform the department of the issues to be determined in the proceeding, the names of the parties and the child, and the identity and location of the tribunal in which the issues will be determined. The notice is for informational purposes only and is not intended as a substitute for procedures necessary under the Montana Rules of Civil Procedure to establish personal jurisdiction over the department. Whether or not the department is given notice, an agreement, judgment, decree, or order is void as to any interest of the department that is or may be affected by the agreement, judgment, decree, or order if the department was not joined as a party in the manner provided in the Montana Rules of Civil Procedure.

(c) The notice must be personally served on the department. Within 20 days after service of the notice, the department may:

(i) decline to enter the proceeding as a party, in which case the proceeding may continue without the department's participation;

(ii) inform the tribunal that a substantial interest of the department could be adversely affected by the proceeding, in which case the proceeding may not continue without joining the department as a necessary party in the manner provided in the Montana Rules of Civil Procedure; or

(iii) inform the tribunal that prior to the filing of the proceeding, the department initiated an administrative proceeding under this chapter in which the parties and some or all of the issues are the same as those in the proceeding before the tribunal. The tribunal shall then discontinue the proceeding as to the common issues until administrative remedies have been exhausted.

(6) (a) When the department is providing services, a recipient or former recipient of public assistance who assigned support rights under 42 U.S.C. 602(a)(26) or 42 U.S.C. 608(a)(3) or a collection agency acting on behalf of the recipient or former recipient may collect only that part of a delinquent support amount that accrued after termination of public assistance. The recipient, former recipient, or collection agency may not commence or maintain an action against or make an agreement with the obligor to recover an assigned delinquent support amount unless the department, in writing:

(i) releases or relinquishes its assigned interest;

(ii) declares the support debt owed the department to be satisfied, in which case the balance of the delinquent amount is released; or

(iii) consents to the action or agreement.

(b) If a recipient, former recipient, or collection agency collects or receives value for any part of an assigned delinquent support amount and the department has not given its consent or released or relinquished its assigned interest, the recipient, former recipient, or collection agency shall make prompt and full restitution to the department. If prompt and full restitution is not made, the department may send a written demand to the recipient, former recipient, or collection agency, and if prompt and full restitution is not made within 20 days of the date of the written demand, the recipient, former recipient, or collection agency is liable for damages equal to double the amount collected or value received. The amount of damages may be determined and assessed by the department under the contested case provisions of the Montana Administrative Procedure Act. The damages may be collected by the department by any method or remedy available for the enforcement of child support owed by an obligor parent.

(c) This subsection (6) does not limit the right of a person to recover money not assigned. If there are competing proceedings against an obligor for collection of delinquent support, the collection of support assigned to the department takes priority over the obligor's income and assets.

(7) An applicant for or recipient of services may not act to the prejudice of the department's rights while the services are being provided.

(8) Unless the department has consented to the agreement in writing, if public assistance is being or has been paid for a child, an agreement between an obligee and an obligor or a judgment, decree, or order adopting the agreement does not act to reduce or terminate any rights of the department to establish a support order or to recover a support debt from the obligor, even if the agreement, judgment, decree, or order purports to:

(a) relieve or terminate the obligor's support duty;

(b) waive, modify, compromise, or discharge the support debt;

(c) prepay future support obligations or settle past, present, or future support obligations; or

(d) permit the obligor to pay past, present, or future support obligations:

(i) with noncash contributions;

(ii) by the payment of other debts or obligations, such as vehicle, rent, and mortgage payments; or

(iii) by making contributions to a trust or other account or payments toward an asset if the contributed amounts are unavailable to the department.

(9) The department may petition a court or an administrative agency for modification of any order on the same basis as a party to that action is entitled to do.

(10) The department is subrogated to the right of the child or obligee to maintain any civil action or execute any administrative remedy available under the laws of this or any other state to collect a support debt. This right of subrogation is in addition to and independent of the assignment under 42 U.S.C. 602(a)(26) and the support debt created by 40-5-221.

(11) If public assistance is being or has been paid, the department is subrogated to the debt created by a support order and any money judgment is considered to be in favor of the department. This subrogation is an addition to any assignment made under 42 U.S.C. 602(a)(26) and applies to the lesser of:

- (a) the amount of public assistance paid; or
- (b) the amount due under the support order.

(12) The department may adopt and enforce the rules necessary to carry out the provisions of this part.

(13) While providing services under this chapter and in order to carry out the purposes mentioned in this chapter, the department, through its director or the director's authorized representatives, may:

- (a) administer oaths;
- (b) certify official acts and records;
- (c) issue investigative and hearing subpoenas;
- (d) order discovery before and after a hearing;
- (e) hold prehearing and settlement conferences;
- (f) compel the attendance of witnesses and the production of books, accounts, documents, and evidence;
- (g) conduct proceedings supplementary to and in aid of a writ of execution or warrant for distraint, including a hearing on a claim that property is exempt from execution and the examination of an obligor or other person in the manner provided for the taking of a deposition in a civil action; and
- (h) perfect service of investigative and hearing subpoenas by certified mail or in the manner prescribed for service of a summons in a civil action in accordance with the Montana Rules of Civil Procedure.

(14) In addition to any other requirement for service provided by the Montana Rules of Civil Procedure, if a person is required to give notice to, serve, or provide a written response to the department under this chapter, the notice, service, or response must be made to the department's child support enforcement division.

(15) The department may collect any funds received under this chapter, and wrongfully retained, by the obligor through any remedy available for collection of child support.

(16) A hearing on a claim that property is exempt from execution must initially be conducted by teleconference methods and is subject to the Montana Administrative Procedure Act. At the request of a party or upon a showing that a party's case is substantially prejudiced by the lack of an in-person hearing, the hearings officer shall grant a de novo in-person hearing."

Section 3. Section 40-5-203, MCA, is amended to read:

"40-5-203. Child support enforcement services. (1) The department may accept applications for child support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against persons owing a duty to pay support.

(2) The department may establish by rule the terms and conditions by which services are provided under this section.

(3) If child support enforcement services are provided under this part to or for a child as a result of the payment of public assistance, the department shall continue to provide services after public assistance is no longer being paid, subject to the same conditions and on the same basis as in the case of other individuals to whom services are furnished under this section, without requiring an application, application fee, or other request for services. Acceptance of continued services constitutes agreement to the terms and conditions set for applicants by the department under this section.

(4) Services under this section, including information requests, are available to ~~obligors, obligees, and residents of other states~~ *nonresidents* on the same terms as residents of this state.

(5) The department may terminate services under this section if it:

(a) receives a written request for termination of services from the person to whom services are being provided;

(b) receives notice that the child is receiving public assistance; or

(c) determines that the person receiving services has violated any term or condition set by the department for an applicant under this section.

(6) For purposes of credit rating reports by the department, the department shall indicate if the withholding is for delinquent support or for regular monthly support obligations.”

Section 4. Section 40-5-206, MCA, is amended to read:

“40-5-206. Central unit for information and administration — cooperation enjoined — availability of records. (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering ~~interstate~~ *IV-D* inquiries concerning deserting parents, for receiving and answering requests for information made by consumer reporting agencies under 40-5-261, to coordinate and supervise departmental activities in relation to deserting parents, and to ensure effective cooperation with law enforcement agencies.

(2) During or in anticipation of a delinquency, enforcement, or modification proceeding, a proceeding to establish child or medical support or paternity, an attempt to locate an obligor, or a contested case, the department or other IV-D agency may request and, notwithstanding any statute making the information confidential, all state, county, and city agencies, officers, and employees shall provide on request information, if known, concerning an obligor or obligee, including:

(a) name;

(b) residential and mailing addresses;

(c) date of birth;

(d) social security number;

(e) wages or other income;

(f) number of dependents claimed for state and federal income tax withholding purposes;

(g) name and address of employer;

(h) state and local tax and revenue records;

(i) penal corrections records;

(j) address, location, and description of any real property or titled personal property; and

(k) any other asset in which the obligor or obligee may have an interest, including its location and the extent, nature, and value of the interest.

(3) Upon service of an administrative subpoena from the department or another IV-D agency during or in anticipation of a delinquency, enforcement, or modification proceeding, a proceeding to establish child or medical support or paternity, an attempt to locate an obligor, or a contested case, public utilities, cable television companies, and financial institutions shall, with regard to an obligor or obligee, provide the department or the requesting IV-D agency with the name and address of the obligor or obligee, the name and address of the obligor's or obligee's employer, and any information on the obligor's or obligee's assets and liabilities contained in customer records.

(4) Any information obtained by the department during the course of a child support investigation that is confidential at the source must be treated by the department as confidential and must be safeguarded accordingly. Absent a specific statutory prohibition to the contrary and subject to subsection (6), the department may release information obtained from nonconfidential public and private sources, including information regarding support orders, judgments, and payment records.

(5) Absent a specific statutory prohibition or rule to the contrary and subject to subsection (6), use or disclosure of information obtained by the department from confidential sources or any information maintained by the department in its records, including the names, addresses, and social security numbers of obligors and obligees, is limited to:

(a) purposes directly related to the provision of services under this chapter;

(b) ~~county government~~ attorneys and courts having jurisdiction in support and abandonment proceedings and IV-D agencies in other states engaged in the enforcement of support of minor children under the federal Social Security Act; and

(c) any other use permitted or required by the federal Social Security Act.

(6) The department may not disclose information regarding the whereabouts of a party to another party if:

(a) the department received notice that a protective order with respect to the party has been entered against the other party; or

(b) the department has reason to believe that the release of information may result in physical or emotional harm to the party.

(7) A person or private entity that discloses information to the department in compliance with this section is not liable to the obligor or obligee for negligent disclosure.

(8) An entity failing to comply with this section is subject to the contempt authority of the department under 40-5-226."

Section 5. Section 40-5-226, MCA, is amended to read:

"40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of final decision and order. (1) The administrative hearing is defined as a "contested case".

(2) If a hearing is requested, it must initially be conducted by teleconference methods and is subject to the Montana Administrative Procedure Act. At the

request of a party or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the hearings officer shall grant a de novo in-person hearing.

(3) The hearings officer shall determine the liability and responsibility, if any, of the parent or parents under the notice and shall enter a final decision and order in accordance with the determination. The order may award support from the date of:

(a) the child's birth if paternity was established under 40-5-231 through 40-5-238 or under Title 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

(b) the parties' separation if support is initially established under 40-5-225; or

(c) notice to the parties of a support modification request under 40-5-273.

(4) (a) Except as provided in subsection (4)(b), if the parent or parents fail to appear at the hearing or to timely file a request for a hearing, the hearings officer, upon a showing of valid service, shall enter a default decision and order declaring the amount stated in the notice to be final.

(b) In a multiple party proceeding under 40-5-225, if one party files a timely request for hearing, the matter must be set for hearing. Notice of the hearing must be served on the parties. If a party refuses to appear for the hearing or participate in the proceedings, the hearings officer shall determine child support and medical support orders based on the notice, information available to the department, and evidence provided at the hearing by the appearing parties. A party's refusal to appear is a consent to entry of child and medical support orders consistent with the hearings officer's determination. However, the default order may not be for more than the support requested in the notice unless the hearings officer finds that the evidence requires a larger amount.

(5) In a hearing to determine financial responsibility, whether temporary or final, and in any proceeding to modify support under 40-5-272, 40-5-273, and 40-5-276 through 40-5-278, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the uniform child support guidelines adopted by the department under 40-5-209. The hearings officer is not limited to the amounts stated in the notice. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the order is entered upon the parties' consent. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the hearings officer finds by clear and convincing evidence that the application of the guidelines is unjust to the child or to any of the parties or is inappropriate in a particular case. If the hearings officer finds that the guideline amount is unjust or inappropriate in a particular case, the hearings officer shall state the reasons for finding that the application of the guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar findings must also be made in a case in which the parties have agreed to a support amount that varies from the guideline amount. The hearings officer may vary the application of the guidelines to limit the obligor's liability for past support to the proportion of expenses already incurred that the hearings officer considers just. Findings that rebut and vary the guideline

amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(6) In a hearing to enforce a support order or to establish paternity under this chapter, the department shall send a copy of the notice of hearing to the obligee by regular mail addressed to the obligee's last-known address. The obligee may attend and observe the hearing as a nonparty. This subsection does not limit participation of an obligee who is a party to the proceedings or who is called as a witness to testify.

(7) (a) Within 60 days after the hearing has been concluded, any posthearing briefs are received, and all the evidence submitted, except for good cause, the hearings officer shall enter a final decision and order. The determination of the hearings officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act. A copy of the final decision must be delivered or mailed to each party, each party's attorney, and the obligee if the obligee is not a party.

(b) A child support obligation established under this section is subject to the registration and processing provisions of part 9 of this chapter.

(8) A support order entered under this part must contain a statement that the order is subject to review and modification by the department upon the request of the department or a party under 40-5-272, 40-5-273, and 40-5-276 through 40-5-278 when the department is providing services under IV-D for the enforcement of the order.

(9) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearings officer.

(10) A child support obligation determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearings officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure. When issuing a support order, the department shall consider whether any of the exceptions to immediate income withholding found in 40-5-411 apply, and, if an exception is applicable, the department shall include the exception in the support order.

(11) (a) Unless the hearings officer makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, each order establishing a child support obligation, whether temporary or final, and each modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearings officer.

(b) If an obligor is excepted from paying support through income withholding, the support order must include a requirement that whenever a party to the case is receiving IV-D services, support payments must be paid through the department as provided in 40-5-909.

(12) (a) If the department establishes paternity or establishes or modifies a child support obligation, the department's order must include a provision requiring each party other than the department to promptly file with the department and to update, as necessary, information on:

- (i) identity of the party;
- [(ii) social security number;]
- (iii) residential and mailing addresses;
- (iv) telephone number;
- (v) driver's license number;
- (vi) name, address, and telephone number of employer; and

(vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the obligor's and obligee's employer.

(b) The order must further direct that in a subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the department's due process requirements for notice and service of process are met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the department.

(c) The department shall keep the information provided under subsection (12)(a) confidential except as necessary for purposes of Title IV-D of the Social Security Act.

(13) The hearings officer may:

(a) compel obedience to the hearings officer's orders, judgments, and process and to subpoenas and orders issued by the department, including income-withholding orders issued pursuant to 40-5-415;

(b) compel the attendance of witnesses at administrative hearings;

(c) compel obedience of subpoenas for paternity blood tests;

(d) compel the production of accounts, books, documents, and other evidence;

(e) punish for civil contempt. Contempt authority does not prevent the department from proceeding in accordance with the provisions of 2-4-104.

(f) compel the production of information requested by the department or ~~another IV-D agency of another state~~ under 40-5-443.

(14) A contempt occurs whenever:

(a) a person acts in disobedience of any lawful order, judgment, or process of the hearings officer or of the department;

(b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for genetic paternity tests fails to do so;

(c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing fails to do so;

(d) an obligor or obligee subject to a discovery order issued by the hearings officer fails to comply with discovery requests;

(e) a person or entity compelled by administrative subpoena from the department or another IV-D agency to produce financial information or other information needed to establish paternity or to establish, modify, or enforce a support order fails to do so;

(f) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions of the order. In the case of a payor under an income-withholding order, a separate contempt occurs each time that income is required to be withheld and paid to the department and the payor fails to take the required action.

(g) a payor or labor union fails to provide information to the department or another IV-D agency when requested under 40-5-443[; or]

[(h) a financial institution uses information provided by the department pursuant to 40-5-924 for any other purpose without the authorization of the department].

(15) Before initiating a contempt proceeding, the department shall give the alleged contemnor notice by personal service or certified mail of the alleged infraction and a reasonable opportunity to comply with the law and to cure the alleged infraction. In order to initiate a contempt proceeding, an affidavit of the facts constituting a contempt must be submitted to the hearings officer, who shall review it to determine whether there is cause to believe that a contempt has been committed. If cause is found, the hearings officer shall issue a citation requiring the alleged contemnor to appear and show cause why the alleged contemnor should not be determined to be in contempt and required to pay a penalty of not more than \$500 for each count of contempt. The citation, along with a copy of the affidavit, must be served upon the alleged contemnor either by personal service or by certified mail. All other interested persons may be served a copy of the citation by first-class mail.

(16) At the time and date set for hearing, the hearings officer shall proceed to hear witnesses and take evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor fails to appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearings officer finds the alleged contemnor in contempt, the hearings officer may impose a penalty of not more than \$500 for each count found. The hearings officer's decision constitutes a final agency decision, subject to judicial review under 40-5-253 and subject to the provisions of Title 2, chapter 4.

(17) An amount imposed as a penalty may be collected by any remedy available to the department for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1. The department may retain any penalties collected under this section to offset the costs of administrative hearings conducted under this chapter.

(18) The penalties charged and collected under this section must be paid into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)”

Section 6. Section 40-5-263, MCA, is amended to read:

“40-5-263. Central clearinghouse — interstate enforcement services — powers and duties of the department. (1) The department shall establish a clearinghouse for the registration of all interstate IV-D cases referred to the department by other states. The clearinghouse shall serve as the central point for the receipt and dissemination of information regarding interstate IV-D enforcement requests, including but not limited to:

(a) petitions under the Revised Uniform Reciprocal Enforcement of Support Act, Uniform Reciprocal Enforcement of Support Act, ~~or~~ the Uniform Interstate Family Support Act, *or Title IV-D of the Social Security Act*; and

(b) wage withholding requests under part 4 of this chapter.

(2) (a) A case must be referred to the clearinghouse to be processed as a IV-D case and receive the benefits of IV-D status and clearinghouse services.

(b) The clearinghouse may accept any ~~interstate~~ IV-D referral made by ~~interstate~~ application or by petition under the Revised Uniform Reciprocal Enforcement of Support Act, ~~or~~ the Uniform Interstate Family Support Act, *or Title IV-D of the Social Security Act*. An application must be made on forms prescribed by the department.

(3) Upon certification by the initiating ~~state agency in another state, an Indian tribe, or a country~~ that a case filed in the registry of foreign support orders, including a petition under the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or the Uniform Interstate Family Support Act, is eligible for IV-D services and that the obligor resides, has property, or derives income in this state, the department may:

(a) proceed under Title 40, chapter 5, part 1; or

(b) pursue any other remedy available to it to establish or enforce a support order.

(4) If necessary, the department shall establish the paternity of the child.

(5) The clearinghouse shall:

(a) review and acknowledge receipt of any ~~interstate~~ IV-D referral;

(b) request missing information from the initiating ~~state agency in another state, an Indian tribe, or a country~~;

(c) determine appropriate enforcement remedies and forward the referral to the appropriate enforcement unit;

(d) provide status updates to the initiating ~~state agency in another state, an Indian tribe, or a country~~, including the location of the responsible enforcement unit;

(e) locate an obligor and the obligor's assets, if necessary; and

(f) initiate a IV-D referral if services are provided by the department ~~to a resident of this state~~ and the obligor ~~resides or the obligor's income or assets reside~~ outside the state.

(6) If the department is providing support enforcement services ~~to a resident of this state~~, the director or the director's designee may certify any ~~interstate~~ petition, application, and referral, including a petition under part 1 of this chapter.

(7) A lien created by operation of law or issued by order of a court or ~~another IV-D agency in another state~~ entity to enforce a support order may, at the request of the other IV-D agency, be registered with the department. Upon registration, the lien applies to any of the obligor's real and personal property located in this state with the same force and effect as a lien established under 40-5-248. At the request of the other IV-D agency, a registered lien may be enforced by the department using any remedy available to enforce a support lien under 40-5-248."

Section 7. Section 40-5-271, MCA, is amended to read:

“40-5-271. Registration of support orders. (1) The department may, for the purpose of review and modification proceedings under 40-5-272 and 40-5-273, register support orders issued by a district court of this state or by a court or administrative agency of another state, *an Indian tribe, or a country*. Registration of the order under this section does not confer jurisdiction for any purpose other than for the review and modification process.

(2) When the department conducts review and modification proceedings, the department shall give the parties notice by personal service or certified mail and opportunity to contest registration of the order. A party seeking to vacate the registered order has the burden of proving that the court or agency issuing the order:

- (a) did not have jurisdiction to enter the order;
- (b) did not have personal jurisdiction over the party; or
- (c) did not give the party reasonable notice and opportunity to be heard before the order was entered.

(3) (a) As an alternative to any other registration process or remedy available for the enforcement of a support order issued by a court or agency in another state, *an Indian tribe, or a country*, the department may register the support order under this subsection (3).

(b) Registration under this subsection (3) is only for the purpose of enforcement and does not confer jurisdiction for any other purpose such as visitation, custody, or paternity disputes.

(c) If an order is registered for enforcement under this subsection (3), the department shall notify the parties to the order of the registration. A copy of the registered order must be included with the notice. The notice must inform the parties:

- (i) of the amount of any alleged arrearage as of the date of the notice;
- (ii) that a party may request a hearing to vacate the registration or to assert defense to any alleged arrearage for any reason set out in subsection (3)(e);
- (iii) that a hearing to contest the validity or enforcement of the order must be requested within 20 days after service of the notice; and
- (iv) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearage and will preclude further contest of the order with respect to any matter that could have been asserted at the hearing.

(d) A party seeking to contest the validity or enforcement of a registered order shall request a hearing within 20 days after service of the notice of registration. If a party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law. If a party timely requests a hearing to contest the validity or enforcement of the order, the department shall schedule the matter for hearing.

(e) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

- (i) the court or agency issuing the order did not have subject matter jurisdiction to enter the order or lacked personal jurisdiction over the contesting party;

(ii) the court or agency issuing the order did not give the party reasonable notice and opportunity to be heard before the order was entered;

(iii) the order was obtained by fraud;

(iv) the issuing court or agency has stayed enforcement of the order pending appeal;

(v) the order has been vacated, suspended, or modified by a later order;

(vi) there is a defense under the law of this state to the remedy sought; or

(vii) the statute of limitations precludes enforcement of some or all of the arrearages.

(f) If the contesting party does not establish a defense under subsection (3)(e) to the validity or enforcement of the order, the department shall issue an order confirming the order. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of the registration. A confirmed order is enforceable as of the date of confirmation in the same manner as an order issued by the department or a district court of this state.

(g) In a proceeding for arrears, the statute of limitations under the laws of this state or of the issuing ~~state~~ *jurisdiction*, whichever is longer, applies.

(h) Hearings under this subsection (3) are subject to the provisions of the Montana Administrative Procedure Act and must initially be conducted by teleconferencing methods. At the request of a party, the hearings officer shall, at the close of a teleconference hearing, grant a de novo in-person hearing.”

Section 8. Section 40-5-403, MCA, is amended to read:

“40-5-403. Definitions. As used in this part, the following definitions apply:

(1) “Alternative arrangement” means a written agreement between the obligor and obligee, and the department in the case of an assignment of rights under 53-2-613, that has been approved and entered in the record of the court or administrative authority issuing or modifying the support order.

(2) “Department” means the department of public health and human services provided for in 2-15-2201.

(3) “Employer” includes a payor.

(4) “Income” means any form of periodic payment to a person, regardless of source, including commissions, bonuses, workers’ compensation, disability payments, payments under a pension or retirement program, interest, and earnings and wages. However, income does not include:

(a) any amount required by law to be withheld, other than creditor claims, including federal, state, and local taxes and social security; and

(b) any amounts exempted from judgment, execution, or attachment by federal or state law.

(5) “Obligee” means either a person to whom a duty of support is owed or a public agency of this or another state *or an Indian tribe* to which a person has assigned the right to receive current and accrued support payments.

(6) “Obligor” means a person who owes a duty to make payments under a support order.

(7) "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure or any employer under the Uniform Interstate Family Support Act contained in part 1 of this chapter.

(8) "Support order" has the meaning provided in 40-5-201.

(9) "*IV-D agency*" or "*Title IV-D agency*" means the agency responsible for the provision of services under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq."

Section 9. Section 40-5-431, MCA, is amended to read:

"40-5-431. Registration of interstate income withholding orders. (1) Whenever an obligor, whether or not the obligor resides in this state, derives income within this state and an order for income withholding of the obligor's income has been issued by a ~~public~~ *another IV-D agency of another state* as a means to enforce support orders under Title IV-D of the Social Security Act, that agency may register the income withholding order with the department. Upon registration of the ~~foreign~~ withholding order *issued by an entity other than the department*, it must be treated in the same manner and have the same effect as an income withholding order issued by the department. The provisions of 40-5-188 through 40-5-191 apply to this section to the extent that they are consistent with this section.

(2) The application for registration of a ~~foreign~~ *an order issued by an entity other than the department* for income withholding must include:

(a) a certified copy of the support order, with all modifications of the order;

(b) a certified copy of the income withholding order;

(c) a sworn statement of the facts entitling the agency to issue an income withholding order, including a statement of the amount of arrearages and a statement that all procedural due process requirements of the ~~foreign~~ *other* jurisdiction for issuance of the income withholding order have been carried out in full;

(d) the name, address, and social security number of the obligor;

(e) the name and address of the obligor's employer or of any other payor of income to the obligor if the order for income withholding of the ~~foreign~~ *other* jurisdiction extends to other income; and

(f) the name and address of the agency or person to whom support payments collected by the department under income withholding procedures should be transmitted.

(3) When the ~~foreign~~ income withholding order *issued by an entity other than the department* is registered, the department shall serve the order upon the payor, with directions to the payor to comply with the order and to deliver the withheld amounts to the department. Registration of a ~~foreign~~ *an* income-withholding order *issued by an entity other than the department* under this section does not confer jurisdiction for any other purpose, such as modification of the support order, custody, or visitation."

Section 10. Section 40-5-432, MCA, is amended to read:

"40-5-432. Application for interstate withholding. (1) Whenever an obligor resides in this state and derives income within this state and a support

order issued in another jurisdiction is being enforced by a public agency of that jurisdiction pursuant to Title IV-D of the Social Security Act, that agency may apply to the department for income withholding services.

(2) The application for ~~interstate~~ income withholding must include:

(a) a certified copy of the support order, with all ~~modification thereof~~ *modifications of the support order*;

(b) an affidavit by the obligee containing a statement that the obligor is delinquent in the payment of support in an amount equal to at least 1 month's support payment and a computation of the period and total amount of the arrearage as of the date of the application;

(c) a certified copy of the payment record if ~~such~~ *the* records are maintained by the agency or any other agency within that jurisdiction;

(d) the name, address, and social security number of the obligor;

(e) the name and address of all known payors within this state; and

(f) the name and address of the agency or person to whom support payments collected by the department under income withholding procedures should be sent.

(3) Upon receipt of the application, the department shall ~~commence~~ *begin* procedures to establish orders for income withholding, including notice and opportunity for hearing under this part. The department shall further advise the obligor that the income withholding was requested on the basis of an application from another jurisdiction.

(4) In any hearing based on an application under this section, the certified copy of the support order and affidavit, without further proof or foundation, constitutes prima facie evidence that the support order is valid and that the obligee or public agency is entitled to an order of income withholding and that the amount of current support payments and arrearages are as stated.

(5) In accordance with 40-5-414, a final decision on whether or not income withholding is appropriate must be rendered within 45 days of service of notice on the obligor. If, however, because of the ~~interstate~~ *interjurisdictional* aspects of the case, the hearing examiner is unable to resolve a dispute over the amount of arrearages within ~~such~~ *the* time *limit* and the hearing examiner has found that the obligor is delinquent in an amount equal to at least 1 month's support payment, the hearing examiner shall authorize immediate service of the order for withholding as to current support and may continue the hearing on the disputed amounts beyond the 45-day limit."

Section 11. Section 40-5-433, MCA, is amended to read:

"40-5-433. Additional duties of department in interstate income withholding. (1) If the department determines that the obligor is no longer employed in this state or no longer derives income within this state, the department shall promptly notify the agency ~~which~~ *that* requested income withholding of the changes and shall forward to that agency all information it has with respect to the obligor's new address and the name and address of the obligor's new employer or other source of income.

(2) The department shall promptly transmit payments received on an income withholding order to the agency or person designated in the ~~interstate~~ application."

Section 12. Section 40-5-434, MCA, is amended to read:

“40-5-434. Initiation of income withholding in other jurisdictions. Whenever the department is authorized or required under the laws of this state to enforce and collect on a support order and the obligor is employed or has a source of income ~~in another~~ *outside of the state*, the department shall request the *Title IV-D* agency responsible for income withholding in that ~~state~~ *jurisdiction* to implement income withholding procedures. The department shall compile and transmit to the withholding agency of the other ~~state~~ *jurisdiction* all documentation required by the law of that ~~state~~ *jurisdiction* necessary for the purpose of obtaining an income withholding order in that ~~state~~ *jurisdiction*. The department shall also transmit to the withholding agency a certified copy of any subsequent modification of the support order.”

Section 13. Section 40-5-601, MCA, is amended to read:

“40-5-601. Failure to pay support — civil contempt. (1) For purposes of this section, “support” means child support; spousal support; health insurance, medical, dental, and optical payments; day care expenses; and any other payments due as support under a court or administrative order. Submission of health insurance claims is a support obligation if health insurance coverage is ordered.

(2) If a person obligated to provide support fails to pay as ordered, the payee or assignee of the payee of the support order may petition a district court to find the obligated person in contempt.

(3) The petition may be filed in the district court:

- (a) that issued the support order;
- (b) of the judicial district in which the obligated person resides; or
- (c) of the judicial district in which the payee or assignee of the payee resides or has an office.

(4) Upon filing of a verified petition alleging facts constituting contempt of the support order, the district court shall issue an order requiring the obligated person to appear and show cause why the obligated person should not be held in contempt and punished under this section.

(5) The obligated person is presumed to be in contempt upon a showing that:

- (a) there is a support order issued by a court or administrative agency of this or another state, *an Indian tribe, or a country* with jurisdiction to enter the order;
- (b) the obligated person had actual or constructive knowledge of the order; and
- (c) the obligated person failed to pay support as ordered.

(6) Certified payment records maintained by a clerk of court or administrative agency authorized by law or by the support order to collect support are admissible in a proceeding under this section and are prima facie evidence of the amount of support paid and any arrearages under the support order.

(7) Following a showing under subsection (5), the obligated person may move to be excused from the contempt by showing clear and convincing evidence that the obligated person:

- (a) has insufficient income to pay the arrearages;

(b) lacks personal or real property that can be sold, mortgaged, or pledged to raise the needed sum;

(c) has unsuccessfully attempted to borrow the sum from a financial institution;

(d) has no other source, including relatives, from which the sum can be borrowed or secured;

(e) does not have a valid out-of-court agreement with the payee waiving, deferring, or otherwise compromising the support obligation; or

(f) cannot, for some other reason, reasonably comply with the order.

(8) In addition to the requirement of subsection (7), the obligated person shall also show by clear and convincing evidence that factors constituting the excuse were not occasioned or caused by the obligated person voluntarily:

(a) remaining unemployed or underemployed when there is employment suitable to the obligated person's skills and abilities available within a reasonable distance from the obligated person's residence;

(b) selling, transferring, or encumbering real or personal property for fictitious or inadequate consideration within 6 months prior to a failure to pay support when due;

(c) selling or transferring real property without delivery of possession within 6 months prior to a failure to pay support when due or, if the sale or transfer includes a reservation of a trust for the use of the obligated person, purchasing real or personal property in the name of another person or entity;

(d) continuing to engage in an unprofitable business or contract unless the obligated person cannot reasonably be removed from the unprofitable situation; or

(e) incurring debts subsequent to entry of the support order that impair the obligated person's ability to pay support.

(9) If the obligated person is not excused under subsections (7) and (8), the district court shall find the obligated person in contempt of the support order. For each failure to pay support under the order, the district court shall order punishment as follows:

(a) not more than 5 days incarceration in the county jail;

(b) not more than 120 hours of community service work;

(c) not more than a \$500 fine; or

(d) any combination of the penalties in subsections (9)(a) through (9)(c).

(10) An order under subsection (9) must include a provision allowing the obligated person to purge the contempt. The obligated person may purge the contempt by complying with an order requiring the obligated person to:

(a) seek employment and periodically report to the district court all efforts to find employment;

(b) meet a repayment schedule;

(c) compensate the payee for the payee's attorney fees, costs, and expenses for a proceeding under this section;

(d) sell or transfer real or personal property or transfer real or personal property to the payee, even if the property is exempt from execution;

(e) borrow the arrearage amount or report to the district court all efforts to borrow the sum;

(f) meet any combination of the conditions in subsections (10)(a) through (10)(e); or

(g) meet any other conditions that the district court in its discretion finds reasonable.

(11) If the obligated person fails to comply with conditions for purging contempt, the district court shall immediately find the obligated person in contempt under this section and impose punishment.

(12) A proceeding under this section must be brought within 3 years of the date of the last failure to comply with the support order.”

Section 14. Section 40-5-701, MCA, is amended to read:

“40-5-701. Definitions. As used in this part, the following definitions apply:

(1) (a) “Child” means:

(i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States;

(ii) a person under 19 years of age who is still in high school;

(iii) a person who is mentally or physically incapacitated when the incapacity began prior to that person reaching 18 years of age; and

(iv) in IV-D cases, a person for whom:

(A) support rights are assigned under 53-2-613;

(B) a public assistance payment has been made;

(C) the department is providing support enforcement services under 40-5-203; or

(D) the department has received a referral for interstate *IV-D* services from an agency of another state under the provisions of the Uniform Interstate Family Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Reciprocal Enforcement of Support Act, or Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support extending beyond the time the child reaches 18 years of age.

(2) “Delinquency” means a support debt or support obligation due under a support order in an amount greater than or equal to 6 months’ support payments as of the date of service of a notice of intent to suspend a license.

(3) “Department” means the department of public health and human services.

(4) “~~IV-D case~~” means a case in which the department is providing support enforcement services as a result of:

~~(a) an assignment of support rights under 53-2-613;~~

~~(b) a payment of public assistance;~~

~~(c) an application for support enforcement services under 40-5-203; or~~

~~(d) a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act, the~~

~~Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or Title IV-D of the Social Security Act.~~

~~(5)~~(4) "License" means a license, certificate, registration, permit, or any other authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, profession, recreational activity, or any other privilege that is subject to suspension, revocation, forfeiture, termination, or a declaration of ineligibility to purchase by the licensing authority prior to its date of expiration.

~~(6)~~(5) "Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license.

~~(7)~~(6) "Obligee" means:

(a) a person to whom a support debt or support obligation is owed; or

(b) a public agency of this or another state *or an Indian tribe* that has the right to receive current or accrued support payments or that is providing support enforcement services under this chapter.

~~(8)~~(7) "Obligor" means a person who owes a duty of support or who is subject to a subpoena or warrant in a paternity or child support proceeding.

~~(9)~~(8) "Order suspending a license" means an order issued by a support enforcement entity to suspend a license. The order must contain the name of the obligor, the type of license, and, if known, the social security number of the obligor.

~~(10)~~(9) "Payment plan" includes but is not limited to a plan approved by the support enforcement entity that provides sufficient security to ensure compliance with a support order and that incorporates voluntary or involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a support debt and, if applicable, current and future support.

~~(11)~~(10) "Recreational activity" means an activity for which a license or permit is issued by the department of fish, wildlife, and parks under Title 87, chapter 2, part 6 or 7, except 87-2-708 or 87-2-711, or under 87-2-505, 87-2-507, 87-2-508, or 87-2-510.

~~(12)~~(11) "Subpoena" means a writ or order issued by a ~~district~~ court or the department in a proceeding or as part of an investigation related to the paternity or support of a child that commands a person to appear at a particular place and time to testify or produce documents or things under the person's control.

~~(13)~~(12) "Support debt" or "support obligation" means the amount created by the failure to provide or pay:

(a) support to a child under the laws of this or any other state or under a support order;

(b) court-ordered spousal maintenance or other court-ordered support for the child's custodial parent; or

(c) fines, fees, penalties, interest, and other funds and costs that the support enforcement entity is authorized to collect by the use of any procedure available to the entity for the payment, enforcement, and collection of child support or spousal maintenance or support.

~~(14)~~(13) "Support enforcement entity" means:

(a) in IV-D cases, the department; or

(b) in all other cases, the district court that entered the support order or a district court in which the support order is registered.

~~(15)~~(14) (a) "Support order" means an order that provides a determinable amount for temporary or final periodic payment of a support debt or support obligation and that may include payment of a determinable or indeterminable amount for insurance covering the child issued by:

(i) a district court of this state;

(ii) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;

(iii) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or

(iv) an administrative agency of another state *or an Indian tribe* with a hearing function and process similar to those of the department.

(b) If an action for child support is commenced under this part and the context so requires, support order also includes:

(i) judgments and orders providing periodic payments for the maintenance or support of the child's custodial parent; and

(ii) amounts for the recovery of fines, fees, penalties, interest, and other funds and costs that the support enforcement entity is authorized to collect by the use of any procedure available to the entity for the payment, enforcement, and collection of child support or spousal maintenance or support.

~~(16)~~(15) "Suspension" includes the withdrawal, withholding, revocation, forfeiture, or nonissuance of a license and license privileges.

~~(17)~~(16) "Warrant" means a bench warrant, a warrant to appear, an order to show cause, or any other order issued by ~~the district~~ a court relating to the appearance of a party in a paternity or child support proceeding.

(17) "IV-D case" means a case in which the department is providing support enforcement services as a result of:

(a) an assignment of support rights under 53-2-613;

(b) a payment of public assistance;

(c) an application for support enforcement services under 40-5-203; or

(d) a referral for services from an agency of another state or an Indian tribe under the provisions of the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or Title IV-D of the Social Security Act."

Section 15. Section 40-5-901, MCA, is amended to read:

"40-5-901. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

[(1) "Date of hire" means the first day that an employee starts work for which the employee is owed compensation by the payor of income.]

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

[(3) (a) "Employee" means a person 18 years of age or older who performs labor in this state for an employer in this state for compensation and for whom

the employer withholds federal or state tax liabilities from the employee's compensation.

(b) The term does not include an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of the agency has determined that reporting pursuant to 40-5-922 with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.]

(4) "Employer" means a person, firm, corporation, association, governmental entity, or labor organization that engages an employee for compensation and withholds federal or state tax liabilities from the employee's compensation.

(5) "Foreign support order" means a support order entered or last modified by a court or administrative agency of another state, the District of Columbia, the Commonwealth of Puerto Rico, a territory or insular possession subject to the jurisdiction of the United States, an Indian tribe, or a foreign jurisdiction.

(6) "Income withholding" generally means procedures for directing a payor to withhold from an obligor's income an amount sufficient to pay the obligor's support obligation and to defray arrears that are or may become due. Specifically:

(a) when preceded by "IV-D", income withholding means the procedures set out in Title 40, chapter 5, part 4; and

(b) when preceded by "non IV-D", income withholding means those cases in which an immediate income-withholding order is issued under 40-5-315 after January 1, 1994.

(7) "Interstate case" means a case referred to the department by, or from the department to, another IV-D agency.

[(8) "Labor organization" means a labor union, union local, union affiliate, or union hiring hall.]

(9) "Obligee" means the payee under a support order or a person or agency entitled to receive support payments.

(10) "Obligor" means a person who is obligated to pay support under a support order.

(11) "Payor" means:

(a) an employer or person engaged in a trade or business in this state who engages an employee for compensation; or

(b) when used in context with income withholding, means a person, firm, corporation, association, employer, trustee, political subdivision, state agency, or agent paying income to an obligor on a periodic basis.

[(12) "Rehire" means the first day, following a termination of employment, that an employee begins to again perform work or provide services for a payor. Termination of employment does not include temporary separations from employment, such as unpaid medical leave, an unpaid leave of absence, or a temporary or seasonal layoff.]

(13) "Support order" means a judgment, decree, or order, whether temporary or final, that:

(a) is for the benefit of a child or a state agency;

(b) provides for monetary support, health care, arrearages, or reimbursement;

(c) may include related costs and fees, interest, and similar other relief; and

(d) may include an order for maintenance or other support to be paid to a child's custodial parent.

(14) "IV-D" or "IV-D case" means a case in which the department is providing services under the provisions of Title IV-D of the Social Security Act and the regulations promulgated under that act. A IV-D case also includes a case in which the department is collecting a support debt assigned to this or another state or an *Indian tribe* under Title IV-D. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)"

Section 16. Section 40-5-906, MCA, is amended to read:

"40-5-906. Child support information and processing unit. (1) The department shall establish and maintain a centralized child support case registry and payment processing unit. The purpose of this unit is to facilitate mass case processing by utilizing computer technology to identify parents and their income and to initiate automated procedures to collect child support as it becomes due and payable.

(2) The case registry must include a database of information concerning child support orders, all cases receiving IV-D services, and all district court and administrative cases with support orders entered or modified after October 1, 1998.

(3) The case registry must use automated systems to obtain information from federal, state, and local databases with regard to the location of obligors and their income and assets. This information must be shared with the courts of this state and, upon request, may be shared with ~~child support enforcement agencies of this and other states~~ *other IV-D agencies* for the purpose of establishing paternity and establishing and enforcing child support obligations.

(4) To assist creditors, credit managers, and others who need timely verification of the existence of child support liens in IV-D cases, the case registry must include a directory of liens, which must include liens against an obligor's real and personal property filed by the department with other agencies and lien registries. Information in the lien registry may be made available through automated systems, which may include voice response units.

(5) Each IV-D case with a child support order must be electronically monitored so that when a timely payment of support is not made, enforcement action may be taken. To accomplish this purpose, payments due under a child support order must be paid to the department for processing and disbursement.

(6) In either a IV-D income-withholding case in this state or a state non IV-D case, if immediate income withholding is authorized after January 1, 1994, an employer or other payor of income shall pay all support withheld from an obligor's income to one centralized location as specified by the department.

(7) To facilitate automated disbursement of support payments, automated enforcement actions, and service of notice when required, an obligor or obligee must be directed to provide, and update as necessary, information sufficient to locate the obligor and obligee and to locate the obligor's income and assets.

(8) An employer or labor organization shall report a newly hired or rehired employee. Information reported by an employer must be electronically compared to the information database to align an obligor who owes a duty of

support with a source of income. When a match is revealed in a IV-D case, a notice must, if appropriate to the case, be promptly transmitted to the employer directing the employer to commence withholding for the payment of the obligor's support obligation.]

(9) The department may enter into contracts or cooperative agreements with any person, business, firm, corporation, or state agency to establish, operate, or maintain the case registry and payment processing unit or any function or service afforded by the unit, provided that:

(a) the department is ultimately responsible for operation of the case registry and payment processing unit, including any function or service afforded by the unit;

(b) there is a board to act in an advisory capacity to the case registry and payment processing unit. The board shall advise the department in the policy, direction, control, and management of the case registry and payment processing unit and in determining forms, data processing needs, terms of contracts and cooperative agreements, and other similar technical requirements. Board members who are not employed by the department shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503. Except for members who represent the department, appointed board members shall serve for a term of 2 years. The board consists of five members as follows:

(i) a district court judge nominated by the district court judges' association;

(ii) a clerk of court nominated by the association of clerks of the district courts;

(iii) the supreme court administrator or designee;

(iv) two members, appointed by the department director, one from the child support enforcement division and one from the operations and technology division; and

(v) a representative of a county data processing unit, nominated by the association of clerks of the district courts; and

(c) the costs charged to the department under the contract or cooperative agreement may not exceed the actual costs that the department would have incurred without the contract or cooperative agreement.

(10) The department may adopt rules to implement 19-2-909, 19-20-306, 40-5-157, 40-5-291, and this part. Rules must be drafted, adopted, and applied in a manner that:

(a) minimizes the personal intrusiveness on the employer or employee of any requested information;

(b) minimizes the costs to the department and any employer or employee with respect to obtaining and submitting any requested information; and

(c) maximizes the confidentiality and security of any employer or employee information that the department gathers under 19-2-909, 19-20-306, 40-5-157, 40-5-291, and this part. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)”

Section 17. Section 40-5-909, MCA, is amended to read:

“40-5-909. Centralized payment center — mandatory payments to center. (1) Payments due under a support order must be paid through the

department for processing and distribution to the person or agency entitled to receive the payment whenever:

- (a) the case is receiving IV-D services; or
- (b) the support obligation is payable through non IV-D income withholding.

(2) A support order entered or modified in this state after October 1, 1998, that excludes the obligor from paying support through income withholding must provide that:

(a) if the case is or later becomes a IV-D case or if support becomes payable through IV-D or non IV-D income withholding, support payments must be paid through the department; and

(b) a payment that is not made to the department does not constitute payment of support or credit toward satisfaction of the support obligation unless the payment is verified by the department to its satisfaction.

(3) (a) If a support order does not include the provisions required by subsection (2) or directs payment of support to a payee other than the department, the department may give written notice to the obligor and obligee directing or redirecting payments to the department. After receipt of the notice, payment other than as directed does not constitute payment of support or credit toward satisfaction of the support obligation.

(b) An obligor who redirects payments to the department is not liable to the obligee or answerable to the court for not making payments as directed by the court.

(c) While support is required to be paid through the department, the notice directing or redirecting payments to the department may not be superseded by any subsequent order of a court or agency directing the obligor to make payments other than to the department.

(4) After the obligor has been ordered or directed to make payments to the department under this section, the obligor shall make the payments to the department and is not entitled to credit against a support obligation for payment made to a person or agency other than the department.

(5) (a) When the obligor is paying support through IV-D or non IV-D income withholding, the income-withholding order must direct the payor to make the payments through the department.

(b) If a payor is directed by the income-withholding order to make payments to a payee other than the department, the department may redirect the payments to the department by written order to the employer or payor. The order supersedes any prior, inconsistent court or agency order.

(c) For as long as income withholding is appropriate to the case, the directive to the payor to make payments to the department may not be superseded by any subsequent order of a court or agency directing payments to any other payee.

(6) (a) An employer who receives an income-withholding order issued in another state, as defined in 40-5-103, may contact the department to determine whether the withholding order was issued by the appropriate authority.

(b) The employer may elect to forward the funds to the department for distribution.

(c) If the employer elects under this section to forward the funds to the department for distribution, the employer shall immediately provide a copy of the income-withholding order to the department.

(7) Income-withholding orders may be issued in this state pursuant only to 40-5-308 through 40-5-315 and 40-5-401 through 40-5-432.

(8) Payments of support that are received by the department in interstate cases or as the result of a writ of execution, warrant for distraint, state and federal tax offset, or similar enforcement remedy must be processed through the case registry and payment processing unit.

(9) (a) If, through a private collection action, an obligee obtains a payment of support that must be processed and distributed through the case registry and payment processing unit, the obligee shall forward the payment to the department within 5 working days of the receipt of the payment.

(b) If the department takes an enforcement action against the obligor because the obligee failed to timely forward a payment of support under subsection (9)(a), the obligee is liable in a civil action to the obligor for the amount that should have been forwarded to the department.

(10) (a) Payments made to the department under this section must be by cash, personal or business check, money order, automatic bank account withdrawal, certified funds, electronic funds transfer services, or any other means acceptable to the department.

(b) Payments may not be credited to the obligor's child support obligation until actually received by the department.

(c) The withholding of income by a payor or employer under an order to withhold issued under Title 40, chapter 5, part 3 or 4, is not alone sufficient for credit against an obligor's support obligation. Payments withheld from an obligor's income that are not actually received by the department may not be credited to the obligor's child support obligation. The payor or employer is liable to the obligor in a civil action initiated by the obligor for the amount withheld but not paid to the department.

(d) A check presented to the department as payment, whether by the obligor, the obligor's employer, or another payor on the obligor's behalf, that is dishonored by the issuing bank may not be credited to the obligor's child support obligation.

(e) A payment made out to or delivered to any other person or agency other than to the department may not be credited to the obligor's support obligation.

(11) An uncredited payment under this section is considered as still owed by the obligor and may be collected using any remedy available under law.

(12) *If the department is providing IV-D services for the enforcement of a tribal court order that expressly permits satisfaction of a child support obligation with noncash resources, this section applies to the portion of the support obligation paid or payable with cash resources.*

Section 18. Section 40-5-923, MCA, is amended to read:

“40-5-923. Information and records — disclosure. Information in the case registry and payment processing unit that contains the social security number, residential address, income sources, and employers of an obligee or obligor [and the employee W-4 forms or similar forms transmitted to the department] is private and confidential and may be disclosed only to:

(1) courts, tribunals, and administrative agencies in this and any agency of another state or an Indian tribe having jurisdiction over child support, custody, visitation, and welfare pursuant to 42 U.S.C. 651, et seq.;

(2) public assistance and medicaid agencies and the revenue, workers' compensation, and employment security programs of this or any other state for the purpose of determining eligibility, continued eligibility, or fraud by programs operated by those agencies and programs;

(3) the obligor or obligee who is the subject of the information;

(4) the state vital statistics agency for the purposes of 50-15-302; and

(5) the department of revenue. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)”

Section 19. 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 20. Effective date. [This act] is effective on passage and approval.

Approved March 18, 2005

CHAPTER NO. 22

[HB 87]

AN ACT TRANSFERRING RESPONSIBILITY FOR FLEET VEHICLE REGISTRATION FROM THE DEPARTMENT OF TRANSPORTATION TO THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 61-3-324 AND 61-3-325, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 61-3-324, MCA, is amended to read:

“61-3-324. Fleet registration — application — additions to and deletions from fleet. (1) A person owning or leasing a fleet may apply to the department of ~~transportation~~ to register the fleet annually through the department of ~~transportation~~ in lieu of registering each motor vehicle in its domicile.

(2) The application for fleet registration must:

(a) be submitted to the department of ~~transportation~~ prior to November 1 of each year;

(b) include a list of the motor vehicles in the fleet;

(c) include the current registration receipt for each motor vehicle; and

(d) include any other relevant information required by the department of ~~transportation~~.

(3) A motor vehicle may be added to the fleet.

(4) A motor vehicle may be removed from a fleet if the owner of the fleet surrenders to the department of ~~transportation~~ the current registration receipt and the license plate for the vehicle no later than December 31. If the receipt or license plate has been lost or stolen, the owner shall submit an affidavit explaining why ~~he~~ *the owner* is not able to surrender the receipt or license plate.”

Section 2. Section 61-3-325, MCA, is amended to read:

“61-3-325. Vehicles subject to staggered registration — fees and taxes — disposition. (1) Any motor vehicle in the fleet that is subject to staggered registration under 61-3-313 through 61-3-316 may be registered as

part of the fleet on the following fleet renewal date. The department of ~~transportation~~ shall collect the remaining fees and taxes due for the registration year after crediting the registrant for the period that was previously paid.

(2) (a) The department of ~~transportation~~ shall compute fees and taxes due on each motor vehicle in the fleet as provided in part 5 of this chapter, based on its domicile.

(b) The department of ~~transportation~~ shall also collect a registration fee of \$7.50 for each motor vehicle in the fleet in lieu of the registration fee provided for in 61-3-321. The department shall retain \$4.50 of each registration fee for administrative costs and forward the remaining \$3 to the state treasurer for deposit in the general fund.

(c) All fees and taxes must be paid no later than February 15 each year.”

Section 3. Effective date. [This act] is effective January 1, 2006.

Approved March 18, 2005

CHAPTER NO. 23

[HB 90]

AN ACT EXTENDING THE TERMINATION DATE FOR THE DOMESTIC VIOLENCE FATALITY REVIEW COMMISSION BY 2 YEARS; AND AMENDING SECTION 4, CHAPTER 81, LAWS OF 2003.

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

Section 1. Section 4, Chapter 81, Laws of 2003, is amended to read:

“**Section 4. Termination.** [This act] terminates December 31, ~~2006~~ 2008.”

Approved March 18, 2005

CHAPTER NO. 24

[HB 101]

AN ACT ALLOWING THE DEPARTMENT OF TRANSPORTATION TO ISSUE A TERM PERMIT FOR A LOAD THAT IS IN EXCESS OF SPECIFIED LIMITS BUT THAT DOES NOT EXCEED 35,000 POUNDS IN EXCESS AXLE WEIGHT; AND AMENDING SECTION 61-10-125, MCA.

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

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

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

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

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

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

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

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

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

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

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

(vii) \$3,000 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 35,000 pounds in excess axle weight, with no axle or axle group exceeding the maximum weight allowed by a weight analysis conducted by the department of transportation;

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

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

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

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

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

| Total Excess Axle Weight (pounds) | Calculated Cost of 25 Miles of Travel (dollars) |
|--------------------------------------|---|
| 5,000 | 3.50 |
| 10,000 | 7.00 |
| 15,000 | 10.50 |

| | |
|--------------------|--|
| 20,000 | 14.00 |
| 25,000 | 17.50 |
| 30,000 | 21.00 |
| 35,000 | 24.50 |
| 40,000 | 28.00 |
| 45,000 | 31.50 |
| 50,000 | 35.00 |
| 55,000 | 38.50 |
| 60,000 | 42.00 |
| 65,000 | 45.50 |
| 70,000 | 49.00 |
| 75,000 | 52.50 |
| 80,000 | 56.00 |
| 85,000 | 59.50 |
| 90,000 | 63.00 |
| 95,000 | 66.50 |
| 100,000 | 70.00 |
| over 100,000 | 70.00 + 3.50 per 5,000 lbs. or part of 5,000 lbs. in excess of 100,000 lbs. |

(4) For purposes of subsection (3):

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

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

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

Approved March 18, 2005

CHAPTER NO. 25

[HB 107]

AN ACT UPDATING THE AUTHORITY OF AND REQUIREMENTS FOR THE DEPARTMENT OF ADMINISTRATION TO PLACE CERTAIN BUSTS, PLAQUES, STATUES, MEMORIALS, MONUMENTS, ART DISPLAYS, AND OTHER ITEMS IN THE CAPITOL, ON THE CAPITOL GROUNDS, OR IN STATE BUILDINGS ON THE CAPITOL COMPLEX; ELIMINATING THE PEARL HARBOR MEMORIAL COMMITTEE AND CERTAIN ADMINISTRATIVE PROVISIONS RELATING TO THE PEARL HARBOR MEMORIAL COMMITTEE AS A RESULT OF THE COMPLETION OF THE MEMORIAL TO PEARL HARBOR SURVIVORS; AMENDING SECTIONS 2-17-804, 2-17-807, 2-17-808, AND 2-17-813, MCA; AND REPEALING SECTIONS 5-17-301, 5-17-302, AND 5-17-303, MCA.

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

Section 1. Section 2-17-804, MCA, is amended to read:

“2-17-804. Council duties and responsibilities. (1) The council shall:

(a) adopt an art and memorial plan for the placement of art and memorials in the capitol complex and on the capitol complex grounds;

(b) review proposals for long-term displays of up to 50 years, subject to renewal, in the capitol complex and on the capitol complex grounds and for the naming of state buildings, spaces, and rooms in the capitol complex;

(c) advise the legislature on the placement of busts, *plaques*, statues, memorials, monuments, or art displays of a long-term nature in public areas of the capitol complex and on the capitol complex grounds, including the executive residence and the original governor’s mansion;

(d) advise the department of administration on interior decoration of the capitol; and

(e) advise the department of fish, wildlife, and parks on grounds maintenance and grounds displays.

(2) In advising the legislature on long-term displays, the council shall consider whether the bust, *plaque*, statue, memorial, monument, or art display:

(a) reasonably fits the long-range master plan for the capitol and adjacent grounds developed under 2-17-805;

(b) adversely alters the appearance of the capitol complex;

(c) unreasonably affects foot traffic on the capitol complex;

(d) adversely impacts existing maintenance programs or the utility infrastructure;

(e) recognizes a person or event of statewide significance and relevance;

(f) has artistic merit in its design and construction;

(g) will be safely and aesthetically suited to its installation site; and

(h) has adequate funding for design, installation, and maintenance.

(3) By November 15 of each year preceding a legislative session, the council shall report to the legislature on requests that it has reviewed for naming buildings, spaces, and rooms and for placing items in the capitol complex or on the capitol complex grounds. The report must include a recommendation to the legislature on whether reviewed requests meet the criteria established by this part. If a request meets the criteria, the council shall recommend a timeframe during which the project should be authorized.”

Section 2. Section 2-17-807, MCA, is amended to read:

“2-17-807. Approval for displays and naming buildings, spaces, and rooms. (1) A state building, space, or room in the capitol complex may not be named after an individual or a bust, *plaque*, statue, memorial, monument, or art display may not be displayed on a long-term basis in the capitol complex or on the capitol complex grounds unless the building, space, or room name or display is approved by the legislature and complies with this part.

(2) (a) ~~Except as provided in subsection (2)(b),~~ a state building, space, or room in the capitol complex may not be named after an individual or a bust, *plaque*, statue, memorial, monument, or art display commemorating an

individual may not be displayed on a long-term basis in the capitol complex unless the individual has been deceased for at least 10 years.

(b) *The statue of Mike and Maureen Mansfield authorized in 2-17-808(1)(d)(iii) and the plaque commemorating President George H.W. Bush authorized in 2-17-808(2)(b)(ii) may continue to be displayed in the capitol complex.*

(3) A bust, *plaque*, statue, memorial, monument, or art display commemorating an event, including a military event, may not be displayed on a long-term basis in the capitol complex until 10 years after the end of the event.

(4) All busts, *plaques*, statues, memorials, monuments, or art displays authorized, but not installed within 5 years of authorization, must be reauthorized.

(5) The department of administration may review and approve the temporary display of a bust, *plaque*, statue, memorial, monument, or art display for up to 1 year in the capitol complex or on the capitol complex grounds.”

Section 3. Section 2-17-808, MCA, is amended to read:

“2-17-808. Placement of certain busts, *plaques*, statues, memorials, monuments, and art displays. (1) The following busts, *plaques*, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in the capitol:

(a) the busts of Thomas J. Walsh, Burton K. Wheeler, and Joseph Dixon;

(b) the *plaques* commemorating Theodore Brantley, Fred Whiteside, the first Montana volunteers who fought in the Spanish-American War, the construction of the capitol from 1899 to 1902, ~~and~~ the 1972 Montana constitutional convention, *and the women legislators’ centennial*;

(c) the murals by Edgar S. Paxson, Ralph E. DeCamp, Charles M. Russell, Amedee Joullin, and F. Pedretti and sons;

~~(d) the portraits of Joseph K. Toole and Wilbur Fiske Sanders;~~

~~(e)~~(d) the statues of:

(i) Wilbur Fiske Sanders;

(ii) ~~Jeanette~~ *Jeannette* Rankin; and

(iii) Mike and Maureen Mansfield;

~~(f)~~(e) the Montana statehood centennial bell;

~~(g)~~(f) the gallery of outstanding Montanans;

~~(h)~~(g) the Montana constitutional exhibit; and

~~(i)~~(h) the biographical descriptions of Montana’s governors, to be placed near the portraits of the governors.

(2) The following busts, *plaques*, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the grounds of the capitol:

(a) the ~~statue~~ *statues* of Thomas Francis Meagher *and Lady Liberty*;

(b) the ~~plaque~~ *plaques* commemorating:

(i) Donald Nutter;

(ii) *President George H.W. Bush*; and

(iii) *American prisoners of war and personnel of the United States armed services missing in action; and*

(c) *two benches with plaques recognizing contributors to the 1997-2000 capitol restoration, repair, and renovation project;*

(d) *the Montana centennial square; and*

(e) *the monument of the ten commandments.*

(3) ~~The statue by Robert Scriver entitled “symbol of the pros”~~ *is following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the capitol complex grounds:-*

(a) *the statue by Robert Scriver entitled “symbol of the pros”;*

(b) *the monuments to the liberty bell, the veterans’ and pioneer memorial building—landscape beautification project, Montana veterans, and Pearl Harbor survivors and the peace pole;*

(c) *the sculptures of the herd bull and the eagle;*

(d) *the plaques commemorating the Montana national guard and Lewis and Clark; and*

(e) *the arrastra.*

(4) *The following busts, plaques, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, in state buildings on the capitol complex:*

(a) *the paintings of Dr. W.F. Cogswell and the paintings entitled “burning bush”, “dryland farmer”, “farm girl”, “the river rat”, “top of the world”, “angus #68”, “the source”, “the Bozeman trail”, and “the Mullan road”;*

(b) *the art displays known as “Montana workers—mining, ranching, and building”, “copper city rodeo”, “dancing cascade”, “save a piece of the sky”, and “night light”;*

(c) *the plaque commemorating Walt Sullivan and the plaque of the Sam W. Mitchell building; and*

(d) *the busts of Lee Metcalf and Sam W. Mitchell.*

~~(4)~~(5) *The senate sculpture provided for in 2-17-809 is to be placed for up to 50 years, subject to renewal, on the west wall in the senate chambers.*

~~(5)~~(6) *The council shall determine the specific placement of the items identified in subsections (1) through ~~(3)~~ (4).”*

Section 4. Section 2-17-813, MCA, is amended to read:

“2-17-813. Certain items entrusted to Montana historical society. A bust, *plaque*, statue, memorial, monument, or art display in possession of the state that may have been associated with the capitol complex but is not listed under 2-17-808 is entrusted to the Montana historical society for storage or temporary display until a suitable location is identified, recommended for placement by the council, and approved by the legislature for long-term placement.”

Section 5. Repealer. Sections 5-17-301, 5-17-302, and 5-17-303, MCA, are repealed.

Approved March 18, 2005

CHAPTER NO. 26

[HB 126]

AN ACT SIMPLIFYING AND CLARIFYING THE WORKERS' COMPENSATION ACT; CHANGING THE TERM "AVERAGE WEEKLY WAGE" TO "STATE'S AVERAGE WEEKLY WAGE"; AMENDING SECTIONS 17-6-317, 17-6-318, 39-11-103, 39-11-202, 39-71-116, 39-71-118, 39-71-401, 39-71-2211, AND 39-71-2312, MCA; REPEALING SECTIONS 39-71-221, 39-71-222, 39-71-416, 39-71-426, 39-71-427, 39-71-428, 39-71-801, 39-71-802, 39-71-803, 39-71-804, 39-71-805, 39-71-806, 39-71-807, 39-71-808, 39-71-809, 39-71-810, 39-71-811, 39-71-812, AND 39-71-813, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

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

Section 1. Section 17-6-317, MCA, is amended to read:

"17-6-317. Participation by private financial institutions — rulemaking. (1) (a) The board may jointly participate with private financial institutions in making loans to a business enterprise if the loan will:

(i) result in the creation of a business estimated to employ at least 10 people in Montana on a permanent, full-time basis;

(ii) result in the expansion of a business estimated to employ at least an additional 10 people in Montana on a permanent, full-time basis; or

(iii) prevent the elimination of the jobs of at least 10 Montana residents who are permanent, full-time employees of the business.

(b) Loans under this section may be made only to business enterprises that are producing or will produce value-added products or commodities.

(c) A loan made pursuant to this section does not qualify for a job credit interest rate reduction under 17-6-318.

(2) A loan made pursuant to this section may not exceed 1% of the coal severance tax permanent fund and must comply with each of the following requirements:

(a) (i) The business enterprise seeking a loan must have a cash equity position equal to at least 25% of the total loan amount.

(ii) A participating private financial institution may not require the business to have an equity position greater than 50% of the total loan amount.

(iii) If additional security or guarantees, exclusive of federal guarantees, are required to cover a participating private financial institution, then the additional security or guarantees must be proportional to the amount loaned by all participants, including the board of investments.

(b) The board shall provide 75% of the total loan amount.

(c) The term of the loan may not exceed 15 years.

(d) The board shall charge interest at the following annual rate:

(i) 2% for the first 5 years if 15 or more jobs are created or retained;

(ii) 4% for the first 5 years if 10 to 14 jobs are created or retained;

(iii) 6% for the second 5 years; and

(iv) the board's posted interest rate for the third 5 years, but not to exceed 10% a year.

(e) (i) The interest rates in subsections (2)(d)(i) and (2)(d)(ii) become effective when the board receives certification that the required number of jobs has been created or as provided in subsection (2)(e)(ii). If the board disburses loan proceeds prior to creation of the required jobs, the loan must bear interest at the board's posted rate.

(ii) In establishing interest rates under subsections (2)(d)(i) and (2)(d)(ii) for preventing the elimination of jobs, the board shall require the submission of financial data that allows the board to determine if the loan and interest rate will in fact prevent the elimination of jobs.

(f) If a business entitled to the interest rate in subsection (2)(d)(i) or (2)(d)(ii) reduces the number of required jobs, the board may apply a graduated scale to increase the interest rate, not to exceed the board's posted rate.

(g) For purposes of calculating job creation or retention requirements, the board shall use the *state's* average weekly ~~salary~~ *wage*, as defined in 39-71-116, multiplied by the number of jobs required. This calculated number is the minimum aggregate salary threshold that is required to be eligible for a reduced interest rate. If individual jobs created pay less than the *state's* average weekly *wage*, the borrower shall create more jobs to meet the minimum aggregate salary threshold. If fewer jobs are created or retained than required in subsection (2)(d)(i) or (2)(d)(ii) but aggregate salaries meet the minimum aggregate salary threshold, the borrower is eligible for the reduced interest rate. A job paying less than the minimum wage, provided for in 39-3-409, may not be included in the required number of jobs.

(h) (i) A participating private financial institution may charge interest in an amount equal to the national prime interest rate, adjusted on January 1 of each year, but the interest rate may not be less than 6% or greater than 12%.

(ii) At the borrower's discretion, the borrower may request the lead lender to change this prime rate to an adjustable or fixed rate on terms acceptable to the borrower and lender.

(iii) A participating private financial institution, or lead private financial institution if more than one is participating, may charge a 0.5% annual service fee.

(i) The business enterprise may not be charged a loan prepayment penalty.

(j) The loan agreement must contain provisions providing for pro rata lien priority and pro rata liquidation provisions based upon the loan percentage of the board and each participating private lender.

(3) If a portion of a loan made pursuant to this section is for construction, disbursement of that portion of the loan must be made based upon the percentage of completion to ensure that the construction portion of the loan is advanced prior to completion of the project.

(4) A private financial institution shall participate in a loan made pursuant to this section to the extent of 85% of its lending limit or 25% of the loan, whichever is less. However, the board's participation in the loan must be 75% of the loan amount.

(5) A business enterprise receiving a loan under the provisions of this section may not pay bonuses or dividends to investors until the loan has been paid off,

except that incentives may be paid to employees for achieving performance standards or goals.

(6) The board may adopt rules that it considers necessary to implement this section.”

Section 2. Section 17-6-318, MCA, is amended to read:

“17-6-318. Job credit interest rate reduction for business loan participation. (1) A borrower who uses the proceeds of a business loan participation funded under the provisions of this part to create jobs employing Montana residents is entitled to a job credit interest rate reduction for each job created to employ a Montana resident. A borrower who uses the proceeds of a loan made pursuant to 17-6-309(2) to create jobs is entitled to a job credit interest rate reduction for each job created. The job credit interest rate reduction is equal to 0.05% for each job created to employ a Montana resident, up to a maximum interest rate reduction of 2.5%.

(2) If the salary or wage of the job created:

(a) exceeds the *state’s* average weekly wage, as defined in 39-71-116, the amount of the job credit interest rate reduction may be increased proportionately for each increment of 25% above the *state’s* average weekly wage to a maximum of two times the *state’s* average weekly wage; or

(b) is less than the *state’s* average weekly wage, as defined in 39-71-116, the job credit interest rate reduction is reduced proportionately for each 25% increment below the *state’s* average *weekly* wage.

(3) A job credit interest rate reduction may not be allowed for a job created by the borrower using the proceeds of the loan for which the salary or wage is less than the minimum wage provided for in 39-3-409.

(4) A job credit may not be given unless one whole job is created.

(5) To qualify for the job credit interest rate reduction, the borrower shall provide satisfactory evidence of the creation of jobs and shall make a written application to the board through its financial institution or, in the case of a loan made pursuant to 17-6-309(2), shall make a written application directly to the board.”

Section 3. Section 39-11-103, MCA, is amended to read:

“39-11-103. (Temporary) Definitions. As used in this chapter, the following definitions apply:

~~(1) “Average weekly wage” has the meaning provided in 39-71-116.~~

~~(2)~~(1) “Eligible training provider” means:

(a) a unit of the university system, as defined in 20-25-201;

(b) a community college district, as defined in 20-15-101;

(c) an accredited, tribally controlled community college located in the state of Montana; or

(d) an entity approved to provide workforce training that is included on the eligible training provider list.

~~(3)~~(2) “Eligible training provider list” means the list maintained by the department of labor and industry of those eligible training providers who may be used to provide workforce training under a grant authorized in 39-11-202.

~~(4)~~(3) “Employee” means the individual employed in a new job.

~~(5)~~(4) "Employer" means the individual, corporation, partnership, or association providing new jobs and entering into a grant contract.

~~(6)~~(5) "Full-time job" means a predominantly year-round position requiring an average of 35 hours of work each week.

~~(7)~~(6) (a) "New job" means a newly created full-time job in an eligible business.

(b) The term does not include:

(i) jobs for recalled employees returning to positions held previously, for replacement employees, or for employees newly hired as a result of a labor dispute, part-time or seasonal jobs, or other jobs that previously existed within the employment of the employer in the state; or

(ii) jobs created by an employer as the result of an acquisition of a Montana company or entity if those jobs previously existed in the state of Montana in the acquired company or entity unless it is demonstrated that the jobs:

(A) are substantially different as a result of the acquisition; and

(B) will require new training for the employee to meet new job requirements.

~~(8)~~(7) "New jobs credit" means the credit provided in 39-11-203.

~~(9)~~(8) "Office of economic development" means the office of economic development established in 2-15-218.

~~(10)~~(9) "Primary sector business" means an employer engaged in expanding operations within Montana that through the employment of knowledge or labor adds value to a product, process, or export service that results in the creation of new wealth and for which at least 50% of the sales of the employer occur outside of Montana or the employer is a manufacturing company with at least 50% of its sales to other Montana companies that have 50% of their sales occurring outside of Montana.

~~(11)~~(10) "Primary sector business training program" or "program" means the grant provided to employers for the purpose of working with eligible training providers to provide employees with education and training required for jobs in new or expanding primary sector businesses in the state.

~~(12)~~(11) (a) "Program costs" means all necessary and incidental costs of providing program services.

(b) The term does not include the cost of purchase of equipment to be owned or utilized by the eligible training provider.

~~(13)~~(12) "Program services" means training and education specifically directed to the new jobs, including:

(a) all direct training costs, such as:

(i) program promotion;

(ii) instructor wages, per diem, and travel;

(iii) curriculum development and training materials;

(iv) lease of training equipment and training space;

(v) miscellaneous direct training costs;

(vi) administrative costs; and

(vii) assessment and testing;

(b) in-house or on-the-job training; and

(c) subcontracted services with eligible training providers.

(13) “*State’s average weekly wage*” has the meaning provided in 39-71-116. (Terminates June 30, 2007—sec. 10, Ch. 567, L. 2003.)”

Section 4. Section 39-11-202, MCA, is amended to read:

“39-11-202. (Temporary) Primary sector business workforce training grants — eligibility. (1) The grant review committee provided for in 39-11-201 may award workforce training grants to primary sector businesses that provide education or skills-based training, through eligible training providers from the eligible training provider list, for employees in new jobs.

(2) To be eligible for a grant, an applicant shall demonstrate that at least 50% of the applicant’s sales will be from outside of Montana or that the applicant is a manufacturing company with 50% of its sales from companies that have 50% of their sales outside of Montana and must meet at least one of the following criteria:

(a) be a value-adding business as defined by the Montana board of investments;

(b) demonstrate a significant positive economic impact to the region and state beyond the job creation involved;

(c) provide a service or function that is essential to the locality or the state; or

(d) be a for-profit or a nonprofit hospital or medical center providing a variety of medical services for the community or region.

(3) An applicant shall also provide a match of at least \$1 for every \$3 requested. The match:

(a) must be from new, unexpended funds available at the time of application;

(b) may include new loans and investments and expenditures for direct project-related costs such as new equipment and buildings. The committee may consider recent purchases of fixed assets directly related to the proposal on a case-by-case basis. A purchase of fixed assets directly related to the proposed training activities that have been made within 90 days after submission of the application may be considered eligible by the department.

(4) (a) Except as provided in subsection (4)(c), a grant provided under this section may not exceed \$5,000 for each full-time position for which an employee is being trained. A grant may be provided only for a new job ~~that has~~ *for which* an average weekly wage *is paid* that meets or exceeds the lesser of Montana’s the current *state’s* average weekly wage, the current average weekly wage of the county in which the employees are to be principally employed, or for jobs that will be principally located on a reservation, the current average weekly wage of the reservation.

(b) The office of economic development may consider the value of employee benefits in calculating the expected annual wage.

(c) The committee may, in exceptional circumstances, consider a higher grant ceiling for jobs that will pay significantly higher wages and benefits if the need for higher training costs is documented in the application.

(d) A grant provided under this section may not exceed an amount greater than the present value of expected incremental tax receipts, as described in 39-11-203, that are expected over the 10-year period immediately following the grant award. The committee shall consider the loan rate established by the board of investments pursuant to the Municipal Finance Consolidation Act of

1983 that is in effect at the time of the grant and the state personal income tax rates in effect or those rates scheduled to take effect in calculating the maximum grant amount.

(5) A primary sector business workforce training program must involve at least 10 new jobs unless unique circumstances are documented that indicate a significant, positive, secondary impact to the local economy. Funding ceilings will be determined by the availability of funding, the cost for each job, and the quality of the primary sector business proposal.

(6) The grant application, at a minimum, must contain:

(a) a business plan containing information that is sufficient for the committee to obtain an adequate understanding of the business to be assisted, including the products or services offered, estimated market potential, management experience of principals, current financial position, and details of the proposed venture. In lieu of a business plan, the committee may consider a copy of the current loan application to entities such as the Montana board of investments, the federal business and industry guarantee program, or the small business administration.

(b) financial statements and projections for the 2 most recent years of operation and projections for each of the 2 years following the grant, including but not limited to balance sheets, profit and loss statements, and cash flow statements. A business operating for less than 2 years shall provide all available financial statements.

(c) a hiring and training plan, which must include:

(i) a breakdown of the jobs to be created or retained, including the number and type of jobs that are full-time, part-time, skilled, semiskilled, or unskilled positions;

(ii) a timetable for creating the positions and the total number of employees to be hired;

(iii) an assurance that the business will comply with the equal opportunity and nondiscrimination laws;

(iv) procedures for outreach, recruitment, screening, training, and placement of employees;

(v) a description of the training curriculum and resources;

(vi) written commitments from any agency or organization participating in the implementation of the hiring plan; and

(vii) a description of the type and method of training to be provided to employees, the starting wage and wage to be paid after training for each position, the job benefits to be paid or provided, and any payment to eligible training providers.

(7) If the committee determines that an applicant meets the criteria established in this section and has complied with the applicable procedures and review processes established by the committee, the committee may award a primary sector business workforce development grant to the employer and authorize the disbursement of funds to the primary sector business.

(8) (a) A contract with a grant recipient must contain provisions:

(i) certifying that the full amount of the grant will be reimbursed in the event that the primary sector business ceases operation within 12 months from the time that the grant is awarded;

(ii) requiring the employer receiving the grant to repay any shortfall in the personal income tax revenues to the state, as calculated in 39-11-203, that are the result of the company failing to meet the number of jobs or pay level of those jobs described in the final grant application. A shortfall in any fiscal year must be accessed against and paid by the company in the next fiscal year.

(iii) providing the department with annual reports and a final closeout report that documents the higher wages paid to an employee upon completion of the training.

(b) The contract must be signed by the person in the primary sector business who is assigned the duties and responsibilities for training and the overall success of the program and by the primary sector business's chief executive. (Terminates June 30, 2007—sec. 10, Ch. 567, L. 2003.)

Section 5. 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 and the Occupational Disease Act of Montana 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) “Average weekly wage” means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department. It is established at the nearest whole dollar number and must be adopted by the department before July 1 of each year.~~

~~(5)~~(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 ~~(5)(a)~~ (4)(a) through ~~(5)(d)~~ (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 ~~(5)(a)~~ ~~(4)(a)~~ through ~~(5)(e)~~ ~~(4)(e)~~, does not exist.

~~(6)(5)~~ “Business partner” means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.

~~(7)(6)~~ “Casual employment” means employment not in the usual course of the trade, business, profession, or occupation of the employer.

~~(8)(7)~~ “Child” includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

~~(9)(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.

~~(10)(9)~~ “Days” means calendar days, unless otherwise specified.

~~(11)(10)~~ “Department” means the department of labor and industry.

~~(12)(11)~~ “Fiscal year” means the period of time between July 1 and the succeeding June 30.

~~(13)(12)~~ (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, ~~but~~.

(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)(13)~~ “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)(14)~~ “Invalid” means one who is physically or mentally incapacitated.

~~(16)(15)~~ “Limited liability company” ~~is as defined~~ *has the meaning provided* in 35-8-102.

~~(17)(16)~~ “Maintenance care” means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

~~(18)(17)~~ “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)(18)~~ “Objective medical findings” means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

~~(20)(19)~~ “Order” means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at ~~or decision~~ ~~made~~ by the department.

~~(21)(20)~~ “Palliative care” means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

~~(22)~~(21) "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.

~~(23)~~(22) "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.

~~(24)~~(23) "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.

~~(25)~~ The "plant of the employer" includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer's usual trade, business, or occupation.

~~(26)~~(24) "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

~~(27)~~(25) "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)~~(26) "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)~~(27) "Reasonably safe tools ~~and~~ 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)~~(28) (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)~~ (28), "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)~~(29) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of a business enterprise.

(30) "*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.

~~(32)~~(31) "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.

~~(33)~~(32) "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.

~~(34)~~(33) "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.

~~(35)~~(34) "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.

~~(36)~~(35) "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-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a treating physician, as provided for in subsection ~~(36)(a)~~ (35)(a), in the area where the physician assistant-certified 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 ~~(36)(a)~~ (35)(a) through ~~(36)(e)~~ (35)(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 ~~(36)(a)~~ (35)(a), in the area in which the advanced practice registered nurse is located.

~~(37)~~(36) "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.

~~(38)~~(37) "Year", unless otherwise specified, means calendar year."

Section 6. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined. (1) ~~The~~ *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 ~~this chapter 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 ~~defined~~ *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 ~~this chapter 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, 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 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 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.

(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, ~~as defined in this chapter.~~

(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, ~~as defined in this chapter.~~

(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 7. 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, ~~as defined in 39-71-117,~~ and to all employees, ~~as defined in~~

~~39-71-118.~~ 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 ~~and~~ or domestic employment;

(b) casual employment ~~as defined in 39-71-116;~~

(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" ~~is~~ *means* a person who submits articles or photographs for publication and is paid by the article or by the photograph; ~~and As used in this subsection,~~

(ii) "newspaper carrier":

(i)(A) ~~is~~ *means* a person who provides a newspaper with the service of delivering newspapers singly or in bundles; ~~but and~~

(i)(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 defined 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).

(3) (a) 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 who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. There is a \$17 fee for the initial application. Any subsequent application renewal must be accompanied by a \$17 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) The exemption, if approved, remains in effect for 2 years following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall submit a renewal application every 2 years. The renewal application and the \$17 renewal application fee must be received by the department at least 30 days before the anniversary date of the previously approved exemption.

(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

(f) If the department denies the application for exemption, the applicant may, after mediation pursuant to department rules, contest the denial by petitioning the workers' compensation court.

(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 8. Section 39-71-2211, MCA, is amended to read:

"39-71-2211. Premium rates for construction industry — filing required. (1) With respect to each classification of risk in the construction industry under plan No. 2, the advisory organization designated under 33-16-1023 shall file with the commissioner of insurance a method of computing premiums that does not impose a higher insurance premium solely because of an employer's higher rate of wages paid.

(2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method of recognizing differences in rates of pay. This method must use a credit scale with the starting point set at 1.168 times the ~~Montana~~ *state's* average weekly wage as reported by the department.

(3) The advisory organization shall file a revenue neutral plan for new and renewed policies for prompt and orderly transition to a method of computing premiums that is in compliance with the requirements of this section.

(4) The state compensation insurance fund, plan No. 3, shall adopt the plan filed by the designated advisory organization or adopt a credit scale plan that meets the requirements of this section."

Section 9. Section 39-71-2312, MCA, is amended to read:

"39-71-2312. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of directors of the state compensation insurance fund provided for in 2-15-1019.

~~(2) “Department” means the department of administration provided for in 2-15-1001.~~

~~(3)(2)~~ “Executive director” means the chief executive officer of the state compensation insurance fund.

~~(4)(3)~~ “State fund” means the state compensation insurance fund provided for in 39-71-2313. It is also known as compensation plan No. 3 or plan No. 3.”

Section 10. Repealer. Sections 39-71-221, 39-71-222, 39-71-416, 39-71-426, 39-71-427, 39-71-428, 39-71-801, 39-71-802, 39-71-803, 39-71-804, 39-71-805, 39-71-806, 39-71-807, 39-71-808, 39-71-809, 39-71-810, 39-71-811, 39-71-812, and 39-71-813, MCA, are repealed.

Section 11. Directions to code commissioner. Section 39-71-226 is intended to be renumbered and codified as an integral part of Title 39, chapter 71, part 23.

Section 12. Effective date — applicability. [This act] is effective July 1, 2005, and applies to injuries occurring or occupational diseases contracted on or after July 1, 2005.

Section 13. Termination date. [Sections 3 and 4] terminate June 30, 2007.

Approved March 18, 2005

CHAPTER NO. 27

[HB 127]

AN ACT AMENDING THE DEFINITION OF “SERIOUSLY DEVELOPMENTALLY DISABLED” FOR THE PURPOSES OF CIVIL COMMITMENT; REMOVING THE CRITERION OF NEAR TOTAL CARE; AMENDING SECTION 53-20-102, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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) “Board” or “mental disabilities board of visitors” means the mental disabilities board of visitors created by 2-15-211.

(2) “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) “Court” means a district court of the state of Montana.

(4) “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) "Developmental disability" means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation and that requires treatment similar to that required by mentally retarded individuals. A developmental disability is a disability that originated before the individual attained age 18, that has continued or can be expected to continue indefinitely, and that results in the person having a substantial disability.

(6) "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) "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) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(9) "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) "Resident" means a person committed to a residential facility.

(11) "Residential facility" or "facility" means the Montana developmental center.

(12) "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 is appropriate.

(13) "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 a residential facility.

(14) "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) "Seriously developmentally disabled" means a person who:

(a) has a developmental disability;

(b) is impaired in cognitive functioning; and

(c) ~~has behaviors that pose an imminent risk of serious harm to self or others or self-help deficits so severe as to require total care or near total care and who, because of those behaviors or deficits, cannot be safely and effectively habilitated in 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. Effective date. [This act] is effective January 1, 2006.

Approved March 18, 2005

CHAPTER NO. 28

[HB 128]

AN ACT PROVIDING THAT THE COMMISSION OR WARRANT OF AN OFFICER IN THE STATE'S ORGANIZED MILITIA MUST BE VACATED IF THE OFFICER IS CONVICTED OF A FELONY OR INCARCERATED IN A STATE OR FEDERAL CORRECTIONAL INSTITUTION; AND AMENDING SECTION 10-1-205, MCA.

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

Section 1. Section 10-1-205, MCA, is amended to read:

“10-1-205. Vacating commissions or warrants. The commission or warrant of an officer ~~shall~~ *must* be vacated:

- (1) upon acceptance by the governor of the resignation of the officer; or
- (2) by an order of the governor discharging the officer:

(a) for failure to maintain ~~his~~ *the officer's* qualifications for federal recognition;

(b) upon the scheduled or actual termination or withdrawal of ~~his~~ *the officer's* federal recognition ~~where~~ *when* federal recognition is a prerequisite for continued service;

(c) upon a change in federal reserve status ~~which~~ *that* makes ~~him~~ *the officer* ineligible ~~to continue assigned~~ *for continued assignment* to a unit of the organized militia;

(d) for ~~his~~ *the officer's* absence from duty without leave for more than 3 months; ~~or~~

(e) upon the recommendation of a board of examination or the sentence of a court-martial;

(f) upon conviction of a felony; or

(g) upon final sentencing to confinement in a federal or state penitentiary or correctional institution as defined in 45-2-101.”

Approved March 18, 2005

CHAPTER NO. 29

[HB 168]

AN ACT REVISING THE LAWS GOVERNING THE MONTANA INSURANCE GUARANTY ASSOCIATION; REMOVING THE MINIMUM DOLLAR AMOUNT FOR A COVERED PROPERTY OR CASUALTY CLAIM; CLARIFYING THE IMMUNITY WITH RESPECT TO THE MONTANA INSURANCE GUARANTY ASSOCIATION; AMENDING SECTIONS 33-10-105 AND 33-10-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 33-10-105, MCA, is amended to read:

“33-10-105. General powers and duties. (1) The association:

(a) (i) is obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency or before the policy expiration date if less than 30 days after the determination or before the insured replaces the policy or causes its cancellation if the insured does so within 30 days of the determination;

(ii) is obligated under subsection (1)(a)(i) only for that amount of each covered claim that ~~is in excess of \$100 and is less than~~ *does not exceed* \$300,000, except that:

(A) the association shall pay an amount not exceeding \$10,000 ~~per~~ *for each* policy for a covered claim for the return of unearned premium; and

(B) the association shall pay the full amount of any covered claim arising out of a workers' compensation policy; and

(iii) is not obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises;

(b) is considered the insurer to the extent of its obligation on the covered claims and to that extent has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(c) shall investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which the settlements, releases, and judgments may be properly contested;

(d) shall notify persons as the commissioner directs under 33-10-109(2)(a);

(e) shall handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but the designation may be declined by a member insurer.

(f) shall reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this part.

(2) The association may:

(a) employ or retain persons as are necessary to handle claims and perform other duties of the association;

(b) borrow funds necessary to effect the purposes of this part in accord with the plan of operation;

(c) sue or be sued;

(d) negotiate and become a party to contracts as are necessary to carry out the purpose of this part;

(e) perform other acts as are necessary or proper to effectuate the purpose of this part;

(f) refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities; if, at the end of any calendar year, the board of

directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year.”

Section 2. Section 33-10-110, MCA, is amended to read:

“33-10-110. Immunity. There shall be no ~~is not any~~ liability on the part of and ~~no~~ a cause of action of any nature shall arise ~~may not be brought~~ against any member insurer ~~or its agents or employees~~, the association or ~~its insurance producers~~ the association’s agents or employees, the board of directors, or the commissioner or ~~his~~ the commissioner’s representatives for any action taken by them in the performance of their powers and duties under this part.”

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

Approved March 18, 2005

CHAPTER NO. 30

[HB 171]

AN ACT CONFORMING WITH FEDERAL INCOME TAX LAW BY EXTENDING THE DUE DATE FOR FILING A MONTANA INDIVIDUAL INCOME TAX RETURN BY A PERSON, AND BY THE PERSON’S SPOUSE, SERVING IN A COMBAT ZONE OR A CONTINGENCY OPERATION; CLARIFYING THE DEFERMENT OF TAXES FOR A PERSON IN MILITARY SERVICE; AMENDING SECTION 15-30-313, 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 15-30-313, MCA, is amended to read:

“15-30-313. Soldiers’ and sailors’ relief Deferment of taxes for person in military service — filing of return. (1) The collection from ~~any~~ a person in the military service, as defined by the Soldiers’ and Sailors’ Civil Relief Act of 1940, effective October 17, 1940 ~~section 511 of the Servicemembers Civil Relief Act, 50 App. U.S.C. 511, as amended October 6, 1942, of any the tax prescribed by the state on the income of such person imposed by 15-30-103, whether falling~~ due prior to or during ~~his~~ the person’s period of military service, shall ~~must~~ be deferred for a period extending not more than ~~6 months~~ 180 days after the termination of ~~his~~ the person’s period of military service if ~~such~~ the person’s ability to pay ~~such~~ the tax is materially impaired by reason of ~~such~~ military service.

(2) ~~No interest~~ Interest and penalty on any amount of tax, collection of which that is deferred for any period under ~~this section and 15-30-314 or this section,~~ and no penalty for nonpayment of such amount during such period shall ~~may not~~ accrue for ~~such~~ the period of deferment by reason of ~~such~~ nonpayment. The running of any statute of limitations against the payment of ~~such~~ the tax by any lawful means shall ~~must~~ be suspended for the period of military service of any ~~individual~~ person for whom the collection of ~~such~~ the tax is deferred under this section and for an additional period of 1 year beginning with the day following the period of military service.

(3) *In accordance with the provisions of section 7508 of the Internal Revenue Code, 26 U.S.C. 7508, the individual income tax return of a person, and the person’s spouse, serving in a combat zone or participating in a contingency*

operation is due on or before 180 days after the time of disregarded service plus the disregarded period of qualified hospitalization attributable to an injury suffered while serving in the combat zone or contingency operation.”

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

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2003.

Approved March 18, 2005

CHAPTER NO. 31

[HB 175]

AN ACT ALLOWING AN INSURER TO WITHHOLD COURT-ORDERED RESTITUTION FROM BENEFITS PAYABLE TO AN INJURED WORKER CONVICTED OF THEFT OF WORKERS' COMPENSATION BENEFITS; AMENDING SECTION 39-71-743, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 39-71-743, 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; ~~or~~

(c) as provided in 53-2-612 or 53-2-613 for medical benefits paid pursuant to chapter 71 or 72 of this title; *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 approved for payment on the basis of a past-due child support obligation.

(3) After determination that the claim is covered under the Workers' Compensation Act or Occupational Disease Act of Montana, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. Except as provided in 39-71-704(7), a fee or charge is not

payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer.”

Section 2. Effective date — applicability. [This act] is effective July 1, 2005, and applies to benefits paid on or after July 1, 2005.

Approved March 18, 2005

CHAPTER NO. 32

[HB 185]

AN ACT AMENDING RECLAMATION BOND PROVISIONS OF THE METAL MINE RECLAMATION LAWS AND THE OPENCUT MINING ACT PERTAINING TO MINES ON FEDERAL LANDS; ALLOWING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ACCEPT BONDS PAYABLE TO THE STATE OF MONTANA AND A FEDERAL LAND MANAGEMENT AGENCY; AMENDING SECTIONS 82-4-338 AND 82-4-433, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE 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 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) 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) (a) If the department determines that there exists at an area permitted or licensed under this part an imminent danger to public health, 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) 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), the department may forfeit additional amounts under the procedure provided in subsection (8)(a).

(c) The department shall return to the surety any money received from the surety pursuant to this subsection 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) must be returned to the surety, unless otherwise agreed to in writing by the surety.

(9) 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. 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, 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, and the permit. The bond must be signed by the landowner or operator, as appropriate, 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 bond amount must be set by the department at the cost of restoring the land.

(2) (a) *For open-cut mining 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.

~~(2)~~(3) In lieu of the bond, the operator may deposit with the department 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. The penalty of the bond or amount of cash and securities must be increased or reduced from time to time as provided in this part. 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. The bond or security may cover only actual affected land and may be increased or reduced to cover only those acreages as remain unreclaimed.

~~(3)~~(4) If the license of a surety upon 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 surety licensed to do business in the state. Upon failure of the operator to make substitution of surety, the department may suspend the permit of the operator to conduct operations upon the land described in the permit until the substitution has been made.

~~(4)~~(5) The department shall cause the reclamation of any affected land with respect to which a bond has been forfeited.

~~(5)~~(6) Whenever an operator has completed all of the requirements under the provisions of this part as to any affected land, the operator shall notify the department of the completed requirements. If the board releases the operator from further obligation regarding any affected land, the penalty of the bond must be reduced proportionately."

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

Approved March 18, 2005

CHAPTER NO. 33

[HB 190]

AN ACT REVISING THE DEFINITION OF "VICTIM" IN LAWS RELATING TO THE RIGHT OF VICTIMS TO ATTEND CRIMINAL PROCEEDINGS; MAKING THE DEFINITION CONSISTENT WITH ASSAULT AND PARTNER OR FAMILY MEMBER ASSAULT LAWS; AMENDING SECTION 46-24-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Section 46-24-106, MCA, is amended to read:

“46-24-106. Crime victims — family members — right to attend proceedings — exceptions. (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, ~~or~~ *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.”

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 crimes committed before [the effective date of this act].

Approved March 18, 2005

CHAPTER NO. 34

[HB 195]

AN ACT REVISING LAWS GOVERNING FARM SCALES; PROVIDING A DEFINITION OF “ON-FARM SCALE”; CLARIFYING THE LICENSE RENEWAL DATE FOR ON-FARM SCALES; CLARIFYING LICENSE RENEWAL PERIODS FOR ON-FARM SCALES AND OTHER WEIGHING DEVICES; PROVIDING FOR LATE FEES FOR DELAYED LICENSE RENEWALS; PERMITTING THE DEPARTMENT OF LABOR AND INDUSTRY TO SEAL AND REMOVE WEIGHING DEVICES FOR FAILURE TO PAY FEES; PROHIBITING USE OF WEIGHING DEVICES REMOVED

FROM SERVICE AND SEALED; AMENDING SECTIONS 30-12-101, 30-12-203, AND 50-50-207, 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 30-12-101, MCA, is amended to read:

“30-12-101. Definitions. Unless the context requires otherwise, in parts 1 through 5 of this chapter the following definitions apply:

(1) “Barrel”, when used in connection with fermented liquor, means a unit of 31 gallons.

(2) “Commerce”, “trade”, or “commercial” means a monetary or value exchange between parties for merchandise or services.

(3) “Commodity in package form” means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive of any auxiliary shipping container enclosing packages that individually conform to the requirements of parts 1 through 5. An individual item or lot of any commodity not in a consumer package form or nonconsumer package form, but on which there is marked a selling price based on an established price per unit of weight or of measure, is a commodity in package form.

(4) “Consumer package” or “package of consumer commodity” means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

(5) “Cord”, when used in connection with wood intended for fuel purposes, means the amount of wood that is contained in a space of 128 cubic feet when the wood is ranked and well stowed.

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

(7) “Intrastate commerce” means any commerce or trade that is begun, carried on, and completed wholly in this state, and the phrase “introduced into intrastate commerce” defines the time and place at which the first sale and delivery of a commodity is made in this state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

(8) “Nonconsumer package” or “package of nonconsumer commodity” means a commodity in package form other than a consumer package and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

(9) *“On-farm scale” means a scale that is permanent or mobile, located on a farm or ranch, and used primarily by the owner or operator of the farm or ranch. An on-farm scale may be a livestock scale used for the weighing of live animals, a vehicle scale used for weighing grain, hay, or other field crops, or a combination livestock and vehicle scale.*

~~(9)~~(10) “Person” includes individuals, partnerships, corporations, companies, societies, and associations.

~~(10)~~(11) “Sell” and “sale” include but are not limited to barter and exchange.

~~(11)~~(12) "Ton" means a unit of 2,000 pounds avoirdupois weight.

~~(12)~~(13) "Weight", when used in connection with any commodity, means net weight.

~~(13)~~(14) (a) "Weight", "measure", and "weights and measures" mean all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with those instruments and devices. The terms do not include meters for the measurement of electricity, gas (natural or manufactured), or water when they are operated in a public utility system. The provisions of parts 1 through 5 do not apply to electricity, gas, or water meters operated in a public utility system or to any appliances or accessories associated with them.

(b) The terms do not include time measuring devices by which products or services are sold."

Section 2. Section 30-12-203, MCA, is amended to read:

"30-12-203. Licensing of weighing devices. (1) A person may not knowingly operate or use an unlicensed weighing device in trade or commerce for ascertaining the weight of any commodity.

(2) A license must be obtained by ~~making application~~ *applying* to the department upon ~~blank forms to be a form~~ provided by the ~~division of weights and measures~~ *department*. Each license must require at least one inspection ~~per~~ a year.

(3) An application must be accompanied by the proper fee as established by this section except that fees may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.

WEIGHING DEVICES

| Capacity | Fees |
|--|---------|
| 499 pounds or less | \$12.00 |
| 500 pounds through 1,999 pounds | 20.00 |
| 2,000 pounds through 7,999 pounds | 40.00 |
| 8,000 pounds through 60,000 pounds | 100.00 |
| 60,001 pounds or more | 175.00 |

(4) The capacity of a weighing device must be determined by the manufacturer's rated capacity.

(5) (a) All licenses ~~must be~~ *are* annual and, *except for those described in subsection (5)(b)*, expire on the anniversary date established by rule by the board of review established in 30-16-302.

(b) *Licenses for on-farm scales expire at the end of the calendar year.*

(6) (a) A late renewal fee equal to 50% of the renewal license fee established in subsection (3) must be assessed if the fee is not paid:

(i) *for on-farm scales*, before the first day of the sixth month of the year in which the license fee is due; or

(ii) *for all other licenses*, within 60 days of the anniversary date.

(b) *If the fee is not paid by the respective due date listed in subsection (6)(a), the weighing device may be sealed and removed from service by the department.*

~~(c) A person failing to pay the renewal license fee before the first day of the sixth month of the year in which the license fee is due forfeits the right to use the weighing device, and it must be taken out of service by the division of weights and measures until the renewal fee and late renewal fee are paid *may not use a weighing device that has been removed from service or break the seal on a device removed from service until all fees have been paid.*~~

(7) The fees must be deposited to the state special revenue fund of the department for use in the administration and enforcement of this part.”

Section 3. Section 50-50-207, MCA, is amended to read:

“50-50-207. Expiration date of license. (1) Except as provided in subsection (2), licenses expire on December 31 following the date of issue unless canceled for cause.

(2) License renewals provided for in 16-11-122, 30-12-203(5)(a), ~~50-50-207~~ 50-50-201, 80-7-106, and 82-15-105 expire on the anniversary date established by rule by the board of review established in 30-16-302.”

Section 4. Effective date — applicability. [This act] is effective on passage and approval and applies to weighing devices licensed or renewed on or after [the effective date of this act].

Approved March 18, 2005

CHAPTER NO. 35

[HB 205]

AN ACT REQUIRING THAT BOND FORFEITURES IN A FELONY CASE BE DEPOSITED IN THE STATE GENERAL FUND; AMENDING SECTION 46-9-511, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 46-9-511, MCA, is amended to read:

“46-9-511. Forfeiture procedure. When an order of forfeiture is not discharged, the court having jurisdiction shall proceed with the forfeiture of bail as follows:

(1) if money has been posted as bail *in a misdemeanor case, as defined in 45-2-101*, the court shall pay the money to the treasury of the city or county where the money was posted; ~~or~~

(2) *if money has been posted as bail in a felony case, as defined in 45-2-101, the court shall pay the money to the department of revenue for deposit in the state general fund; or*

~~(3)~~(3) if other property is posted as a condition of release, the property must be sold in the same manner as property sold in civil actions. The proceeds of the sale must be used to satisfy all court costs and prior encumbrances, if any, and from the balance, a sufficient sum to satisfy the judgment or forfeiture must be paid ~~into the treasury of the city or county where the case is pending as provided under subsection (1) in a misdemeanor case or under subsection (2) in a felony case.~~

~~(4)~~(4) If a surety bond has been posted as bail, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions.”

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved March 18, 2005

CHAPTER NO. 36

[HB 226]

AN ACT CHANGING THE NAME OF THE SHERIFF'S DEPARTMENT TO THE SHERIFF'S OFFICE; AND AMENDING SECTIONS 2-15-1781, 7-3-1344, 7-4-2503, 7-4-2508, 7-4-2509, 7-4-2510, 7-4-3001, 7-32-2102, 7-32-2126, 10-4-102, 19-7-612, 19-7-801, 39-3-406, 40-6-402, 44-2-401, 44-5-506, AND 45-8-108, MCA.

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 ~~department~~ *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.

(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 ~~shall~~ *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 7-3-1344, MCA, is amended to read:

"7-3-1344. Prior rights of law enforcement officers. (1) A police officer employed by any police department ~~or departments~~ established as required by law in any city or town of the county or a deputy sheriff employed by the county sheriff's ~~department~~ *office* prior to the election and qualification of a commission under part 12 and this part has the same job tenure rights as though the election and qualification had not taken place.

(2) A police officer who has vested rights in a police retirement fund shall maintain prior vested rights in the fund upon its transfer to a consolidated county municipality. Any police retirement fund established as required by law in any city or town of the county prior to the election and qualification of a commission under part 12 and this part must be continued as a retirement fund for the police department of the municipality, subject, however, to the prior vested rights of a police officer employed by any police department ~~or departments~~ established as required by law in any city or town of the county prior to the election and qualification of a commission under part 12 and this part.

(3) The board of trustees of the police retirement fund shall consist of the president, the director of finance, the director of law, and two members of the police department from the active list of the police officers of the municipality who must be selected by a majority vote of the members of the police department on the active list of the municipality. The selection must be made between May 1 and May 10 each year, and the active police officer members of the board shall serve overlapping 2-year terms.

(4) Except as provided in this section, the police retirement fund must be continued and administered in the manner prescribed by law for retirement funds established in cities and towns.”

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 ~~department~~ 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.

(3) (a) In each county with a population in excess of 30,000, the county attorney must be a full-time official under 7-4-2704, and the salary is \$50,000 a

year, subject to adjustment as provided in subsection (3)(c). In counties with a population less than 30,000, the county attorney who is a part-time official is entitled to receive an annual base salary equal to the salary received for the fiscal year ending June 30, 2001.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney is the same as that established for full-time county attorneys in subsection (3)(a).

(c) Each county attorney is entitled to an increase in salary based upon the schedule developed and approved by the county compensation board as provided in subsection (4).

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of \$1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of \$1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of additional service up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of \$500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase.

(4) (a) There is a county compensation board consisting of the county commissioners, three of the county officials described in subsection (1) appointed by the board of county commissioners, the county attorney, and two 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 7-4-2508, MCA, is amended to read:

“7-4-2508. Compensation of undersheriff and deputy sheriff. (1) The sheriff shall fix the compensation of the undersheriff at 95% of the salary of that sheriff.

(2) (a) The sheriff shall fix the compensation of the deputy sheriff based upon a percentage of the salary of that sheriff according to the following schedule:

In counties with population of:

| | |
|------------------|------------|
| Below 15,000 | 85% to 90% |
| 15,000 to 29,999 | 76% to 90% |
| 30,000 to 74,999 | 74% to 90% |
| 75,000 and over | 72% to 90% |

(b) The sheriff shall adjust the compensation of the deputy sheriff within the range prescribed in subsection (2)(a) according to a rank structure in the ~~department~~ office.

(3) For purposes of this section, the term “compensation” means the base rate of pay and does not mean longevity payments or payments for hours worked overtime.”

Section 5. Section 7-4-2509, MCA, is amended to read:

“7-4-2509. Sheriff’s ~~department~~ office — work period in lieu of workweek — overtime compensation. (1) (a) A sheriff’s ~~department~~ office may establish a work period other than the workweek provided in 39-3-405 or 7-32-2111 for determining when an employee may be paid overtime.

(b) The aggregate of all work periods in a year, when expressed in hours, may not exceed 2,080 hours.

(2) The board of county commissioners may by resolution establish that any undersheriff or deputy sheriff who works in excess of ~~his~~ *the* regularly scheduled work period will be compensated for the hours worked in excess of the work period at a rate to be determined by that board of county commissioners.”

Section 6. Section 7-4-2510, MCA, is amended to read:

“7-4-2510. Sheriff’s ~~department~~ office — longevity payments. Beginning on the date of ~~his~~ *the* deputy sheriff’s or undersheriff’s first anniversary of employment with the ~~department~~ office and adjusted annually, a deputy sheriff or undersheriff is entitled to receive a longevity payment amounting to 1% of the minimum base annual salary for each year of service with the ~~department~~ office, but years of service during any year in which the salary was set at the same level as the salary of the prior fiscal year may not be included in any calculation of longevity increases. This payment ~~shall~~ *must* be made in equal monthly installments.”

Section 7. Section 7-4-3001, MCA, is amended to read:

“7-4-3001. Office of sheriff. The duties and functions of the sheriff’s ~~department~~ office are provided for in *Title 7, chapter 32, part 21, chapter 32.*”

Section 8. Section 7-32-2102, MCA, is amended to read:

“7-32-2102. Undersheriff to be appointed — return to other duties. (1) The sheriff, as soon as possible after ~~he enters upon the duties of his~~ *taking* office, ~~must~~ *shall*, except in counties of the seventh class, appoint ~~some person~~ *an* undersheriff to ~~hold during~~ *serve at* the pleasure of the sheriff. ~~Such~~ *The* undersheriff has the same powers and duties as a deputy sheriff.

(2) A deputy sheriff appointed undersheriff as provided in subsection (1) ~~must shall~~ resume other duties within the sheriff's ~~department~~ office, while maintaining his tenure and seniority, if the sheriff appoints another to succeed ~~him~~ the deputy sheriff as undersheriff. Upon the return to the position of deputy sheriff, ~~such~~ the person ~~shall~~ must be paid the same salary ~~he~~ the person would have received had ~~he~~ the person not taken the undersheriff position."

Section 9. Section 7-32-2126, MCA, is amended to read:

"7-32-2126. Liability insurance for privately owned vehicles when used on official business. (1) The board of county commissioners shall provide liability insurance for not more than one privately owned vehicle used by the sheriff, not more than one privately owned vehicle used by the undersheriff, and not more than one privately owned vehicle used by each deputy sheriff when the vehicles are used on official business. The insurance ~~shall~~ must be paid for from county funds and ~~shall~~ must provide full comprehensive and collision coverage plus minimum coverage of \$100,000 for each person for bodily injury and medical expenses, \$300,000 for all persons per accident, and \$50,000 per accident for property damage.

(2) This section ~~shall~~ does not apply to counties furnishing motor vehicles to the sheriff's ~~department~~ office pursuant to the provisions of 7-32-2125."

Section 10. 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.

(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 ~~departments~~ offices, local citizens, organizations, and other public safety organizations may submit recommendations for membership on the advisory council."

Section 11. Section 19-7-612, MCA, is amended to read:

"19-7-612. Medical examination of disability retiree — cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of

the position held by the recipient when the recipient was retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (2) or when, if a position is available, the recipient cannot be reinstated under subsection (2) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) (a) Except as provided in subsection (2)(b), a person other than an elected official whose disability retirement benefit is canceled because the person is no longer incapacitated must be reinstated to the position held by the person immediately before the person's retirement or to a position in a comparable pay and benefit category within the person's capacity, whichever is first open. The fact that the person was retired for disability may not prejudice any right to reinstatement to duty that the person may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(3) The public body required to reinstate a person under subsection (2) may request a medical or psychological review as to the ability of the member to return to work as a member of the sheriff's ~~department~~ office. If the board's findings are upheld, the public body shall pay the cost of the review."

Section 12. Section 19-7-801, MCA, is amended to read:

"19-7-801. Membership in municipal police officers' retirement system prior to or following city-county consolidation — payment of benefits by two systems. (1) A law enforcement officer who has not changed employment but who has, because of a city-county consolidation, been transferred either from a city police force to a county sheriff's ~~department~~ office or from a county sheriff's ~~department~~ office to a city police force as a law enforcement officer is eligible for a service retirement benefit if the officer's combined service credit in the sheriffs' retirement system and the municipal police officers' retirement system satisfies the minimum membership service requirement of the system to which the officer last made contributions. A member who has elected to continue membership in the public employees' retirement system under 19-7-301 may continue the election. However, credit for service in the public employees' retirement system that has not been transferred prior to January 1, 1979, may not be transferred.

(2) A member of the municipal police officers' retirement system who begins employment in a position covered by the sheriffs' retirement system following a city-county consolidation may remain in the municipal police officers' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board no later than 30 days after beginning the employment.

(3) Eligibility for and calculation of disability retirement, death benefits, and refund of contributions are governed by the provisions of the retirement system to which the officer last made contributions.

(4) The service retirement benefit of a member described in subsection (1) must be calculated separately for each system based on the service credit under each system. The calculation for the sheriffs' retirement system portion of the benefit must include the appropriate reduction in the retirement benefit for an

optional retirement benefit elected under 19-7-1001. The final salary or highest average compensation for each calculation must be based on the highest compensation earned while a member of either system. Each system shall pay its proportionate share, based on the number of years of service credit, of the combined benefit.

(5) Upon the death of a retired member receiving a service retirement benefit under this section, the survivor or contingent annuitant and the continuing benefit must be determined separately for each system as follows:

(a) For the municipal police officers' retirement system portion of the benefit, the surviving spouse must receive a benefit equal to the municipal police officers' retirement system portion of the service retirement benefit as calculated at the time of the member's retirement. If the retired member leaves no surviving spouse or upon the death of the surviving spouse, the retired member's surviving dependent child, or children collectively if there are more than one, must receive the same monthly benefits that a surviving spouse would receive for as long as the child or one of the children remains dependent, as defined in 19-9-104. The benefits must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata benefits to that child must cease and be paid to the remaining children until all the children are no longer dependent.

(b) For the sheriffs' retirement system portion of the benefit:

(i) the contingent annuitant must receive a continuing benefit as determined under 19-7-1001, if the retired member elected an optional retirement benefit; or

(ii) if the retired member did not elect an optional retirement benefit, any payment owed the retired member, including the excess, if any, of the retired member's accumulated contributions standing to the retired member's credit at the time of retirement less payments made to the retired member must be paid to the retired member's designated beneficiary."

Section 13. Section 39-3-406, MCA, is amended to read:

"39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) an individual employed in a bona fide executive, administrative, or professional capacity, as these terms are defined by regulations of the commissioner, or in an outside sales capacity, as defined in 29 CFR 541.5;

(k) an individual employed by the United States of America;

(l) resident managers employed in lodging establishments or assisted living facilities who, under the terms of their employment, live in the establishment or facility;

(m) a direct seller as defined in 26 U.S.C. 3508;

(n) a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.

(o) a person 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.

(p) an employee employed in domestic service employment 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 as provided under section 213(a)(15) of the Fair Labor Standards Act, 29 U.S.C. 213, when the person providing the service is employed directly by a family member or an individual who is a legal guardian.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

(b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment

primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(e) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(g) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(h) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

(i) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(j) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

(k) a driver employed by an employer engaged in the business of operating taxicabs;

(l) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than \$10,000;

(m) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(n) an employee of a sheriff's ~~department~~ *office* who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(o) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents

the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(p) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(q) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(r) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(s) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(t) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(u) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

(v) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

(w) an employee of the consolidated legislative branch as provided in 5-2-503;

(x) an employee of the state or its political subdivisions employed, at the employee's option, on an occasional or sporadic basis in a capacity other than the employee's regular occupation. Only the hours that the employee was employed in a capacity other than the employee's regular occupation may be excluded from the calculation of hours to determine overtime compensation."

Section 14. 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 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*, ~~or a sheriff's department 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 15. Section 44-2-401, MCA, is amended to read:

"44-2-401. Missing persons — dental records. (1) Any person who reports a missing person to a police *department*, ~~or sheriff's department office~~, or other law enforcement authority must be given a form, supplied by the department of justice, that authorizes the release of the dental records of the missing person. The form must state that if the person is still missing 30 days after the report was made, the form ~~should~~ *may* be signed by a relative of the missing person and taken to the dentist of the missing person, who ~~must~~ *shall* release the dental records or copies ~~thereof of the records~~ to the relative. The records must be submitted by the relative within the next 10 days to the law enforcement authority to which the missing person report was made.

(2) If the missing person has not been found within 30 days after the report was made and no relative exists or can be located, the law enforcement authority may execute a signed written declaration stating that an investigation into the location of the missing person is being conducted and that the dental records may be necessary to the investigation. A dentist shall release the missing person's dental records upon presentation of the declaration.

(3) If a person reported missing has not been found within 45 days after the report was made, the law enforcement authority conducting the investigation shall confer with the county coroner or state medical examiner and write a missing person report on a form supplied by the department of justice. The report and any dental records or copies ~~thereof of the records~~ obtained under this section must be submitted to the department of justice.

(4) The department of justice shall maintain an information file concerning each person reported to it as missing. The file must include information received under this section and any other information the department considers relevant to locating the missing person.

(5) The department files must be made available to any law enforcement agency attempting to locate missing persons.

(6) A law enforcement authority that finds a missing person or is notified that ~~he~~ *a missing person* has been found shall notify the department of justice, which shall return all dental records to the dentist and destroy the file prepared under subsection (4) concerning the person.”

Section 16. Section 44-5-506, MCA, is amended to read:

“44-5-506. Participating agencies. (1) Agencies eligible for participation in the section are:

- (a) municipal police departments;
- (b) sheriff's ~~departments~~ *offices*; and
- (c) sections of the department of justice engaged in criminal investigation.

(2) A participant in the section must be an eligible agency that has been authorized by the attorney general to receive criminal intelligence information from the section under this part.”

Section 17. Section 45-8-108, MCA, is amended to read:

“45-8-108. Definitions. As used in 45-8-107 through 45-8-109, unless the context requires otherwise, the following definitions apply:

(1) “Civil disorder” means a public disturbance involving unlawful acts of violence by a group of two or more persons that causes an immediate danger of or results in injury to the property or person of any other individual.

(2) “Governmental military force” means:

- (a) the national guard as defined in 10 U.S.C. 101;
- (b) the organized militia of a state or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia not included in the definition of the national guard; and
- (c) the armed forces of the United States.

(3) “Law enforcement agency” means a department of public safety, a police department, a sheriff's ~~department~~ *office*, the highway patrol, or a governmental unit of one or more persons employed by the state or federal government or a political subdivision of the state or federal government, for the purpose of detecting and preventing crime and enforcing laws or ordinances, whose employees are authorized to make arrests for crimes while acting in the scope of their authority.

(4) “Peace officer” has the meaning given in 45-2-101.”

Section 18. Name change — directions to code commissioner. Wherever a reference to a sheriff's department appears in legislation enacted by the 2005 legislature, the code commissioner is directed to change it to a reference to a sheriff's office.

Approved March 18, 2005

CHAPTER NO. 37

[HB 274]

AN ACT AMENDING THE MONTANA AGRICULTURAL FEED LAWS TO INCREASE LICENSING AND REGISTRATION FEES, TO ESTABLISH MINIMUM AND MAXIMUM LICENSING, REGISTRATION, AND

INSPECTION FEES, AND TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE TO ADJUST THESE FEES BY RULE; AMENDING SECTIONS 80-9-101, 80-9-201, 80-9-202, 80-9-206, AND 80-9-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 80-9-101, MCA, is amended to read:

“80-9-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) “AOAC international” means the association of official analytical chemists.

(2) “Brand name” means any word, name, symbol, or device or any combination of them identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

(3) (a) “Commercial feed” means all materials or combinations of materials that are distributed or intended for distribution for use as feed or for mixing in feed, unless the materials are specifically excluded by law.

(b) The term does not include unmixed whole seeds and physically altered entire unmixed seeds when those seeds are not chemically changed or adulterated within the meaning of 80-9-204. The department may by rule exclude from this definition or from specific provisions of this chapter commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when those commodities, compounds, or substances are not intermixed with other materials and are not adulterated within the meaning of 80-9-204.

(4) “Contract feeder” means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract under which the commercial feed is supplied, furnished, or otherwise provided to that person and under which that person’s remuneration is determined completely or in part by feed consumption, mortality, profits, or amount or quality of product.

(5) “Customer formula feed” means commercial feed that consists of a mixture of commercial feeds or feed ingredients, each batch of which is manufactured according to the specific instructions of the final purchaser.

(6) “Distribute” means to offer for sale, sell, exchange, or barter commercial feed or to supply, furnish, or otherwise provide commercial feed to a contract feeder.

(7) “Distributor” means a person who distributes commercial feed.

(8) “Drug” means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals, other than humans, and articles other than feed intended to affect the structure or function of the animal body.

(9) “Facility” means something that is built, installed, or established to serve a particular purpose.

(10) “Feed ingredient” means each of the constituent materials making up a commercial feed or a noncommercial feed.

(11) “Guarantor” means a person whose name and principal mailing address appear on the label and who guarantees the information contained on the label as required by 80-9-202. The person may or may not also be the manufacturer.

~~(10)~~(12) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed or on the invoice or delivery slip with which a commercial feed is distributed.

~~(11)~~(13) "Labeling" means all labels and other written, printed, or graphic matter upon a commercial feed, any of its containers, its wrapper, or accompanying the commercial feed.

~~(12)~~(14) "Manufacture" means to grind, mix, blend, or further process a commercial feed.

~~(13)~~(15) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

~~(14)~~(16) (a) "Noncommercial feed" means all materials or combinations of materials that are used as feed or for mixing in feed and that are not intended for distribution, unless the materials are specifically excluded by law.

(b) The term does not include unmixed whole seeds and physically altered entire unmixed seeds when those seeds are not chemically changed or adulterated within the meaning of 80-9-204. The department may by rule exclude from this definition or from specific provisions of this chapter commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when those commodities, compounds, or substances are not intermixed with other materials and are not adulterated within the meaning of 80-9-204.

~~(15)~~(17) "Official sample" means a sample of feed taken by the department in accordance with the provisions of 80-9-301.

~~(16)~~(18) "Percent" or "percentage" means percentage by weights.

~~(17)~~(19) "Person" means an individual, partnership, corporation, or association.

~~(18)~~(20) "Pet" means any domesticated animal normally maintained in or near the household of its owner.

~~(19)~~(21) "Pet food" means any commercial feed prepared and distributed for consumption by pets.

~~(20)~~(22) "Product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.

~~(21)~~(23) "Quantity statement" means the net weight or mass; net volume, either liquid or dry; or count.

~~(22)~~(24) "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank, including but not limited to gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles.

~~(23)~~(25) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

~~(24)~~(26) "Ton" means a net weight of 2,000 pounds avoirdupois."

Section 2. Section 80-9-201, MCA, is amended to read:

"80-9-201. Licenses and registration. (1) Except as provided in subsection (4)(b), a license is required of a *facility or person*:

- (a) who manufactures commercial feed in this state;
- (b) who distributes commercial feed in or into this state; or

(c) whose name appears on the label of a commercial feed as guarantor.

(2) (a) A separate license is required for each facility that manufactures commercial feed within this state or for each facility that distributes commercial feed in or into this state. A facility or person that manufactures, distributes, or is a guarantor for commercial feed ~~need~~ must be licensed ~~only~~ once annually pursuant to this section.

(b) (i) ~~All~~ *Except as provided in this subsection (2)(b)(i), all* new applicants shall pay a nonrefundable fee of ~~\$75~~ \$100 per each calendar year for a license for each facility, ~~distribution point, or point of invoicing.~~ *The department may by rule adjust the license fee to maintain adequate funding for the administration of this part. The fee may not be less than \$100 a year or more than \$110 a year.*

(ii) ~~License~~ *Except as provided in this subsection (2)(b)(ii), license* renewals received by the department prior to January 1 of each year must be accompanied by a nonrefundable renewal fee of ~~\$50~~ \$75 for each license. *The department may by rule adjust the license fee to maintain adequate funding for the administration of this part. The fee may not be less than \$75 a year or more than \$85 a year.*

(3) Applicants for licensure shall file with the department information on forms provided by the department, including the following:

(a) the applicant's name and place of business;

(b) the mailing address and physical location of the facility to be licensed; ~~and~~

(c) an indication of whether the facility to be licensed manufactures feed, distributes feed, or both; *and*

(d) *an indication of whether or not the person applying for licensure is a guarantor.*

(4) (a) A license granted under this section remains in force until the end of the calendar year for which it is issued or until canceled by the licensee or by the department for cause. The department may collect a \$25 late penalty fee for a license renewal application received after January 1 of any year. A license is nontransferable, and license fees are nonrefundable.

(b) A license is not required for a distributor who distributes only pet food or specialty pet food.

(5) A person who manufactures for distribution or who distributes commercial feed in this state shall, upon written request by the department, submit the following information regarding products distributed in this state:

(a) a list of feed products;

(b) all labeling, promotional material, and claims for any feed product;

(c) analytical methods for ingredients claimed or listed on a label, if the methods are not available from AOAC international; and

(d) replicated data performed by a reputable investigator whose work is recognized as acceptable by the department, verifying any claims for effectiveness of a feed product.

(6) (a) A person may not manufacture for distribution or distribute in this state a pet food or specialty pet food that has not been registered under this section by the manufacturer or the guarantor. ~~The~~ *Except as provided in this subsection (6)(a), the* application for registration must be accompanied by a

nonrefundable fee of ~~\$25~~ \$50 for each pet food or specialty pet food. *The department may by rule adjust the registration fee to maintain adequate funding for the administration of this part. The fee may not be less than \$50 a year or more than \$60 a year.*

(b) The registration of pet food and specialty pet food is for a period of 1 year ~~commencing~~ *starting* January 1 and ending December 31 of each year.

(7) An applicant for registration of a pet food or specialty pet food shall file with the department the following information:

(a) the applicant's name and address; and

(b) a complete standard list of all products being registered.

(8) The department may refuse registration of a pet food or specialty pet food *that is* not in compliance with this chapter and may cancel any registration subsequently found *to not to* be in compliance with this chapter. A registration may not be refused or canceled unless the registrant has been given an opportunity to be heard before the department and to amend the application in order to comply with this chapter."

Section 3. Section 80-9-202, MCA, is amended to read:

"80-9-202. Labeling. (1) A commercial feed, except a customer formula feed, must be accompanied by a label containing:

(a) the quantity statement;

(b) the product name and any brand name under which the commercial feed is distributed;

(c) the guaranteed analysis stated in terms the department by rule determines are required to advise the user of the composition of the feed or to support claims made in the labeling. The substances or elements guaranteed must be determinable by laboratory methods such as the methods published by AOAC international.

(d) the common or usual name of each ingredient used in the manufacture of the commercial feed. The department by rule may permit the use of a collective term for a group of ingredients ~~which~~ *that* perform a similar function, or it may exempt commercial feeds or any group of them from this requirement of an ingredient statement if it finds that the statement is not required in the interest of consumers.

(e) the name and principal mailing address of the manufacturer, ~~or~~ the person responsible for distributing the commercial feed, *or the guarantor*;

(f) adequate directions for use for all commercial feeds containing drugs. The department may by rule require directions for the use of other commercial feeds when necessary for their safe and effective use.

(g) precautionary statements ~~which~~ *that* the department by rule determines are necessary for safe and effective use of the commercial feed.

(2) A customer formula feed must be accompanied by a label, invoice, delivery slip, or other shipping document containing:

(a) the name and address of the manufacturer *or guarantor*;

(b) the name and address of the purchaser;

(c) the date of delivery;

(d) the specific agreed to composition of the feed or a list of the ingredients, but not necessarily the percentage of each ingredient;

(e) adequate directions for use for all customer formula feed containing drugs. The department may by rule require directions for the use of other customer formula feeds when necessary for their safe and effective use.

(f) precautionary statements ~~which~~ *that* the department by rule determines are necessary for safe and effective use of the feeds;

(g) in cases when a drug-containing product is used in a customer formula feed:

(i) the purpose of the drug in the form of a claim statement; and

(ii) the established name of each active drug ingredient and the level of each drug used in the final mixture, expressed in accordance with the association of American feed control officials model feed regulations, as published in that organization's official publication and adopted by department rule."

Section 4. Section 80-9-206, MCA, is amended to read:

"80-9-206. Inspection fees — filing of annual statement. (1) An inspection fee must be paid on all commercial feeds, including customer formula feeds, except pet foods and specialty pet foods, distributed in this state as follows:

(a) The feed manufacturer has primary responsibility for paying inspection fees. However, the distributor is responsible for inspection fees if the manufacturer has not paid them.

(b) ~~The~~ *Except as provided in this subsection (1)(b),* the inspection fee is 18 cents a ton. Inspection fees must be paid on each commercial feed, including customer formula feeds and feed ingredients that are defined as commercial feeds even though they are used in the manufacture of other commercial feeds. However, premixes prepared and used within a feed plant or transferred from one plant to another within the same organization are exempt. *The department may by rule adjust the inspection fee to maintain adequate funding for the administration of this part. The fee may not be less than 18 cents a ton or more than 25 cents a ton.*

(c) A person producing a commercial feed with a feed mixing plant at a feed lot or a poultry, swine, or dairy operation may not be required to pay inspection fees on the commercial feeds produced and used in the feeding operation at the site, but is responsible for any unpaid inspection fees on commercial feed purchased by that person and on any commercial feed that person produces and distributes other than in that person's feeding operations at the site.

(2) Each person who holds a license as required in 80-9-201(1) shall:

(a) file, not later than January 31 of each year, an annual statement setting forth the number of tons of commercial feeds distributed in this state during the preceding calendar year ~~(January 1 through December 31)~~ and, upon filing the statement, shall pay the inspection fee. Inspection fees that have not been remitted to the department on or before January 31 have a penalty fee of 10% or a minimum of \$10, whichever is more, added to the amount due. The assessment of this penalty fee does not prevent the department from taking other action as provided in this chapter.

(b) keep those records that are necessary or are required by the department to indicate accurately the tonnage of commercial feed distributed in this state. The department may examine the records to verify statements of tonnage.

(c) make accurate and prompt reports as required. Failure to do so is sufficient cause for the department to cancel or refuse to reissue a license.”

Section 5. Section 80-9-301, MCA, is amended to read:

“80-9-301. Enforcement — inspection — notice — sampling and analysis. (1) To enforce this chapter, the department upon presenting appropriate credentials may enter, at reasonable times or under emergency conditions, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed, distributed, or held or enter any vehicle being used to transport or hold commercial feeds. The department may inspect at reasonable times and within reasonable limits and in reasonable manner any factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling found in a factory, warehouse, establishment, or vehicle. The inspection may include the verification of only those records and production and control procedures necessary to determine compliance with the good manufacturing practice rules adopted under 80-9-204(14).

(2) The department may enter premises to inspect, sample, and analyze noncommercial feeds and ingredients. The department shall provide at least 2 hours’ notice prior to the inspection and must be accompanied by the owner or the owner’s representative. However, the department’s authority is limited to determining whether the feeds and ingredients are adulterated for commercial feed purposes as provided in 80-9-204. The department may issue orders or condemn noncommercial feeds in the same manner as provided for commercial feeds in 80-9-302.

(3) Each inspection must be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle must be notified of the completion.

(4) If the officer or employee making the inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, the officer or employee shall give the owner, operator, or agent in charge a receipt describing the sample obtained.

(5) To enforce this chapter the department may enter upon any public or private premises, including any vehicle of transport, during regular business hours to obtain samples and examine records relating to distribution of commercial feeds.

(6) Sampling and analysis must be conducted in accordance with methods published by AOAC international or with other generally recognized methods.

(7) The results of all analyses of official samples must be forwarded by the department to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the department shall upon request within 30 days following receipt of the analysis furnish the registrant a portion of the official sample.

(8) The department, in determining for administrative purposes whether a commercial feed is deficient in any component, must be guided by the official

sample as defined in ~~80-9-101(15)~~ and obtained and analyzed as provided for in subsections (4) through (6) of this section.

(9) All official analyses must be performed cooperatively by the department and the agricultural experiment station at Montana state university-Bozeman. However, the department may arrange with other laboratories for specific analyses conducted as part of an official analysis.”

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

Approved March 18, 2005

CHAPTER NO. 38

[HB 300]

AN ACT REVISING THE INSURANCE PRODUCER AND CONSULTANT CONTINUING EDUCATION ACT TO INCLUDE ADJUSTERS; AND AMENDING SECTIONS 33-17-1201, 33-17-1202, 33-17-1203, 33-17-1204, AND 33-17-1205, MCA.

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

Section 1. Section 33-17-1201, MCA, is amended to read:

“33-17-1201. Short title. This part may be cited as the “Insurance Producer, *Adjuster*, and Consultant Continuing Education Act”.”

Section 2. Section 33-17-1202, MCA, is amended to read:

“33-17-1202. Purpose. The purposes of this part are to:

(1) protect insurance consumers and dedicated insurance producers, *adjusters*, and consultants by requiring continuing education for insurance producers, *adjusters*, and consultants;

(2) better educate insurance producers, *adjusters*, and consultants about changes in insurance law, products, ethical conduct as an insurance producer, *adjuster*, or consultant, marketing, and management; and

(3) provide standards for the qualification of instructors, courses, and materials.”

Section 3. Section 33-17-1203, MCA, is amended to read:

“33-17-1203. Continuing education — basic requirements — exceptions. (1) Unless exempt under subsection (4):

(a) a person licensed to act as an insurance producer, *adjuster*, or ~~as a~~ consultant other than a person licensed for limited lines credit insurance shall, during each 24-month period, complete at least 24 credit hours of approved continuing education;

(b) a person licensed to act as an insurance producer only for limited lines credit insurance shall, during each biennium, complete 5 credit hours of approved continuing education in the areas of insurance law, ethics, or limited lines credit insurance;

(c) a person licensed as an insurance producer, *adjuster*, or consultant shall, during each biennium, complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.

(2) If a person licensed as an insurance producer, *adjuster*, or consultant completes more credit hours of approved continuing education in a biennium than the minimum required in subsection (1), the excess credit hours may be carried forward and applied to the continuing education requirements of the next biennium.

(3) The commissioner may, for good cause, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completed.

(4) The minimum continuing education requirements do not apply to:

- (a) a person holding a temporary license issued under 33-17-216; or
- (b) an insurance producer, *adjuster*, or consultant otherwise exempted by the commissioner.”

Section 4. Section 33-17-1204, MCA, is amended to read:

“33-17-1204. Review and approval of continuing education courses by commissioner — advisory council. (1) The commissioner shall, after review by and at the recommendations of the advisory council established under subsection (2), approve only those continuing education courses, lectures, seminars, and instructional programs that the commissioner determines would improve the product knowledge, management, ethics, or marketing capability of the licensee. Course content, instructors, material, instructional format, and the sponsoring organization must be approved and periodically reviewed by the commissioner. The fee for approval of a course, lecture, seminar, or instructional program is listed in 33-2-708(2). The commissioner shall also determine the number of credit hours to be awarded for completion of an approved continuing education activity.

(2) The commissioner shall appoint an advisory council, pursuant to 2-15-122, consisting of at least one representative of the independent insurance agents of Montana, one representative of the Montana association of insurance and financial advisors, one representative of the professional insurance agents of Montana, *one representative of the Montana state adjusters association*, one title insurance producer, two public members who are not directly employed by the insurance industry, one insurance producer or consultant not affiliated with any of the three listed organizations, and a nonvoting presiding officer from the department who will be appointed by the commissioner as a representative of the department. The members of the council shall serve a term of 2 years, except that the initial term of the representative from each organization is 3 years. The commissioner shall consult with the council in formulating rules and standards for the approval of continuing education activities and prior to approving specific education activities. The provisions of 2-15-122(9) and (10) do not apply to this council.

(3) In conducting periodic review of course content, instructors, material, instructional format, or a sponsoring organization, the commissioner may exercise any investigative power of the commissioner provided for in 33-1-311 or 33-1-315.

(4) If after review or investigation the commissioner determines an approved continuing education activity is not being operated in compliance with the standards established under this section, the commissioner may revoke approval, place the activity under probationary approval, or issue a cease and desist order under 33-1-318.”

Section 5. Section 33-17-1205, MCA, is amended to read:

“33-17-1205. Compliance — failure to comply — rulemaking authority. (1) Each person subject to the requirements of 33-17-1203 shall file biennially in a format supplied by the commissioner certification as to the approved courses, lectures, seminars, and instructional programs successfully completed by that person during the preceding biennium.

(2) If a person fails to comply with this section, the person’s license lapses.

(3) In the continuing education affidavit, an insurance producer *or adjuster* shall report to the commissioner the final disposition of any administrative action or the final disposition of any criminal action taken against the insurance producer *or adjuster* in another jurisdiction or by another governmental agency in this state. As used in this subsection, “final disposition of any criminal action” means a plea agreement or sentence and judgment.

(4) Each person providing approved courses, lectures, seminars, and instructional programs, including insurance company education programs, shall file annually with the commissioner an alphabetical list of the names and addresses of all persons who have successfully completed an approved continuing education activity during the preceding calendar year.

(5) The commissioner may, following the process provided for in 33-1-314, withdraw approval of all courses, lectures, seminars, and instructional programs of any person that fails to comply with subsection (4). The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine upon a person that has failed to comply with subsection (4). The fine may not exceed the penalty permitted by 33-1-317.

(6) The commissioner may adopt rules establishing the requirements for biennial filing and reporting of continuing education credits.”

Approved March 18, 2005

CHAPTER NO. 39

[HB 381]

AN ACT REQUIRING THAT A WORKERS’ COMPENSATION CLAIMANT AND THE INSURER OR AN AUTHORIZED THIRD-PARTY EXAMINER ATTEND ANY SCHEDULED MEDIATION CONFERENCE IN PERSON OR PARTICIPATE BY TELEPHONE CONFERENCE CALL; AND AMENDING SECTIONS 39-71-2410 AND 39-71-2411, MCA.

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

Section 1. Section 39-71-2410, MCA, is amended to read:

“39-71-2410. Limitations on mediation proceedings. (1) Except as may be necessary for the workers’ compensation court to rule on issues arising under 39-71-2401(4)(c) or 39-71-2411(7)(e)(8)(c), mediation proceedings *are must be:*

- (a) held in private;
- (b) informal and held without a verbatim record; and
- (c) confidential.

(2) All communications, verbal or written, from the parties to the mediator and any information and evidence presented to the mediator during the proceeding are confidential.

(3) A mediator's files and records are closed to all *persons* but the parties.

(4) (a) A mediator may not be called to testify in any proceeding concerning the issues discussed in the mediation process.

(b) ~~Neither the~~ *The* mediator's report ~~nor~~ *and* any of the information or recommendations contained in ~~it~~ *the report* are *not* admissible as evidence in any action subsequently brought in any court of law.

(5) ~~Notwithstanding subsections (1) through (4),~~ *Subsections (1) through (4) do not prohibit a mediator may issue from issuing a report and the parties and the mediator may be required to attend a conference before the workers' compensation court as set forth in 39-71-2411."*

Section 2. Section 39-71-2411, MCA, is amended to read:

"39-71-2411. Mediation procedure. (1) Except as otherwise provided, a claimant or an insurer having a dispute relating to benefits under chapter 71 or 72 of this title may petition the department for mediation of the dispute.

(2) A party may take part in mediation proceedings with or without representation.

(3) The mediator shall review the department file for the case and may receive any additional documentation or argument either party submits.

(4) *The claimant and an employee of the insurer or an authorized third-party examiner with settlement authority shall attend any scheduled mediation conference in person or shall participate by telephone conference call.*

(4)(5) The mediator shall request that each party offer *an* argument summarizing the party's position. A party's argument must fully present the party's case. The argument is not limited by the rules of evidence.

(5)(6) After the parties have presented all their information and ~~argument~~ *arguments* to the mediator, the mediator shall recommend a solution to the parties within a reasonable time to be established by rule.

(6)(7) A party shall notify the mediator within 25 days of the mailing of the mediator's report *as to* whether the party accepts the mediator's recommendation. If either party does not accept the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute.

(7)(8) (a) If a mediator determines that either party failed to cooperate in the mediation process, the mediator shall prepare a written report setting forth the determination and the grounds for the determination. The report must be mailed to the parties and to the workers' compensation court. Unless a party disputes the determination as set forth in subsection ~~(7)(e)~~ (8)(c), the parties shall repeat the mediation process, but only one time.

(b) A mediator may determine that a party has failed to cooperate in the mediation process only if the party failed to:

(i) supply information or offer a summary of the party's position as reasonably requested by the mediator;

(ii) attend scheduled mediation conferences unless excused by the mediator;
or

(iii) listen to and review the information and position offered by the opposing party.

(c) If a party disputes a mediator's determination that the party failed to cooperate in the mediation process, the party may file a petition with the workers' compensation court. Upon receipt of a petition, the court shall summon the parties and the mediator to determine by oral discussion whether the mediator's determination of noncooperation is supportable. If the court finds that the mediator's determination is supportable, the court may order the parties to attempt a second time to mediate their dispute."

Approved March 18, 2005

CHAPTER NO. 40

[HB 14]

AN ACT BENEFITING MOUNTAIN GOATS BY ALLOWING THE ANNUAL ISSUANCE OF ONE MOUNTAIN GOAT LICENSE THROUGH A COMPETITIVE AUCTION OR LOTTERY; ALLOWING THE AUCTION OR LOTTERY TO BE CONDUCTED BY A WILDLIFE CONSERVATION ORGANIZATION AND ALLOWING THE RETENTION OF 10 PERCENT OF SALE PROCEEDS BY THE WILDLIFE CONSERVATION ORGANIZATION TO COVER EXPENSES; DEDICATING THE REMAINING AUCTION OR LOTTERY PROCEEDS TO THE BENEFIT OF MOUNTAIN GOATS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Auction or lottery of mountain goat license — rules. (1) The commission may issue one mountain goat 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 involved in the conservation of mountain goats may be authorized to conduct the license auction or lottery, in which case the authorized organization may retain up to 10% of the proceeds of the sale to cover reasonable auction or lottery expenses.

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

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 7, and the provisions of Title 87, chapter 2, part 7, apply to [section 1].

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

Approved March 24, 2005

CHAPTER NO. 41

[HB 20]

AN ACT REVISING THE PROCESS FOR DETERMINING THE ELIGIBILITY OF CHILDREN FOR ADMITTANCE TO THE MONTANA SCHOOL FOR THE DEAF AND BLIND; AMENDING SECTION 20-8-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-8-104, MCA, is amended to read:

“20-8-104. Eligibility of children for admittance. ~~Upon proper application for admittance, as prescribed by the rules of the board of public education, and either pursuant to an individualized educational plan developed jointly by a child’s local educational agency and the Montana school for the deaf and blind or by direct application by the child’s parents, hearing impaired or visually impaired children who are not more than 21 years of age residing within the state of Montana and nonresident children who are not more than 21 years of age may be admitted to the Montana school for the deaf and blind if the child’s local educational agency and the Montana school for the deaf and blind determine that the admittance constitutes the most appropriate educational placement for the child. In order to be eligible for services from the Montana school for the deaf and blind, a child may not yet have reached 22 years of age and must be identified as deaf, hearing impaired, or visually impaired pursuant to the Individuals With Disabilities Education Act, 20 U.S.C. 1414.”~~

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

Approved March 24, 2005

CHAPTER NO. 42

[HB 24]

AN ACT PROVIDING THAT A STATEMENT, AFFIRMATION, GESTURE, OR CONDUCT EXPRESSING APOLOGY, SYMPATHY, COMMISERATION, CONDOLENCE, COMPASSION, OR BENEVOLENCE RELATING TO THE PAIN, SUFFERING, OR DEATH OF A PERSON THAT IS MADE TO THE PERSON, THE PERSON’S FAMILY, OR A FRIEND OF THE PERSON OR OF THE PERSON’S FAMILY IS INADMISSIBLE FOR ANY PURPOSE IN A CIVIL ACTION FOR MEDICAL MALPRACTICE; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Statement of apology, sympathy, or benevolence — not admissible as evidence of admission of liability for medical malpractice. (1) A statement, affirmation, gesture, or conduct expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence relating to the pain, suffering, or death of a person that is made to the person, the person’s family, or a friend of the person or of the person’s family is not admissible for any purpose in a civil action for medical malpractice.

(2) As used in this section, the following definitions apply:

(a) “Apology” means a communication that expresses regret.

(b) “Benevolence” means a communication that conveys a sense of compassion or commiseration emanating from humane impulses.

(c) “Communication” means a statement, writing, or gesture.

(d) “Family” means the spouse, parent, spouse’s parent, grandparent, stepmother, stepfather, child, grandchild, sibling, half-sibling, or adopted children of a parent of an injured party.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 26, chapter 1, and the provisions of Title 26, chapter 1, apply to [section 1].

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective July 1, 2005.

Section 5. Applicability. [This act] applies to causes of action arising after [the effective date of this act].

Approved March 24, 2005

CHAPTER NO. 43

[HB 25]

AN ACT PROVIDING THAT FOR PURPOSES OF A MALPRACTICE CLAIM, A HEALTH CARE PROVIDER IS NOT LIABLE FOR AN ACT OR OMISSION BY A PERSON OR ENTITY THAT WAS NOT AN EMPLOYEE OR AGENT OF OR OTHERWISE UNDER THE CONTROL OF THE HEALTH CARE PROVIDER AT THE TIME THAT THE ACT OR OMISSION OCCURRED; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Health care provider's responsibility for others. For purposes of a malpractice claim, as defined in 27-6-103, a health care provider, as defined in 27-6-103, is not liable for an act or omission by a person or entity that was not an employee or agent of or otherwise under the control of the health care provider at the time that the act or omission occurred. This section does not absolve a health care provider from liability under 27-1-703.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 27, chapter 1, part 7, and the provisions of Title 27 apply to [section 1].

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective July 1, 2005.

Section 5. Applicability. [This act] applies to malpractice claims that arise after [the effective date of this act].

Approved March 24, 2005

CHAPTER NO. 44

[HB 26]

AN ACT PROVIDING THAT FOR PURPOSES OF A MEDICAL MALPRACTICE CLAIM, LIABILITY MAY NOT BE IMPOSED ON A HEALTH CARE PROVIDER UNDER CERTAIN CONDITIONS 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; AMENDING SECTION 28-10-103, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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 ~~his~~ *the principal's* agent ~~who~~ *when that person* is not really employed by ~~him~~ *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.”*

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, 2005.

Section 4. Applicability. [This act] applies to malpractice claims that arise after [the effective date of this act].

Approved March 24, 2005

CHAPTER NO. 45

[HB 39]

AN ACT ABOLISHING UNNECESSARY LIMITS ON THE OUT-OF-STATE PURCHASE OF RIFLES AND SHOTGUNS BY MONTANA RESIDENTS AND BY NONRESIDENTS IN MONTANA; AND REPEALING SECTIONS 45-8-341 AND 45-8-342, MCA.

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

Section 1. Repealer. Sections 45-8-341 and 45-8-342, MCA, are repealed.

Approved March 24, 2005

CHAPTER NO. 46

[HB 50]

AN ACT DIRECTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO AMEND THE STATE LIST OF ENDANGERED SPECIES TO

REMOVE ANY SPECIES OR SUBSPECIES ON THE LIST, WITHOUT LEGISLATIVE APPROVAL, IF THAT SPECIES OR SUBSPECIES IS REMOVED FROM THE FEDERAL LIST OF NATIVE ENDANGERED SPECIES; AMENDING SECTION 87-5-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-5-107, MCA, is amended to read:

“87-5-107. List of endangered species. (1) (a) On the basis of investigations on nongame wildlife provided for in 87-5-104 and other available scientific and commercial data and after consultation with other state wildlife agencies, appropriate federal agencies, and other interested persons and organizations ~~but not later than 1 year after July 1, 1973,~~ the department shall recommend to the legislature a list of those species and subspecies of wildlife indigenous to the state ~~which that~~ are determined to be endangered within this state, giving their common and scientific names by species and subspecies.

(b) The department may propose legislation to specifically include any species or subspecies of fish and wildlife appearing on the United States’ list of endangered native fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix D) as it appears on July 1, 1973, as well as any species or subspecies of fish and wildlife appearing on the United States’ list of endangered foreign fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix A), as ~~such that~~ list may be modified ~~hereafter~~.

(2) (a) ~~The department shall conduct a review of the state list of endangered species within not more than 2 years from its effective date and every 2 years thereafter. The department may propose specific legislation to amend the list by such additions or deletions as that are deemed considered appropriate and at such times as that are deemed considered appropriate.~~

(b) ~~Whenever a species or subspecies is removed from the United States’ list of endangered native fish and wildlife (part 17 of Title 50 of the Code of Federal Regulations, appendix D) and that species or subspecies is also on the state list of endangered species in ARM 12.5.201, the department shall amend the state list to remove that species or subspecies. The removal of a species or subspecies from the state list pursuant to this subsection (2)(b) does not require approval by the legislature.~~

(3) ~~Except as otherwise provided in this part, it shall be~~ is unlawful for any person to take, possess, transport, export, sell, or offer for sale and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on any of the following lists:

(a) the list of wildlife indigenous to the state determined to be endangered within the state pursuant to subsection (1);

(b) any species or subspecies of fish and wildlife included by the department and appearing on the United States’ list of endangered native fish and wildlife (part 17 of Title 50, Code of Federal Regulations, appendix D) as it appears on July 1, 1973; and the United States’ list of endangered foreign fish and wildlife (part 17 of Title 50, Code of Federal Regulations, appendix A), as ~~such that~~ list may be modified ~~hereafter~~.

(4) Any species or subspecies of *fish and* wildlife appearing on any of the ~~foregoing enumerated lists which enters~~ that is brought into the state from another state or from a point outside the territorial limits of the United States

and ~~which~~ *that* is transported across the state destined for a point beyond the state may ~~be so entered and be brought into the state and~~ transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(5) ~~In the event~~ *If* the United States' list of endangered native fish and wildlife is modified ~~subsequent to July 1, 1973,~~ by additions ~~or deletions,~~ *such the* modifications, whether or not involving species or subspecies indigenous to the state, may be accepted as binding under subsections (3) and (4) if, after the type of scientific determination described in subsection (1), the department proposes and the legislature accepts ~~such the~~ *the* modification for the state.”

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

Approved March 24, 2005

CHAPTER NO. 47

[HB 54]

AN ACT ALLOWING THE PAYMENT OF ALL TAXES ADMINISTERED BY THE DEPARTMENT OF REVENUE BY CREDIT CARD, DEBIT CARD, OR OTHER COMMERCIALY ACCEPTABLE MEANS; ALLOWING THE PAYMENT OF CERTAIN LICENSING FEES BY CREDIT CARD, DEBIT CARD, OR OTHER COMMERCIALY ACCEPTABLE MEANS; AND AMENDING SECTIONS 15-1-231 AND 30-16-301, MCA.

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

Section 1. Section 15-1-231, MCA, is amended to read:

“15-1-231. Payment of individual income taxes by credit card and other commercially acceptable means. (1) The department may accept payment *of any tax that it administers, including penalties, interest, and fees,* by credit card, debit card, or other commercially acceptable means ~~from a person making a payment to the department of individual income taxes, including penalties, interest, and fees.~~

(2) (a) If the payment is made by credit card, debit card, charge card, or similar method, the tax liability is not discharged and the person has not paid the tax until the department receives payment or credit from the financial institution or credit card company responsible for making the payment or credit and the payment or credit is not subsequently charged back to the state by the financial institution or credit card company. Upon receipt of the payment or credit, the amount is considered paid on the date on which the charge was made by the taxpayer, unless the payment or credit is subsequently charged back to the state by the financial institution or credit card company.

(b) Upon notice of nonpayment, the department may charge the person who attempted the payment of the tax a fee not to exceed the costs of processing the claim for payment of the tax. The amount of the fee must be added to the tax due and is collected in the same manner as the tax due.

(3) The taxpayer shall pay all fees required by a financial institution or credit card company for a payment made pursuant to this section.”

Section 2. Section 30-16-301, MCA, is amended to read:

“30-16-301. Business registration and licensing plan — administration. (1) The provisions of 16-11-120, 16-11-122, 30-12-203, 30-13-203, 30-13-206, 30-13-210, 30-13-217, 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 50-57-201 through 50-57-206, 50-57-208, 80-7-106, 81-9-201, 81-20-201, and 82-15-105 constitute a means of implementing a preliminary plan for streamlined registration and licensing procedures. Sections 16-11-120, 16-11-122, 30-12-203, 30-13-203, 30-13-206, 30-13-210, 30-13-217, 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 50-57-201 through 50-57-206, 50-57-208, 80-7-106, 81-9-201, 81-20-201, and 82-15-105 provide that certain licenses selected by the board of review must allow for:

(a) an anniversary date for license renewal that is set by the board of review;

(b) an electronic means of verifying the information required in the license application; and

(c) ~~credit card discounts in relation to~~ *payment of fees required for licensure by credit card, debit card, or other commercially acceptable means as provided in 15-1-231.*

(2) The department shall designate an employee in charge of administering the plan whose duties include those of executive secretary of the board of review.”

Approved March 24, 2005

CHAPTER NO. 48

[HB 56]

AN ACT MAKING PERMANENT THE FISHING ACCESS ENHANCEMENT PROGRAM, WHICH PROVIDES INCENTIVES TO LANDOWNERS WHO GRANT ACCESS TO OR ACROSS PRIVATE LAND FOR PUBLIC FISHING, BY REPEALING THE PROGRAM TERMINATION DATE; PROVIDING FOR BIENNIAL REPORTS REGARDING PROGRAM SUCCESS AND RECOMMENDATIONS BY THE REVIEW COMMITTEE; AMENDING SECTION 87-1-269, MCA; AND REPEALING SECTION 6, CHAPTER 196, LAWS OF 2001.

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

Section 1. Section 87-1-269, MCA, is amended to read:

“87-1-269. (Temporary) Report required — review committee. (1)

The governor shall appoint a committee of persons interested in issues related to hunters, anglers, landowners, and outfitters, including but not limited to the hunting access enhancement program, the fishing access enhancement program, landowner-hunter relations, outfitting industry issues, and other issues related to private lands and public wildlife. The committee must have broad representation of landowners, outfitters, and sportspeople. The department may provide administrative assistance as necessary to assist the review committee.

(2) (a) The review committee shall report to the governor and to ~~the 58th~~ *each* legislature regarding the success of various elements of the hunting access enhancement program, including a report of annual landowner participation, the number of acres annually enrolled in the program, hunter harvest success

on enrolled lands, the number of qualified applicants who were denied enrollment because of a shortfall in funding, and an accounting of program expenditures, and make suggestions for funding, modification, or improvement needed to achieve the objectives of the program.

(b) The review committee shall report to the governor and to ~~the 58th~~ *each* legislature regarding the success of the fishing access enhancement program and make suggestions for funding, modification, or improvement needed to achieve the objectives of the program.

(3) The director may appoint additional advisory committees that are considered necessary to assist in the implementation of the hunting access enhancement program and the fishing access enhancement program and to advise the commission regarding the development of rules implementing the hunting access enhancement program and the fishing access enhancement program. (~~Terminates March 1, 2006—sec. 6, Ch. 544, L. 1999; sec. 6, Ch. 196, L. 2001.~~)”

Section 2. Repealer. Section 6, Chapter 196, Laws of 2001, is repealed.

Section 3. Coordination instruction. If Senate Bill No. 77 is not passed and approved, then:

- (1) [section 1 of this act] is void;
- (2) 87-1-269 is repealed; and
- (3) 37-47-201 is amended to read:

“37-47-201. Powers and duties of board relating to outfitters, guides, and professional guides. The board shall:

(1) prepare and publish an information pamphlet that contains the names and addresses of all licensed outfitters. This pamphlet must be available for free distribution as early as possible during each calendar year but not later than the second Friday in March. The pamphlet must contain the names and addresses of only those outfitters who have a valid license for the current license year.

(2) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(3) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

(4) establish outfitter standards, guide standards, and professional guide standards;

(5) adopt:

(a) rules of procedure;

(b) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications for licensure as an outfitter, guide, or professional guide. Qualifications for outfitters must include training, testing, experience in activities similar to the service to be provided, knowledge of rules of governmental bodies pertaining to outfitting and condition and type of gear and equipment, and the filing of an operations plan.

(c) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public health, safety, and welfare, including evidence of qualification and licensure under this chapter for any person practicing or offering to practice as an outfitter, guide, or professional guide;

(d) rules specifying standards for review and approval of proposed new operations plans involving hunting use or the proposed expansion of net client hunter use, as set forth in 37-47-316 and 37-47-317, under an outfitter's existing operations plan. Approval is not required when part or all of an existing operations plan is transferred from one licensed outfitter to another licensed outfitter. Rules adopted pursuant to this section must provide for solicitation and consideration of comments from hunters and sportspersons in the area to be affected by the proposal who do not make use of outfitter services.

(e) rules establishing outfitter reporting requirements. The reports must be filed annually and report actual leased acreage actively used by clients during that year and actual leased acres unused by clients during that year, plus any other information designated by the board and developed in collaboration with the department of fish, wildlife, and parks ~~or the review committee established in 87-1-269 that is considered necessary to evaluate the effectiveness of the hunter management and hunting access management programs.~~

(6) hold hearings and proceedings to suspend or revoke licenses of outfitters, guides, and professional guides for due cause;

(7) maintain records of actual clients served by all Montana outfitters that fulfill the requirements of subsection (5)(e)."

Approved March 24, 2005

CHAPTER NO. 49

[HB 64]

AN ACT PROVIDING FOR QUALIFICATIONS FOR MEDICAL MALPRACTICE EXPERT WITNESSES; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Medical malpractice expert witness qualifications. (1) A person may not testify as an expert witness on issues relating to negligence and standards of care and practice in an action on a malpractice claim, as defined in 27-6-103, for or against a health care provider, as defined in 27-6-103, unless the person:

(a) is licensed as a health care provider in at least one state and routinely treats or has routinely treated within the previous 5 years the diagnosis or condition or provides the type of treatment that is the subject matter of the malpractice claim or is or was within the previous 5 years an instructor of students in an accredited health professional school or accredited residency or clinical research program relating to the diagnosis or condition or the type of treatment that is the subject matter of the malpractice claim; and

(b) shows by competent evidence that, as a result of education, training, knowledge, and experience in the evaluation, diagnosis, or treatment of the disease or injury that is the subject matter of the malpractice claim against the health care provider, the person is thoroughly familiar with the standards of care and practice as they related to the act or omission that is the subject matter of the malpractice claim on the date of the incident upon which the malpractice claim is based.

(2) If the malpractice claim involves treatment that is recommended or provided by a physician as defined in 37-3-102, a person may not testify as an expert witness with respect to issues of negligence or standards of care and practice concerning the treatment unless the person is also a physician.

(3) A person qualified as an expert in one medical specialty or subspecialty is not qualified to testify with respect to a malpractice claim against a health care provider in another medical specialty or subspecialty unless there is a showing that the standards of care and practice in the two specialty or subspecialty fields are substantially similar. This subsection (3) does not apply if the subject matter of the malpractice claim against the health care provider is unrelated to the relevant specialty or subspecialty.

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, 2005.

Section 4. Applicability. [This act] applies to causes of action that arise after [the effective date of this act].

Approved March 24, 2005

CHAPTER NO. 50

[HB 79]

AN ACT MAKING PERMANENT THE HABITAT ACQUISITION PROGRAM THAT AUTHORIZES THE FISH, WILDLIFE, AND PARKS COMMISSION TO SECURE, DEVELOP, AND MAINTAIN WILDLIFE HABITAT; ENSURING THAT PROGRAM FUNDING SOURCES ARE MAINTAINED, INCLUDING SPECIAL LICENSE FEES THAT ARE DEDICATED TO THE PROGRAM; REPEALING SECTION 12, CHAPTER 598, LAWS OF 1987, SECTION 3, CHAPTER 319, LAWS OF 1991, AND SECTIONS 1 AND 2, CHAPTER 241, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Repealer. Section 12, Chapter 598, Laws of 1987, section 3, Chapter 319, Laws of 1991, and sections 1 and 2, Chapter 241, Laws of 1993, are repealed.

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

Approved March 24, 2005

CHAPTER NO. 51

[HB 81]

AN ACT REPEALING THE TERMINATION DATE FOR SUPPLEMENTAL GAME DAMAGE LICENSES; REPEALING SECTION 4, CHAPTER 590, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Repealer. Section 4, Chapter 590, Laws of 2001, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.
Approved March 24, 2005

CHAPTER NO. 52

[HB 82]

AN ACT REPEALING THE TERMINATION DATE FOR EITHER-SEX OR ANTLERLESS ELK PERMITS FOR LANDOWNERS WHO OFFER FREE PUBLIC ELK HUNTING; REPEALING SECTION 4, CHAPTER 519, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Repealer. Section 4, Chapter 519, Laws of 2001, is repealed.

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

Approved March 24, 2005

CHAPTER NO. 53

[HB 86]

AN ACT SIMPLIFYING THE APPORTIONMENT OF TAYLOR GRAZING ACT MONEY TO COUNTIES; AMENDING SECTION 17-3-222, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 17-3-222, MCA, is amended to read:

“17-3-222. Apportionment of money to counties. (1) ~~It is the duty of the~~ *The state treasurer to properly shall apportion and allocate the money received under 17-3-221 to the county treasurers, who shall appropriate counties and then allocate the money due each county as follows:*

(a) 50% to the *county treasurer for deposit in the* county general fund; and
(b) 50% to the state general fund to be used for the elementary BASE funding programs of the school districts in the county.

(2) The payments from the state to the county treasurers provided for in subsection (1) are statutorily appropriated as provided in 17-7-502.”

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved March 24, 2005

CHAPTER NO. 54

[HB 97]

AN ACT PROVIDING THAT A CONVICTION FOR NEGLIGENT HOMICIDE WHILE OPERATING A VEHICLE WHEN UNDER THE INFLUENCE OR FOR NEGLIGENT VEHICULAR ASSAULT IS A PRIOR CONVICTION FOR PURPOSES OF THE PENALTY IMPOSED UPON A PERSON WHO IS CONVICTED OF DRIVING UNDER THE INFLUENCE OR WITH AN

EXCESSIVE ALCOHOL CONTENT AND WHO HAS THREE OR MORE PRIOR CONVICTIONS FOR CERTAIN OFFENSES; INCREASING THE PENALTY FOR A FIFTH OR SUBSEQUENT CONVICTION OF DRIVING UNDER THE INFLUENCE OR WITH AN EXCESSIVE ALCOHOL CONTENT; AND AMENDING SECTIONS 61-8-731 AND 61-8-734, MCA.

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

Section 1. Section 61-8-731, MCA, is amended to read:

“61-8-731. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — penalty for fourth or subsequent offense. (1) ~~On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for~~ *Except as provided in subsection (3), if a person is convicted of a violation of 61-8-401 or 61-8-406 and the person has any combination of three or more prior convictions under 45-5-104, 45-5-205, 61-8-401, or 61-8-406 and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), the person is guilty of a felony and shall be punished by:*

(a) sentencing the person to the department of corrections for placement in an appropriate correctional facility or program for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.

(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women’s prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and

(c) a fine in an amount of not less than \$1,000 or more than \$10,000.

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

(3) If a person is convicted of a violation of 61-8-401 or 61-8-406, the person has any combination of four or more prior convictions under 45-5-104, 45-5-205, 61-8-401, or 61-8-406 and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in 61-8-401(1), and the person was, upon a prior conviction, placed in a residential alcohol treatment program under subsection (2), whether or not the person successfully completed the program, the person shall be sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or be fined an amount of not less than \$1,000 or more than \$10,000, or both.

~~(3)~~(4) The court shall, as a condition of probation, order:

(a) that the person abide by the standard conditions of probation promulgated by the department of corrections;

(b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section;

(c) that the person may not frequent an establishment where alcoholic beverages are served;

(d) that the person may not consume alcoholic beverages;

(e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;

(f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(g) that the person submit to random or routine drug and alcohol testing; and

(h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system.

~~(4)~~(5) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

(a) payment of a fine as provided in 46-18-231;

(b) payment of costs as provided in 46-18-232 and 46-18-233;

(c) payment of costs of court-appointed counsel as provided in 46-8-113;

(d) community service;

(e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or

(f) any combination of the restrictions or conditions listed in subsections ~~(4)(a)~~ (5)(a) through ~~(4)(e)~~ (5)(e).

~~(5)~~(6) Following initial placement of a defendant in a treatment facility under subsection (2), the department of corrections may, at its discretion, place the offender in another facility or program.

~~(6)~~(7) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to persons sentenced under this section."

Section 2. Section 61-8-734, MCA, is amended to read:

"61-8-734. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — conviction defined — place of imprisonment — home arrest — exceptions — deferral of sentence not allowed. (1) (a) For the purpose of determining the number of convictions ~~under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406 for prior offenses referred to in 61-8-714, 61-8-722, or 61-8-731~~, "conviction" means a final conviction, as defined in 45-2-101, in this state; conviction for a violation of a similar statute or regulation in another state; or *on* a federally recognized Indian reservation; or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state, *in* another state, or *on* a federally recognized Indian reservation, which forfeiture has not been vacated.

(b) 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, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes.

(c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or 61-8-406.

(2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under 61-8-714, ~~or~~ 61-8-722, *or* 61-8-731 be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(3) Subject to the limitations set forth in 61-8-714 and 61-8-722 concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under either section be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

(4) A court may not defer imposition of sentence under 61-8-714, 61-8-722, or 61-8-731.

(5) The provisions of 61-2-107, 61-2-302, 61-5-205(2), and 61-5-208(2), relating to suspension of driver's licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406."

Approved March 24, 2005

CHAPTER NO. 55

[HB 110]

AN ACT CREATING AN IDENTITY THEFT PASSPORT PROGRAM.

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

Section 1. Identity theft passport — application — issuance. (1) The attorney general, in cooperation with any law enforcement agency, may issue an identity theft passport to a person who is a victim of identity theft in this state and who has filed a police report citing that the person is a victim of a violation of 45-6-332. A victim who has filed a report of identity theft with a law enforcement agency may apply for an identity theft passport through any law enforcement agency. The agency shall send a copy of the police report and the application to the attorney general. The attorney general shall process the application and supporting report and may issue the victim an identity theft passport in the form of a card or certificate.

(2) (a) A victim of identity theft may present the victim's identity theft passport issued under subsection (1) to any of the following:

(i) a law enforcement agency to help prevent the victim's arrest or detention for an offense committed by someone other than the victim who is using the victim's identity;

(ii) any of the victim's creditors to aid in the creditors' investigation and establishment of whether fraudulent charges were made against accounts in the victim's name or whether accounts were opened using the victim's identity; or

(iii) a consumer reporting agency, as defined in 31-3-102, which shall accept the passport as the direct conveyance of a dispute under 31-3-124 and shall

include notice of the dispute in all future reports that contain disputed information caused by identity theft.

(b) Acceptance of the identity theft passport presented by the victim to a law enforcement agency or creditor pursuant to subsection (2)(a) is at the discretion of the law enforcement agency or creditor. A law enforcement agency or creditor may consider the surrounding circumstances and available information regarding the offense of identity theft pertaining to the victim.

(3) An application made with the attorney general pursuant to subsection (1), including any supporting documentation, is confidential criminal justice information, as defined in 44-5-103, and must be disseminated accordingly.

(4) The attorney general shall adopt rules to implement this section. The rules must include a procedure by which the attorney general is assured that an identity theft passport applicant has an identity theft claim that is legitimate and adequately substantiated.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 24, part 2, and the provisions of Title 46, chapter 24, part 2, apply to [section 1].

Approved March 24, 2005

CHAPTER NO. 56

[HB 112]

AN ACT AUTHORIZING AND ENCOURAGING STATE AGENCIES TO ALLOW A STATE EMPLOYEE TO WORK FROM HOME OR AN ALTERNATIVE WORK SITE INSTEAD OF A CENTRAL WORKPLACE; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ADOPT POLICIES; AMENDING SECTION 2-18-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Telework authorized and encouraged. (1) An agency may authorize telework for specified employees when it is in the state's best interest as determined and documented by the agency.

(2) The department shall adopt policies to encourage agencies to authorize telework and to provide for the uniform implementation of this section by agencies.

Section 2. Section 2-18-101, MCA, is amended to read:

"2-18-101. Definitions. As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) "Anniversary date", except as modified in part 3 of this chapter, means the month and day on which an employee began the most recent period of uninterrupted state service.

(3) "Base salary" means the amount of compensation paid to an employee, excluding:

(a) state contributions to group benefits provided in 2-18-703;

- (b) overtime;
 - (c) fringe benefits as defined in 39-2-903; and
 - (d) the longevity allowance provided in 2-18-304.
- (4) "Board" means the board of personnel appeals established in 2-15-1705.
- (5) "Class" means one or more positions substantially similar with respect to the kind or nature of duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may be used to designate each position allocated to the class, similar qualifications may be required of persons appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.
- (6) "Class series benchmark" means a representative position within a class series that is used to illustrate the application of the job evaluation factors that are used to classify positions in the classification plan. A benchmark description describes the duties and responsibilities assigned and the factors applied to the class series benchmark.
- (7) "Class specification" means a written descriptive statement of the duties and responsibilities characteristic of a class of positions and includes the education, experience, knowledge, skills, abilities, and qualifications necessary to perform the work of the class.
- (8) "Compensation" means the annual or hourly wage or salary and includes the state contribution to group benefits under the provisions of 2-18-703.
- (9) "Competencies" means sets of measurable and observable knowledge, skills, abilities, and behaviors that contribute to success in a job.
- (10) "Department" means the department of administration created in 2-15-1001.
- (11) Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 or 2-18-104 from the statewide classification system.
- (12) "Entry salary" means the entry-level base salary for each grade provided in 2-18-312.
- (13) "Grade" means the number assigned to a pay range within a pay schedule in part 3 of this chapter.
- (14) "Job sharing" means the sharing by two or more persons of a position.
- (15) "Market ratio" means an employee's base salary divided by the market salary for the employee's pay grade.
- (16) "Market salary" means the midpoint in a pay grade provided in 2-18-312, based on the average base salary that other employers pay to employees in comparable occupations as determined by the department's salary survey of the relevant labor market.
- (17) "Permanent employee" means an employee who is designated by an agency as permanent and who has attained or is eligible to attain permanent status.
- (18) "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period.
- (19) "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

(20) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

(21) "Program" means a combination of planned efforts to provide a service.

(22) "Seasonal employee" means a permanent employee who is designated by an agency as seasonal, who performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits accrued during the preceding season.

(23) "Short-term worker" means a person who:

(a) is hired by an agency for an hourly wage established by the agency;

(b) may not work for the agency for more than 90 days in a continuous 12-month period;

(c) is not eligible for permanent status;

(d) may not be hired into another position by the agency without a competitive selection process; and

(e) is not eligible to earn the leave and holiday benefits provided in part 6 or the group insurance benefits provided in part 7.

(24) "Telework" means a flexible work arrangement where a designated employee may work from home within the state of Montana or an alternative work site within the state of Montana one or more days a week instead of physically traveling to a central workplace.

(24)(25) "Temporary employee" means an employee who:

(a) is designated as temporary by an agency for a definite period of time not to exceed 12 months;

(b) performs temporary duties or permanent duties on a temporary basis;

(c) is not eligible for permanent status;

(d) is terminated at the end of the employment period; and

(e) is not eligible to become a permanent employee without a competitive selection process."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 18, part 1, and the provisions of Title 2, chapter 18, part 1, apply to [section 1].

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

Approved March 24, 2005

CHAPTER NO. 57

[HB 114]

AN ACT EXTENDING THE TIME FOR APPLYING FOR A HISTORIC RIGHT-OF-WAY ON STATE LAND; AMENDING SECTION 77-1-130, MCA, SECTION 5, CHAPTER 461, LAWS OF 1997, AND SECTION 6, CHAPTER 270, LAWS OF 2001; AND PROVIDING A TERMINATION DATE.

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

Section 1. Section 77-1-130, MCA, is amended to read:

“77-1-130. (Temporary) Recognition of historic right-of-way — criteria for right-of-way deed — conditions — fees. (1) A person or a county may apply to the department for a historic right-of-way deed to provide access to the applicant’s private property, to provide continuation of a county road, or to provide for authorization of existing utilities by filing an application with the department by October 1, ~~2006~~ 2011, on a form prescribed by the department. An application must be accompanied by:

(a) an application fee of \$50;

(b) a notarized affidavit:

(i) demonstrating that the applicant or the applicant’s predecessor in interest used the right-of-way applied for before 1997 and that the use has continued to the present;

(ii) describing the purpose for which the right-of-way was used before 1997; and

(iii) demonstrating that the historic right-of-way applied for is the right-of-way demonstrated in the evidence provided in subsection (1)(c); and

(c) (i) aerial photographs taken by an agency of the United States demonstrating use of the right-of-way applied for; or

(ii) other evidence of the use of the right-of-way applied for.

(2) The department shall review an application and other evidence submitted pursuant to subsection (1) and shall issue a historic right-of-way deed in the name of the applicant if:

(a) the applicant pays the application fee provided in subsection (1)(a) and the fair market value of the historic right-of-way as provided in subsection (4);

(b) the applicant has shown by substantial evidence the matters required in subsections (1)(b) and (1)(c)(i) or (1)(c)(ii);

(c) the department has, if necessary, made a field inspection of the right-of-way applied for; and

(d) the deed is approved by the board.

(3) A historic right-of-way deed issued in the name of the applicant must contain the description of the property of the applicant to which it is appurtenant as provided in the application, and the right-of-way must thereafter be considered appurtenant to that dominant estate. A deed may be assigned by the applicant to the applicant’s successor in interest with the approval of the department. The department may not withhold approval for any reason other than that the use of the historic right-of-way is contrary to subsection (5).

(4) (a) At the time of issuing the historic right-of-way deed, the department shall collect from the applicant the full market value of the acreage of the historic right-of-way.

(b) The amount collected pursuant to subsection (4)(a) must be deposited in the appropriate trust fund established for receipt of income from the land over which a historic right-of-way is granted.

(5) If application is made in accordance with this section, a historic right-of-way deed must be issued by the department, subject to the approval of the board, on the following terms:

(a) the right-of-way is only for the minimum width necessary, as negotiated by the department and the applicant; and

(b) the right-of-way is only for the physical condition of the road or utility facilities existing on the date the historic right-of-way deed is issued by the department.

(6) Issuance of a historic right-of-way deed pursuant to this section is exempt from the requirements of Title 22, chapter 3, part 4, and Title 75, chapter 1, parts 1 and 2.

(7) The survey requirements of 77-2-102 may be waived by the department for the issuance of a historic right-of-way deed if the department determines that there is sufficient information available to define the boundaries of the right-of-way for the purposes of recording the easement.

(8) The department may attach conditions to a historic right-of-way deed necessary to ensure compliance with this chapter.

(9) For the purposes of this section, "historic right-of-way deed" means a document issued by the department granting to the applicant a nonexclusive easement over state land. (Terminates October 1, ~~2011~~ 2016 ~~sec. 6, Ch. 270, L. 2001.~~)

Section 2. Section 5, Chapter 461, Laws of 1997, is amended to read:

"Section 5. Termination. [This act] terminates October 1, ~~2003~~ 2016."

Section 3. Section 6, Chapter 270, Laws of 2001, is amended to read:

"Section 6. Section 5, Chapter 461, Laws of 1997, is amended to read:

"Section 5. Termination. [This act] terminates October 1, ~~2003~~ ~~2011~~ 2016."

Section 4. Termination. [Section 1] terminates October 1, 2016.

Approved March 24, 2005

CHAPTER NO. 58

[HB 116]

AN ACT REQUIRING THAT SIGNIFICANT CHANGES IN OPERATING BUDGETS AND THAT SIGNIFICANT PROGRAM TRANSFERS BE REPORTED TO THE APPROPRIATE INTERIM COMMITTEE; AMENDING SECTIONS 17-7-138 AND 17-7-139, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 17-7-138, MCA, is amended to read:

"17-7-138. Operating budget. (1) (a) Expenditures by a state agency must be made in substantial compliance with the budget approved by the legislature. Substantial compliance may be determined by conformity to the conditions contained in the general appropriations act and to legislative intent as established in the narrative accompanying the general appropriations act. *An explanation of any significant change in agency or program scope must be submitted on a regular basis to the interim committee that has program evaluation and monitoring functions for the agency pursuant to Title 5, chapter 5, part 2.* An explanation of any significant change in agency or program scope,

objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. A significant change may not conflict with a condition contained in the general appropriations act. If the approving authority certifies that a change is time-sensitive, the approving authority may approve the change prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee. Except as provided in subsection (2), the expenditure of money appropriated in the general appropriations act is contingent upon approval of an operating budget by August 1 of each fiscal year. An approved original operating budget must comply with state law and conditions contained in the general appropriations act.

(b) For the purposes of this subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:

(i) the operating budget change exceeds \$1 million; or

(ii) the operating budget change exceeds 25% of a budget category and the change is greater than \$25,000. If there have been other changes to the budget category in the current fiscal year, all the changes, including the change under consideration, must be used in determining the 25% and \$25,000 threshold.

(2) The expenditure of money appropriated in the general appropriations act to the board of regents, on behalf of the university system units, as defined in 17-7-102, is contingent upon approval of a comprehensive operating budget by October 1 of each fiscal year. The operating budget must contain detailed revenue and expenditures and anticipated fund balances of current funds, loan funds, endowment funds, and plant funds. After the board of regents approves operating budgets, transfers between units may be made only with the approval of the board of regents. Transfers and related justification must be submitted to the office of budget and program planning and to the legislative fiscal analyst.

(3) The operating budget for money appropriated by the general appropriations act must be separate from the operating budget for money appropriated by another law except a law appropriating money for the state pay plan or any portion of the state pay plan. The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation. Each operating budget must include expenditures for each agency program, detailed at least by first-level categories as provided in 17-1-102(3). Each agency shall record its operating budget for all funds, other than higher education funds, and any approved changes on the statewide budget and accounting state financial system. Documents implementing approved changes must be signed. The operating budget for higher education funds must be recorded on the university financial system, with separate accounting categories for each source or use of state government funds. State sources and university sources of funds may be combined for the general operating portion of the current unrestricted funds.”

Section 2. Section 17-7-139, MCA, is amended to read:

“17-7-139. Program transfers. (1) Unless prohibited by law or a condition contained in the general appropriations act, the approving authority may approve agency requests to transfer appropriations between programs within each fund type within each fiscal year. The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation. *An explanation of any significant transfer must be submitted on a regular basis to the interim committee that has program evaluation and monitoring functions for the agency pursuant to Title 5, chapter 5, part 2.* An explanation of any transfer that involves a significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. If the approving authority certifies that a request for a transfer representing a significant change in agency or program scope, objectives, activities, or expenditures is time-sensitive, the approving authority may approve the transfer prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee. All program transfers must be completed within the same fund from which the transfer originated. A request for a transfer accompanied by a justification explaining the reason for the transfer must be submitted by the requesting agency to the approving authority and the office of budget and program planning. Upon approval of the transfer in writing, the approving authority shall inform the legislative fiscal analyst of the approved transfer and the justification for the transfer. If money appropriated for a fiscal year is transferred to another fiscal year, the money may not be retransferred, except that money remaining from projected costs for spring fires estimated in the last quarter of the first year of a biennium may be retransferred.

(2) For the purposes of subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:

(a) the budget transfer exceeds \$1 million; or

(b) the budget transfer exceeds 25% of a program’s total operating plan and the transfer is greater than \$25,000. If there have been other transfers to or from the program in the current fiscal year, all the transfers, including the transfer under consideration, must be used in determining the 25% and \$25,000 threshold.”

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved March 24, 2005

CHAPTER NO. 59

[HB 131]

AN ACT CLARIFYING THE LANGUAGE AND PENALTIES REGARDING THE UNLAWFUL POSSESSION, SHIPPING, TRANSPORTATION, SALE, PURCHASE, OR EXCHANGE OF GAME FISH, BIRDS, GAME ANIMALS,

AND FUR-BEARING ANIMALS; AMENDING SECTIONS 87-1-102, 87-3-111, 87-3-112, 87-3-115, 87-3-117, AND 87-3-118, MCA; AND REPEALING SECTION 87-3-113, MCA.

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

Section 1. Section 87-1-102, MCA, is amended to read:

“87-1-102. Penalties — violation of state law. (1) A person who purposely, knowingly, or negligently violates a provision of this title or any other state law pertaining to fish and game is guilty of a misdemeanor, except if a felony is expressly provided by law, and shall be fined an amount not less than \$50 or more than \$1,000 or imprisoned in the county detention center for not more than 6 months, or both, unless a different punishment is expressly provided by law for the violation. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of that person’s license and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period set by the court. If the court imposes forfeiture of the person’s license and privilege to hunt, fish, or trap or to use state lands, the department shall notify the person of the loss of privileges as imposed by the court. The person shall surrender all licenses, as ordered by the court, to the department within 10 days.

(2) (a) ~~Except as provided in subsection (2)(f), a~~ A person convicted of unlawfully taking, killing, possessing, or transporting a bighorn sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals shall be fined an amount not less than \$500 or more than \$2,000 or imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(b) ~~Except as provided in subsection (2)(f), a~~ A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, or mountain lion or any part of these animals shall be fined an amount not less than \$300 or more than \$1,000 or imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(c) A person convicted of unlawfully attempting to trap or hunt a game animal shall be fined an amount not less than \$200 or more than \$600 or imprisoned in the county detention center for not more than 60 days, or both.

(d) A person convicted of purposely, knowingly, or negligently taking, killing, trapping, possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined an amount not less than \$100 or more than \$1,000, imprisoned in the county detention center for not more than 6 months, or both.

In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current license 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, and any pelts possessed unlawfully must be confiscated. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(e) A person convicted of hunting, fishing, or trapping while that person's license is forfeited or a privilege is denied shall be imprisoned in the county detention center for not less than 5 days or more than 6 months. In addition, that person may be fined an amount not less than \$500 or more than \$2,000.

~~(f) A person convicted of purposely or knowingly taking, killing, possessing, or transporting a trophy animal as described in 87-1-115 or any part of those animals shall be fined an amount not less than \$500 or more than \$3,000 or imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 5 years from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.~~

(3) If a person is convicted of illegally taking an animal described in 87-1-111 or 87-1-115 through the use of spotlights, nightscopes, or infrared scopes, the person is prohibited from fishing or hunting in the state for an additional 5 years following the ending date of the original prohibition period. In addition, the person, upon conviction or forfeiture of bond or bail, shall successfully complete, at the person's own expense, a department-sponsored hunter education course.

(4) A person convicted or who has forfeited bond or bail under this section and whose license privileges are forfeited may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or permit during the period when license privileges have been forfeited. A person convicted of unlawfully purchasing, acquiring, obtaining, possessing, or applying for a hunting, fishing, or trapping license during the period when license privileges have been forfeited shall be fined an amount not less than \$500 or more than \$2,000, imprisoned in the county jail for not more than 60 days, or both.

(5) A person convicted or who has forfeited bond or bail under this section and who has been ordered to pay restitution under the provisions of 87-1-111 or 87-1-115 may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later. If the violation involved the unlawful taking of a moose, a bighorn sheep, or a mountain goat, the person may not apply for a special license or enter a drawing for a special license or permit for the same species of game animal that was unlawfully taken for an additional period of 5 years following the ending date of the first 5-year period. A person convicted of unlawfully applying for any special license under Title 87, chapter 2, part 7, or unlawfully entering a drawing for a special license or permit shall be fined an amount not less than \$500 or more than \$2,000, imprisoned in the county detention center for not more than 60 days, or both.

(6) (a) A person convicted of a second offense of any of the following offenses within 10 years of the first conviction or who is convicted of two or more of the following offenses at different times within a 10-year period is subject to the penalties provided in subsection (6)(b):

- (i) hunting during a closed season;
- (ii) spotlighting;
- (iii) hunting without a license;
- (iv) unlawful taking of more than double the legal bag limit;
- (v) unlawful possession of more than double the legal bag limit; and
- (vi) waste of game by abandonment in the field.

(b) (i) A person convicted of the offenses in subsection (6)(a) in the time periods specified in subsection (6)(a) shall be fined an amount not less than \$2,000 or more than \$5,000 or be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit all current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for 60 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period.

(ii) The department shall notify the offender of the loss of privileges.

(iii) The offender shall surrender all hunting, fishing, and trapping licenses to the department within 10 days after having received notice from the department that privileges have been revoked.

(7) (a) A person convicted of a third offense of any of the following offenses within 10 years of the first conviction is subject to the penalties provided in subsection (7)(b):

- (i) hunting during a closed season;
- (ii) spotlighting;
- (iii) hunting without a license; and
- (iv) unlawful taking of more than double the legal bag limit.

(b) (i) A person convicted of the offenses in subsection (7)(a) in the time period specified in subsection (7)(a) shall be fined an amount not less than \$5,000 or more than \$10,000 or be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit all current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for life.

(ii) The department shall notify the offender of the loss of privileges.

(iii) The offender shall surrender all hunting, fishing, and trapping licenses to the department within 10 days after having received notice from the department that privileges have been revoked.

(8) Subject to sentencing restrictions, the court shall order a person who is convicted pursuant to this section to pay the costs of imprisonment under this section.

(9) A mandatory forfeiture of privileges imposed pursuant to this section does not apply to juveniles. However, the court may, at its discretion, order forfeiture of a juvenile's license and privilege to hunt, fish, or trap upon conviction or forfeiture of bond or bail for a violation of this title.

(10) Notwithstanding the provision of subsection (1), the penalties provided by this section are in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2.

(11) If an administrative authority suspends a license, permit, or privilege to obtain a license or permit issued under this title, the administrative authority or the department shall notify the person of the suspension and the person shall surrender the license or permit to the department within 10 days.

(12) For the purposes of this section, the terms “knowingly”, “negligently”, and “purposely” have the same meaning as provided in 45-2-101.”

Section 2. Section 87-3-111, MCA, is amended to read:

~~“87-3-111. Unlawful to buy, sell, possess, or transport fish or game possession, shipping, or transportation of game fish, birds, game animals, or fur-bearing animals — exceptions — penalties.~~ (1) It is unlawful for a person to ~~purchase, sell, offer to sell, possess, ship, or transport~~ all or part of any game fish, upland game bird, migratory game bird, game animal, or fur-bearing animal ~~that is protected by the laws of this state that was unlawfully killed, captured, or taken, whether killed, captured, or taken in Montana or outside of Montana, except as specifically permitted by the laws of this state.~~

(2) ~~The provisions of this~~ This section ~~do~~ does not prohibit:

(a) ~~the possession or transportation within the state of all or part of any legally taken fish, upland game bird, migratory game bird, game animal, or fur-bearing animal;~~

~~(b)~~(a) the ~~sale, purchase, possession, shipping, or transportation of~~ hides, heads, or mounts of lawfully killed, captured, or taken ~~upland game birds, migratory game birds, game fish, birds, game animals, or fur-bearing animals, or game animals,~~ except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110;

~~(c)~~(b) the possession, *shipping, or transportation,* ~~sale, or purchase~~ of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully *killed, captured, or taken* or accidentally killed;

~~(d)~~(c) the possession, *shipping, or transportation,* ~~sale, or purchase~~ of the bones of an elk, antelope, moose, or deer that has ~~been lawfully killed or that has died of~~ from natural causes *and that has not been unlawfully killed, captured, or taken or accidentally killed;*

~~(e)~~(d) the ~~donation and sale~~ *possession, shipping, or transportation* of paddlefish roe as caviar under the provisions of 87-4-601; or

~~(f)~~(e) the possession, *shipping, or transportation,* ~~sale, or purchase~~ of captive-reared migratory waterfowl.

(3) It is unlawful for a person to possess, *ship,* or transport live fish away from the body of water in which the fish were taken, except:

(a) as provided in Title 87, chapter 4, part 6, or as specifically permitted in the laws of this state;

(b) for fish species approved by the commission for use as live bait and subject to any restrictions imposed by the commission; or

(c) within ~~and along~~ the boundaries of the eastern Montana fishing district, as established by ~~the 1994-95~~ commission regulations.

(4) ~~A person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished as provided in 87-1-102. The possession of all or part of a dead game fish, bird, game animal, or fur-bearing animal is prima facie evidence that the person or persons in whose possession the same are found killed, captured, or took the game fish, bird, game animal, or fur-bearing animal.~~

(5) *The value of a game fish, bird, game animal, or fur-bearing animal that is unlawfully possessed, shipped, or transported must be determined from the schedules of restitution values in 87-1-111 and 87-1-115. The value of game fish, birds, game animals, or fur-bearing animals that are unlawfully possessed, shipped, or transported pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in determining the value.*

(6) (a) *If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof does not exceed \$1,000, then the person is subject to the penalties in 87-1-102.*

(b) *If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof exceeds \$1,000, then the person shall be fined not more than \$50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, a person who is convicted under this section or who forfeits bond or bail after being charged with a violation of this section shall lose all hunting, fishing, and trapping licenses and permits and license privileges for a minimum of 3 years or up to a lifetime revocation from the date of conviction. The department shall notify the person of the loss of privileges as imposed by the court, and the person shall surrender all licenses and permits, as ordered by the court, to the department within 10 days of notification by the department.”*

Section 3. Section 87-3-112, MCA, is amended to read:

“87-3-112. Possession of unlawfully killed animals and of unlawful use of fishing implements. (1) ~~The possession of dead bodies or any part thereof of any of the game fish, game or nongame birds, or game or fur-bearing animals defined by the fish and game laws of the state of Montana is prima facie evidence that the person or persons in whose possession the same are found have killed, caught, or taken the same.~~ The possession of a fishing rod and line, spear, gig, or barbed fork on the banks or shores of a stream or lake is prima facie evidence that the person or persons in whose possession ~~the same these implements~~ are found were using the ~~same implements~~ to fish.

(2) ~~It is unlawful to possess, have, hold, purchase, keep in storage, or possess for any other purpose any game fish, game bird, nongame bird, game animal, fur-bearing animal, or parts thereof which were unlawfully killed, captured, or taken. No~~ A person may *not* unlawfully use any fishing rod and line, fishing lines, spear, gig, or barbed fork.”

Section 4. Section 87-3-115, MCA, is amended to read:

“87-3-115. Violation by carriers. ~~No~~ A person or the agent or employee of any common carrier, association, stage, express, railway, or transportation company may *not* transport or receive for transportation or carriage or sell or offer for sale any of the ~~game animals~~ *fish*, game or nongame birds, ~~fish~~ *game animals*, fur-bearing animals, the skins of fur-bearing animals, or parts thereof,

except as specifically provided for by 87-3-114. All *fish*, game or nongame birds, ~~fish~~, game animals, fur-bearing animals, or parts thereof had in possession or ~~which that~~ have been shipped or are being transported in violation of any of the provisions of ~~87-3-113 through 87-3-115 shall~~ 87-3-114 or this section must be seized, confiscated, and disposed of as provided by law.”

Section 5. Section 87-3-117, MCA, is amended to read:

“87-3-117. Definitions of lawfully killed, captured, or taken wildlife and unlawfully killed, captured, or taken wildlife. As used in 87-3-111, 87-3-118, and this section, the following definitions apply:

(1) “Lawfully *killed, captured, or taken wildlife*” means ~~wildlife, as defined in 87-5-102, that is killed, captured, or taken or possessed by hunting, fishing, or trapping~~ *wildlife*, as defined in 87-5-102, that is *killed, captured, or taken* or possessed by hunting, fishing, or trapping in conformance with this title and the regulations adopted by the commission, and the *rules adopted by the* department under authority of this title.

(2) “Unlawfully *killed, captured, or taken wildlife*” means ~~wildlife that is not lawfully killed, captured, or taken wildlife.~~ *wildlife* that is not lawfully *killed, captured, or taken wildlife.*”

Section 6. Section 87-3-118, MCA, is amended to read:

“87-3-118. Felony Unlawful sale or possession of wildlife game fish, birds, game animals, or fur-bearing animals — penalty. (1) A person commits the offense of *unlawful sale of unlawfully taken wildlife a game fish, bird, game animal, or fur-bearing animal* if the person purposely or knowingly:

(a) sells, barter, purchases, or exchanges ~~unlawfully taken wildlife for anything of value; or~~ *unlawfully taken wildlife* for anything of value; or

(b) offers to sell, barter, purchase, or exchange ~~unlawfully taken wildlife for anything of value all or part of any game fish, bird, game animal, or fur-bearing animal.~~ *unlawfully taken wildlife* all or part of any *game fish, bird, game animal, or fur-bearing animal.*

(2) A person commits the offense of possession of unlawfully taken wildlife having a value of more than \$1,000 if the person purposely or knowingly has ~~actual or constructive possession of or transports or causes to be transported unlawfully taken wildlife having a value of more than \$1,000.~~ *actual or constructive possession of or transports or causes to be transported unlawfully taken wildlife* having a value of more than \$1,000. The value of the ~~unlawfully taken wildlife game fish, bird, game animal, or fur-bearing animal~~ *unlawfully taken wildlife* must be determined from the ~~schedule~~ *schedules* of restitution values set out in 87-1-111 and 87-1-115. *The value of game fish, birds, game animals, or fur-bearing animals that are sold, purchased, or exchanged pursuant to a common scheme, as defined in 45-2-101, or as part of the same transaction, as defined in 46-1-202, may be aggregated in determining the value.*

(3) ~~(a)~~ A person commits the offense of unlawful sale or possession of wildlife if the person purposely or knowingly:

(i) ~~sells, barter, purchases, or exchanges wildlife for anything of value;~~ *sells, barter, purchases, or exchanges wildlife* for anything of value;

(ii) ~~attempts to sell, barter, purchase, or exchange wildlife for anything of value;~~ *attempts to sell, barter, purchase, or exchange wildlife* for anything of value;

(iii) ~~transports, causes to be transported, or is in the process of transporting out of state wildlife for purposes of sale, barter, purchase, or exchange for anything of value.~~ *transports, causes to be transported, or is in the process of transporting out of state wildlife* for purposes of sale, barter, purchase, or exchange for anything of value.

~~(b) For the purposes of this subsection (3), “wildlife” includes the edible meat, internal organs, tissue, fluids, or sex organs of wildlife having a value of more than \$1,000 or edible meat of wildlife in excess of 150 pounds, except meat allowed to be sold under the provisions of 71-3-1505.~~

~~(c) For purposes of determining the total pounds of edible meat of wildlife, any nonwildlife meat or ingredients mixed with the meat of wildlife must be included in the total. This section does not prohibit:~~

~~(a) the sale, purchase, or exchange of hides, heads, or mounts of game fish, birds, game animals, or fur-bearing animals that have been lawfully killed, captured, or taken, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110;~~

~~(b) the sale, purchase, or exchange of naturally shed antlers or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;~~

~~(c) the sale, purchase, or exchange of the bones of an elk, antelope, moose, or deer that has died from natural causes and that has not been unlawfully killed, captured, or taken or accidentally killed;~~

~~(d) the donation, sale, purchase, or exchange of paddlefish roe as caviar under the provisions of 87-4-601; or~~

~~(e) the sale, purchase, or exchange of captive-reared migratory waterfowl.~~

~~(4) (a) For purposes of this section, the value of all wildlife actually or constructively possessed, transported, sold, bartered, bought, or exchanged for anything of value within a 45-day period must be added together to determine whether the value of the wildlife is greater than \$1,000. If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof does not exceed \$1,000, then the person shall be fined an amount not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both.~~

~~(b) In addition to the penalties in subsection (4)(a), the person, upon conviction or forfeiture of bond or bail, may lose all hunting, fishing, and trapping licenses and permits and license privileges in this state for a period set by the court. 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 by the department.~~

~~(5) (a) A person who violates this section is guilty of a felony and upon conviction shall be fined not more than \$50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, a person convicted under this section or who pleads guilty to a violation of this section shall lose all hunting, fishing, and trapping permits and license privileges for a minimum of 3 years or up to a maximum of a lifetime revocation from the date of conviction. If a person is convicted under this section or forfeits bond or bail after being charged with a violation of this section and if the value of all or part of the game fish, bird, game animal, or fur-bearing animal or combination thereof exceeds \$1,000, then the person shall be fined not more than \$50,000 or be imprisoned in the state prison for not more than 5 years, or both.~~

~~(b) In addition to the penalties in subsection (5)(a), the person, upon conviction or forfeiture of bond or bail, shall lose all hunting, fishing, and trapping licenses and permits and license privileges in this state for a minimum of 3 years or up to a lifetime revocation from the date of conviction. The department shall notify the person of the 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 by the department."~~

Section 7. Repealer. Section 87-3-113, MCA, is repealed.

Approved March 24, 2005

CHAPTER NO. 60

[HB 138]

AN ACT REQUIRING THE BOARD OF MEDICAL EXAMINERS AND THE BOARD OF DENTISTRY TO ESTABLISH SCREENING PANELS FOR DISCIPLINARY MATTERS; AUTHORIZING SCREENING PANELS TO OVERSEE REHABILITATION PROGRAMS; AND AMENDING SECTIONS 37-3-201 AND 37-4-201, MCA.

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

Section 1. Section 37-3-201, MCA, is amended to read:

“37-3-201. Organization. (1) (a) The board shall, at the first meeting each year, elect from among its members a president, vice-president, and secretary.

(b) The board shall adopt a seal ~~in on~~ which appear the words “The Board of Medical Examiners of Montana” and ~~the further words~~ “Official Seal”, ~~and acts,~~ Acts, rules, orders, certificates, and licenses ~~shall~~ *must* be authenticated by the seal.

(2) *The board shall establish a screening panel for disciplinary matters as provided for in 37-1-307 and shall authorize the screening panel to oversee any rehabilitation program established pursuant to 37-3-203.”*

Section 2. Section 37-4-201, MCA, is amended to read:

“37-4-201. Official seal — organization — subpoena power — screening panel. (1) (a) ~~Said~~ The board shall ~~have~~ *adopt* an official seal of its own design and shall employ the ~~same~~ seal to authenticate ~~its~~ *the board's* acts and records ~~as may be required~~.

(b) The board shall, at its annual meeting, choose from its members a president, vice-president, and secretary-treasurer, who shall serve at the pleasure of the board.

(c) Any member of the board ~~shall have the power to~~ *may* administer oaths and affirmations, and ~~said the board shall have the power to~~ *may* hear testimony and subpoena witnesses ~~as with respect to all~~ matters relating to the duties imposed upon ~~it~~ *the board* by law.

(2) *The board shall establish a screening panel for disciplinary matters as provided for in 37-1-307 and shall authorize the screening panel to oversee any rehabilitation program established pursuant to 37-4-311.”*

Approved March 24, 2005

CHAPTER NO. 61

[HB 139]

AN ACT CLARIFYING PROVISIONS REGARDING RULES AND REGULATIONS OF THE MONTANA NATIONAL GUARD; ADOPTING THE MOST RECENT APPLICABLE FEDERAL MILITARY LAWS, INCLUDING

THE UNIFORM CODE OF MILITARY JUSTICE; CLARIFYING THE GOVERNOR'S AND THE ADJUTANT GENERAL'S AUTHORITY TO PRESCRIBE RULES AND REGULATIONS; AND AMENDING SECTIONS 10-1-104 AND 10-1-105, MCA.

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

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

“10-1-104. Federal regulations to govern. (1) Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the national guard, as in effect on October 1, ~~2003~~ ~~2005~~, insofar as they are applicable and not inconsistent with the constitution *and laws* of this state *or with a rule or regulation adopted pursuant to 10-1-105*, apply to and govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code.

(2) The Uniform Code of Military Justice, as in effect on October 1, ~~2003~~ ~~2005~~, including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the code, is adopted for use by the national guard of this state and applies, insofar as the code is not otherwise inconsistent with the constitution *and laws* of this state ~~and except as otherwise provided by this title~~, *including the regulations, manuals, forms, precedents, and usages implementing, interpreting, and complementing the constitution and laws of this state, or by with a rule or regulation adopted by the department pursuant to 10-1-105*, to the greatest extent practicable to govern the national guard of this state, including all members on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code when the members are serving other than in a federal capacity under Title 10 of the United States Code.”

Section 2. Section 10-1-105, MCA, is amended to read:

“10-1-105. Rules and regulations by governor and adjutant general.

(1) The governor may prescribe rules to carry out the functions and duties under this title and the constitution of this state. ~~These rules must conform to any applicable federal laws and regulations.~~

(2) The adjutant general may adopt rules *and regulations* governing the armed forces of the state and to carry out the duties of the adjutant general and the duties of the department. ~~The rules must conform to applicable federal laws and regulations.”~~

Approved March 24, 2005

CHAPTER NO. 62

[HB 144]

AN ACT UPDATING THE MONTANA INTEGRATED WASTE MANAGEMENT ACT; DEFINING THE TERMS “REUSE” AND “SOURCE REDUCTION”; ESTABLISHING TARGET RATES FOR RECYCLING AND COMPOSTING; AMENDING SECTIONS 75-10-802, 75-10-803, 75-10-804, 75-10-805, AND 75-10-807, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 75-10-802, MCA, is amended to read:

“75-10-802. Definitions. As used in this part, the following definitions apply:

(1) “Composting” means the controlled biological decomposition of organic matter into humus.

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

(3) “Integrated waste management” means the coordinated use of a priority of waste management methods, ~~including waste prevention~~, as specified in 75-10-804.

(4) “Postconsumer material” means only those paper products generated by a consumer that have served their intended end uses and have been separated or diverted from the solid waste stream.

(5) “Recycling” means all activities involving the collection of recyclable material, including but not limited to glass, paper, or plastic; the processing of recyclables to prepare them for resale; the marketing of recovered material for use in the manufacture of similar or different products; and the purchase of products containing recycled material.

(6) “Reuse” means using a product in its original form for a purpose that is similar to or different from the purpose for which it was originally designed.

(7) “Source reduction” means the design, manufacture, purchase, or use of a material or product, including packaging, to reduce its amount or toxicity before it enters the solid waste stream.

~~(6)~~(8) “Special waste” means solid waste that has unique handling, transportation, or disposal requirements to ensure protection of the public health, safety, and welfare and the environment.

~~(7)~~(9) “Waste reduction” means practices that decrease the weight, volume, or toxicity of material entering the solid waste management stream ~~after consumer or commercial use but prior to incineration or disposal.~~

Section 2. Section 75-10-803, MCA, is amended to read:

“75-10-803. Solid waste reduction goal and targets target. (1) It is the goal of the state, by January 1, 1996, to reduce by at least 25% the volume of solid waste that is either disposed of in a landfill or incinerated to reduce, through source reduction, reuse, recycling, and composting, the amount of solid waste that is generated by households, businesses, and governments and that is either disposed of in landfills or burned in an incinerator, as defined in 75-2-103.

(2) Targets for the rate of recycling and composting are:

(a) 17% of the state’s solid waste referenced in subsection (1) by 2008;

(b) 19% of the state’s solid waste referenced in subsection (1) by 2011; and

(c) 22% of the state’s solid waste referenced in subsection (1) by 2015.”

Section 3. Section 75-10-804, MCA, is amended to read:

“75-10-804. Integrated waste management priorities. It is the policy of the state to plan for and implement an integrated approach to solid waste management, which must be based upon the following order of priority:

(1) ~~source reduction of waste generated at the source;~~

(2) ~~reuse of waste;~~

- (3) recycling ~~of waste~~;
- (4) composting ~~of biodegradable waste~~; and
- (5) landfill disposal or incineration.”

Section 4. Section 75-10-805, MCA, is amended to read:

“75-10-805. State government source waste reduction and recycling program. (1) In order to progress toward achieving the waste reduction ~~target~~ *targets* identified in 75-10-803, each state agency, the legislature, and the university system shall:

(a) prepare a ~~source waste~~ *source waste* reduction and recycling plan ~~by January 1, 1992~~, to reduce the solid waste generated by state government. This plan must be submitted to the department and must include, at a minimum, provisions for the composting of yard wastes and the recycling of office and computer paper, cardboard, used motor oil, *used oil filters*, and other materials produced by the state for which recycling markets exist or may be developed.

(b) establish and implement a ~~source waste~~ *source waste* reduction and recycling program ~~by July 1, 1992~~; and

(c) apply computer technology to reduce the generation of waste paper through:

- (i) the use of electronic access systems;
- (ii) the transfer of information in electronic rather than paper form; and
- (iii) other applications of computer technology.

(2) The plan must be evaluated every 5 years and updated as necessary.”

Section 5. Section 75-10-807, MCA, is amended to read:

“75-10-807. Requirement to prepare and implement state solid waste management plan. (1) As a basis for developing an integrated waste management program and ensuring adequate disposal capacity, the department shall prepare and implement a state solid waste management plan in accordance with this part.

(2) The plan must be comprehensive and integrated and must include at least the following elements:

(a) a capacity assurance element that identifies existing disposal capacity, estimates waste generation rates, and determines the disposal capacity needed for the future and that assesses the potential effect of interstate disposal on capacity;

(b) an element that incorporates federal regulations 40 CFR, parts 257 and 258;

(c) an element that identifies the role of each of the components of the integrated waste management priorities contained in 75-10-804 ~~in meeting the solid waste reduction target in 75-10-803~~;

(d) a technology assessment element that assesses the availability and practicality of alternative technologies for solid waste management;

(e) an education and public information element that identifies existing education and information programs and describes how the state will increase the awareness and cooperation of the public in environmentally safe solid waste management;

(f) a special waste and household hazardous waste element that identifies types and quantities of wastes that create special disposal problems and recommends methods for reducing, handling, collecting, transporting, and disposing of those wastes and that identifies existing and future strategies for managing those wastes;

(g) an element that identifies the needs of rural communities and management strategies to address those needs;

(h) an element that identifies mechanisms to ensure proper training of landfill operators; and

(i) a timeline and implementation strategy for each of the plan elements.

(3) The plan must be developed with the involvement of local officials, citizens, solid waste and recycling industries, environmental organizations, and others involved in the management of solid waste.

(4) The department shall conduct hearings as provided in 75-10-111.

(5) The plan must be evaluated every 5 years and updated as necessary.”

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

Approved March 24, 2005

CHAPTER NO. 63

[HB 147]

AN ACT DEFINING THE TERM “ROCK PRODUCTS”; ALLOWING A PERSON MINING ROCK PRODUCTS TO OPERATE MULTIPLE SITES MEETING SPECIFIED CRITERIA UNDER A SINGLE PERMIT; AUTHORIZING A LANDOWNER WHO ALLOWS ROCK PRODUCT MINING TO OBTAIN A MULTIPLE-SITE PERMIT; AMENDING SECTIONS 82-4-303, 82-4-305, 82-4-335, 82-4-337, AND 82-4-339, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 82-4-303, MCA, is amended to read:

“82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) “Abandonment of surface or underground mining” may be presumed when it is shown that continued operation will not resume.

(2) “Amendment” means a change to an approved operating or reclamation plan. A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment.

(3) “Board” means the board of environmental review provided for in 2-15-3502.

(4) “Cyanide ore-processing reagent” means cyanide or a cyanide compound used as a reagent in leaching operations.

(5) “Department” means the department of environmental quality provided for in 2-15-3501.

(6) "Disturbed land" means the area of land or surface water that has been disturbed, beginning at the date of the issuance of the permit. The term includes the area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, load-out facilities, leach dumps, and all similar excavations or coverings that result from the operation and that have not been previously reclaimed under the reclamation plan.

(7) "Exploration" means:

(a) all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation; and

(b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

(8) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium, that is taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(9) "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of *the* aggregate of 10,000 short tons.

(10) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

(11) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

(12) "Placer deposit" means:

(a) naturally occurring, scattered, or unconsolidated valuable minerals in gravel, glacial, eolian, colluvial, or alluvial deposits lying above bedrock; or

(b) all forms of deposit except veins of quartz and other rock in place.

(13) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

(14) "Reclamation plan" means the operator's written proposal, as required and approved by the department, for reclamation of the land that will be disturbed. The proposal must include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation, which may include use of the land as an industrial site not necessarily related to mining;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas when necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) maps and other supporting documents that may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

(15) *“Rock products” means decorative rock, building stone, riprap, mineral aggregates, and other minerals produced by typical quarrying activities or collected from or just below the ground surface.*

~~(15)~~(16) (a) *“Small miner” means a person, firm, or corporation that engages in mining activity that is not exempt from this part pursuant to 82-4-310, that engages in the business of reprocessing of tailings or waste materials, that, except as provided in 82-4-310, knowingly allows other persons to engage in mining activities on land owned or controlled by the person, firm, or corporation, that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335~~(2)~~(3) or a permit that meets the criteria of subsection ~~(15)(e)~~ (16)(c) of this section, and that conducts:*

(i) an operation that results in not more than 5 acres of the earth’s surface being disturbed and unreclaimed; or

(ii) two operations that disturb and leave unreclaimed less than 5 acres for each operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation; and

(B) at least 1 mile apart at their closest point.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation:

(i) exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases; and

(ii) exclude access roads for which the person, firm, or corporation submits a bond to the department in the amount of the estimated total cost of reclamation along with a description of the location of the road and the specifications to which it will be constructed.

(c) A small miner may hold an operating permit that allows disturbance of 100 acres or less. The permit may be amended to add new disturbance areas, but the total area permitted for disturbance may not exceed 100 acres at any time.

~~(16)~~(17) *“Soil materials” means earth material found in the upper soil layers that will support plant growth.*

~~(17)~~(18) (a) *“Surface mining” means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of*

minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

(b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other onsite building construction.

~~(18)~~(19) “Underground mining” means all methods of mining other than surface mining.

~~(19)~~(20) “Unit of surface-mined area” means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit. The term includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations that by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

~~(20)~~(21) “Vegetative cover” means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation.”

Section 2. Section 82-4-305, MCA, is amended to read:

“82-4-305. Exemption — small miners — written agreement. (1) Except as provided in subsections (3) through (10), the provisions of this part do not apply to a small miner if the small miner annually agrees in writing:

(a) that the small miner will not pollute or contaminate any stream;

(b) that the small miner will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;

(c) that the small miner will provide a map locating the miner’s mining operations. The map must be of a size and scale determined by the department.

(d) if the small miner’s operations are placer or dredge mining, that the small miner shall salvage and protect all soil materials for use in reclamation of that site and shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas.

(2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or continue an exemption under subsection (1) unless the small miner annually certifies in writing:

(a) if the small miner is an individual, that:

(i) no business association or partnership of which the small miner is a member or partner has a small-miner exemption; and

(ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or

(b) if the small miner is a partnership or business association, that:

(i) none of the associates or partners holds a small-miner exemption; and

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land, although the bond may not exceed \$10,000 for each operation. If the small miner has posted a bond for reclamation with another government agency, the small miner is exempt from the requirement of this subsection.

(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

(6) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (5), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund

of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(7) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation in which the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of. The acreage disturbed by the operation using cyanide ore-processing reagents or other metal leaching solvents or reagents and covered by the operating permit is excluded from the 5-acre limit specified in ~~82-4-303(15)(a)(i) and (15)(a)(ii)~~ *82-4-303(16)(a)(i) and (16)(a)(ii)*.

(8) The exemption provided in this section does not apply to a person:

(a) whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described under 82-4-360;

(b) who has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) who has failed to post a reclamation bond required by this section, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or

(d) who has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(9) The exemption provided in this section does not apply to an area:

(a) under permit pursuant to 82-4-335;

(b) that has been permitted pursuant to 82-4-335 and reclaimed by the permittee, the department, or any other state or federal agency; or

(c) that has been reclaimed by or has been subject to remediation of contamination or pollution by a public agency, under supervision of a public agency, or using public funds.

(10) A small miner may not use mercury except in a contained facility that prevents the escape of any mercury into the environment."

Section 3. Section 82-4-335, MCA, is amended to read:

"82-4-335. Operating permit — limitation — fees. (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the department. *Except as provided in subsection (2), a separate operating permit is required for each complex.*

(2) (a) *A person who engages in the mining of rock products or a landowner who allows another person to engage in the mining of rock products from the landowner's land may obtain an operating permit for multiple sites if each of the multiple sites does not:*

(i) *operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or ground water;*

(ii) have any water impounding structures other than for storm water control;

(iii) have the potential to produce acid, toxic, or otherwise pollutive solutions;

(iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed as threatened or endangered under the Endangered Species Act of 1973; or

(v) impact significant historic or archaeological features.

(b) A landowner who is a permittee and who allows another person to mine on the landowner's land remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission. The performance bond required under this part is and must be conditioned upon compliance with this part, the rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the landowner's consent.

~~(2)~~(3) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

~~(3)~~(4) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee of \$500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed \$5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

~~(4)~~(5) The person shall submit an application on a form provided by the department, which must contain the following information and any other pertinent data required by rule:

(a) the name and address of the operator and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) the minerals expected to be mined;

(c) a proposed reclamation plan;

(d) the expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;

(f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;

(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

(h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;

(i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

(j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

(m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;

(n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site; and

(o) an assessment of the potential for the postmining use of mine-related facilities for other industrial purposes, including evidence of consultation with the county commission of the county or counties where the mine or mine-related facilities will be located.

~~(5)~~(6) Except as provided in subsection ~~(7)~~ (8), the permit provided for in subsection (1) for a large-scale mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

~~(6)~~(7) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the

permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

~~(7)~~(8) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

~~(8)~~(9) A person may not be issued an operating permit if:

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305; or

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

~~(9)~~(10) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection ~~(4)(a)~~ (5)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection ~~(9)(a)(i) or (9)(a)(ii)~~ (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members."

Section 4. Section 82-4-337, MCA, is amended to read:

"82-4-337. Inspection — issuance of operating permit — modification, amendment, or revision. (1) (a) The department shall review all applications for operating permits for completeness within 60 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1)(b). The department shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within the appropriate review period.

(b) Except as provided in 75-1-208(4)(b), unless the review period is extended as provided in this section, the department shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the department does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within the time period, the operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c) of this section. The department shall promptly notify the applicant of the form and amount of bond that will be required.

(c) A permit may not be issued until:

(i) sufficient bond has been submitted pursuant to 82-4-338;

(ii) the information and certification have been submitted pursuant to ~~82-4-335(9)~~ 82-4-335(10); and

(iii) the department has found that permit issuance is not prohibited by ~~82-4-335(8)~~ 82-4-335(9) or 82-4-341(7).

(d) (i) Prior to issuance of a permit, the department shall inspect the site, unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible because of extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department shall serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed for analysis to determine whether a detailed environmental impact statement is necessary under 75-1-201, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) of this section by not more than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.

(iii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) of this section by not more than 365 days in order to permit reasonable review. The applicant may by written waiver extend this time period.

(iv) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, 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.

(v) Failure of the department to act upon a complete application within the extension period constitutes approval of the application, and the permit must be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit must be granted for the period required to complete the operation and is valid until the operation authorized by the permit is

completed or abandoned, unless the permit is suspended or revoked by the department as provided in this part.

(3) The operating permit must provide that the reclamation plan may be modified by the department, upon proper application of the permittee or after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so that they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection.

(4) (a) The modification of an operating permit may be a major or minor permit amendment or a permit revision. A modification of the operating permit, including a modification necessary to conform to the requirements of existing law as interpreted by a court of competent jurisdiction, must be processed in accordance with the procedures for an application for a permit amendment or revision that are established pursuant to 82-4-342 and this section, including any environmental analysis required by Title 75, chapter 1, part 2.

(b) The modification of an operating permit may not be finalized and an existing bond amount may not be increased until the permit modification procedures and analysis described in subsection (4)(a) are completed.

(5) During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

(6) Applications for major amendments must be processed in the same manner as applications for new permits.

(7) Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The board may by rule establish criteria for classification of amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.

(8) If the department demonstrates that a revision may result in a significant environmental impact that was not previously and substantially evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. Except as provided in 75-1-208(4)(b), applications for minor amendments and other revisions must be processed within 30 days of receipt of an application.”

Section 5. Section 82-4-339, MCA, is amended to read:

“82-4-339. Annual report of activities by permittee — fee — notice of large-scale mineral developer status. (1) Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at a later date that may be provided by rules of the board and each year after that date until reclamation is completed and approved, the permittee shall pay the annual fee of \$100 and shall file a report of activities completed during the preceding year on a form prescribed by the department. The report must:

- (a) identify the permittee and the permit number;
- (b) locate the operation by subdivision, section, township, and range and with relation to the nearest town or other well-known geographic feature;
- (c) estimate acreage to be newly disturbed by operation in the next 12-month period;
- (d) include the number of persons on the payroll for the previous permit year and for the next permit year at intervals that the department considers sufficient to enable a determination of the permittee's status under 90-6-302(4);
- (e) update the information required in ~~82-4-335(4)(a)~~ 82-4-335(5)(a); and
- (f) update any maps previously submitted or specifically requested by the department. The maps must show:
 - (i) the permit area;
 - (ii) the unit of disturbed land;
 - (iii) the area to be disturbed during the next 12-month period;
 - (iv) if completed, the date of completion of operations;
 - (v) if not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and
 - (vi) the date of beginning, amount, and current status of reclamation performed during the previous 12 months.

(2) Whenever the department determines that the permittee has become or will, during the next permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the permittee, the hard-rock mining impact board, and the county or counties in which the operation is located."

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

Approved March 24, 2005

CHAPTER NO. 64

[HB 154]

AN ACT ELIMINATING CERTAIN ANNUAL REPORTING REQUIREMENTS FOR CONSUMER LOAN BUSINESSES; AND AMENDING SECTION 32-5-308, MCA.

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

Section 1. Section 32-5-308, MCA, is amended to read:

"32-5-308. Annual report. (1) A licensee shall *file an annual report* ~~annually~~ before April 15 ~~file a report~~ for the preceding calendar year with the department.

(2) The report ~~shall give~~ *must provide* information with respect to the financial condition of the licensee and ~~shall~~ *must* include:

- (a) the name and address of the licensee;
- ~~(b) balance sheets at the beginning and end of the calendar year;~~
- ~~(e)~~(b) a statement of income and expenses;

- ~~(d)~~ a reconciliation of surplus or net earnings with the balance sheets;
 - ~~(e)~~ a schedule of assets used in the consumer loan business;
 - ~~(f)~~(c) an analysis of charges, size of loans made, and types of security on loans;
 - ~~(g)~~(d) an analysis of suits and foreclosures; and
 - ~~(h)~~(e) other relevant information the department may reasonably require concerning the business *conducted* during the preceding calendar year ~~of~~ *for* each licensed place of business ~~conducted by~~ *of* the licensee in this state.
- (3) The report ~~shall~~ *must* be made under oath and be in a form prescribed by the department. ~~The department which~~ shall publish annually an analysis and summary of the reports.”

Approved March 24, 2005

CHAPTER NO. 65

[HB 155]

AN ACT PROVIDING THAT DISCLOSURES OR CERTAIN CONFLICTS OF INTEREST MUST BE MADE TO THE COMMISSIONER OF POLITICAL PRACTICES RATHER THAN THE SECRETARY OF STATE; AND AMENDING SECTION 2-2-131, MCA.

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

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

“2-2-131. Disclosure. A public officer or public employee shall, prior to acting in a manner that may impinge on public duty, including the award of a permit, contract, or license, disclose the nature of the private interest that creates the conflict. The public officer or public employee shall make the disclosure in writing to the ~~secretary of state~~ *commissioner of political practices*, listing the amount of private interest, if any, the purpose and duration of the person’s services rendered, if any, and the compensation received for the services or other information that is necessary to describe the interest. If the public officer or public employee then performs the official act involved, the officer or employee shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act.”

Approved March 24, 2005

CHAPTER NO. 66

[HB 157]

AN ACT PROVIDING A FORMULA RATHER THAN A SET INTEREST RATE FOR USE IN DETERMINING THE RATES OF INTEREST TO BE PAID ON MINIMUM NONFORFEITURE AMOUNTS UNDER AN ANNUITY CONTRACT; AMENDING THE CONTRACT CHARGE; ALLOWING A REDUCTION FOR PREMIUM TAX PAID; AMENDING SECTION 33-20-505, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 33-20-505, MCA, is amended to read:

“33-20-505. (Temporary) Minimum nonforfeiture amounts. (1) The minimum values as specified in 33-20-506 through 33-20-509 and 33-20-511 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract must be based upon minimum nonforfeiture amounts, as defined in this section.

(2) (a) ~~With respect to contracts providing for flexible considerations, the~~ The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments must be equal to an accumulation up to that time at ~~a rate rates~~ of interest of ~~1.5% a year of percentages as indicated~~ in subsection (3)(a) of the net considerations, ~~as described in subsection (2)(b),~~ paid prior to that time, decreased by the sum of:

(i) any prior withdrawals from or partial surrenders of the contract accumulated at ~~a rate rates~~ of interest of ~~1.5% a year and as indicated in~~ subsection (3)(a);

(ii) ~~an annual contract charge of \$50 accumulated at rates of interest as indicated in subsection (3)(a);~~

(iii) ~~any premium tax paid by the company for the contract accumulated at rates of interest as indicated in subsection (3)(a); and~~

(iv) the amount of any indebtedness to the company on the contract, including interest due and accrued, ~~and increased by existing additional amounts credited by the company to the contract.~~

(b) The net consideration for a given contract year used to define the minimum nonforfeiture amount must be an amount ~~not less than zero and must~~ be equal to ~~87.5% of~~ the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of \$30 and less a collection charge of \$1.25 for each consideration credited to the contract during that contract year. ~~The percentages of net consideration must be 65% of the net consideration for the first contract year and 87 1/2% of the net consideration for the second and later contract years. Regardless of the provisions of the preceding sentence, the percentage must be 65% of the portion of the total net consideration for any renewal contract year that exceeds by not more than two times the sum of those portions of the net consideration in all prior contract years for which the percentage was 65%.~~

~~(3) With respect to contracts providing for fixed schedule consideration, minimum nonforfeiture amounts must be calculated on the assumption that consideration is paid annually in advance and must be defined in the same manner as for contracts with flexible payments of consideration that are paid annually with two exceptions:~~

~~(a) The portion of the net consideration for the first contract year to be accumulated must be the sum of 65% of the net consideration for the first contract year plus 22 1/2% of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.~~

~~(b) The annual contract charge must be the lesser of \$30 or 10% of the gross annual consideration.~~

~~(4) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts must be defined in the same manner as for contracts with flexible payments of consideration, except that the percentage of net~~

~~consideration used to determine the minimum nonforfeiture amount must be equal to 90% and the net consideration must be the gross consideration less a contract charge of \$75.~~

(3) (a) (i) *The interest rate used in determining minimum nonforfeiture amounts must be an annual rate of interest determined as the lesser of 3% a year or the amount calculated under subsection (3)(a)(ii), which must be specified in the contract if the interest rate will be reset.*

(ii) *The interest rate may be the 5-year constant maturity treasury rate reported by the federal reserve board as of a date or an average over a period, rounded to the nearest 1/20th of 1%, specified in the contract no longer than 15 months prior to the contract issue date or redetermination date under subsection (3)(a)(iii) and reduced by 125 basis points whenever the resulting interest rate is not less than 1%.*

(iii) *The interest rate under subsection (3)(a)(ii) must apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, must be stated in the contract. The basis is the date or the average over a specified period that produces the value of the 5-year constant maturity treasury rate to be used at each redetermination date.*

(b) *During the period or term that a contract provides substantive participation in an equity indexed benefit, the contract may increase the reduction described in subsection (3)(a)(ii) by up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date, of the additional reduction may not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. The commissioner may disallow or limit the additional reduction if the commissioner considers the demonstration unacceptable.*

(4) *The commissioner may adopt rules to implement the provisions of subsection (3)(b) and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts for which the commissioner determines that adjustments are justified. (Terminates July 1, 2005—sec. 4, Ch. 512, L. 2003.)*

33-20-505. (Effective July 1, 2005) Minimum nonforfeiture amounts.

(1) The minimum values as specified in 33-20-506 through 33-20-509 and 33-20-511 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract ~~shall~~ *must* be based upon minimum nonforfeiture amounts, as defined in this section.

(2) (a) ~~With respect to contracts providing for flexible considerations, the~~ *The* minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments ~~shall~~ *must* be equal to an accumulation up to ~~such that time at a rate~~ *such that time at a rate* rates of interest ~~of 3% a year of percentages as indicated in subsection (3)(a) of the net considerations (as hereinafter defined), as described in subsection (2)(b), paid prior to such that time, decreased by the sum of:~~

(i) any prior withdrawals from or partial surrenders of the contract accumulated at ~~a rate~~ *a rate* rates of interest ~~of 3% a year~~ *of 3% a year* as indicated in subsection (3)(a);

(ii) an annual contract charge of \$50 accumulated at rates of interest as indicated in subsection (3)(a);

(iii) any premium tax paid by the company for the contract accumulated at rates of interest as indicated in subsection (3)(a); and

(iv) the amount of any indebtedness to the company on the contract, including interest due and accrued, ~~and increased by existing additional amounts credited by the company to the contract.~~

(b) The net consideration for a given contract year used to define the minimum nonforfeiture amount shall *must* be an amount not less than zero and shall be equal to 87.5% of the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of \$30 and less a collection charge of \$1.25 per consideration credited to the contract during that contract year. ~~The percentages of net consideration shall be 65% of the net consideration for the first contract year and 87 1/2% of the net consideration for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65% of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net consideration in all prior contract years for which the percentage was 65%.~~

~~(3) With respect to contracts providing for fixed schedule consideration, minimum nonforfeiture amounts shall be calculated on the assumption that consideration is paid annually in advance and shall be defined as for contracts with flexible payments of consideration which are paid annually with two exceptions:~~

~~(a) The portion of the net consideration for the first contract year to be accumulated shall be the sum of 65% of the net consideration for the first contract year plus 22 1/2% of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.~~

~~(b) The annual contract charge shall be the lesser of \$30 or 10% of the gross annual consideration.~~

~~(4) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible payments of consideration except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to 90% and the net consideration shall be the gross consideration less a contract charge of \$75.~~

~~(3) (a) (i) The interest rate used in determining minimum nonforfeiture amounts must be an annual rate of interest determined as the lesser of 3% a year or the amount calculated under subsection (3)(a)(ii), which must be specified in the contract if the interest rate will be reset.~~

~~(ii) The interest rate may be the 5-year constant maturity treasury rate reported by the federal reserve board as of a date or an average over a period, rounded to the nearest 1/20th of 1%, specified in the contract no longer than 15 months prior to the contract issue date or redetermination date under subsection (3)(a)(iii) and reduced by 125 basis points whenever the resulting interest rate is not less than 1%.~~

~~(iii) The interest rate under subsection (3)(a)(ii) must apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, must be stated in the contract. The basis is the date~~

or the average over a specified period that produces the value of the 5-year constant maturity treasury rate to be used at each redetermination date.

(b) During the period or term that a contract provides substantive participation in an equity indexed benefit, the contract may increase the reduction described in subsection (3)(a)(ii) by up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date, of the additional reduction may not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. The commissioner may disallow or limit the additional reduction if the commissioner considers the demonstration unacceptable.

(4) The commissioner may adopt rules to implement the provisions of subsection (3)(b) and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts for which the commissioner determines that adjustments are justified."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date — applicability. [This act] is effective July 1, 2005, and applies to an annuity contract that is entered into or renewed on or after July 1, 2005.

Approved March 24, 2005

CHAPTER NO. 67

[HB 158]

AN ACT REVISING AND CLARIFYING INCOME TAX WITHHOLDING LAWS AS A RESULT OF THE TRANSFER OF THE ADMINISTRATION OF THE UNEMPLOYMENT INSURANCE TAX FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF LABOR AND INDUSTRY; ELIMINATING THE REQUIREMENT THAT THE STATE TAX APPEAL BOARD CONSIDER A DIRECT APPEAL FROM A DEPARTMENT OF REVENUE DETERMINATION REGARDING THE REPORTING OF WAGES EARNED BY AN UNEMPLOYMENT INSURANCE BENEFIT CLAIMANT; REVISING THE DEFINITIONS OF "EMPLOYEE", "EMPLOYER", AND "WAGES" AND DEFINING "SOLE PROPRIETOR" FOR WITHHOLDING TAX PURPOSES; ADOPTING THE INTERNAL REVENUE CODE DEFINITION OF "WAGES"; REVISING THE EXCEPTIONS TO THE DEFINITION OF "WAGES"; ELIMINATING CERTAIN DEFINITIONS AS THEY APPLY TO INCOME WITHHOLDING TAXES; CLARIFYING THE LIABILITY OF EMPLOYERS FOR FILING ANNUAL WITHHOLDING TAX STATEMENTS AND FOR THE PAYMENT OF WITHHOLDING TAXES; REVISING THE SCHEDULES FOR REMITTING WITHHOLDING TAXES; CLARIFYING PENALTIES AND INTEREST FOR NONCOMPLIANCE WITH WITHHOLDING TAX PROVISIONS; REVISING THE PROVISIONS FOR THE FILING OF WITHHOLDING TAXES ELECTRONICALLY; AMENDING SECTIONS 15-2-302, 15-30-201, 15-30-202, 15-30-203, 15-30-204, 15-30-209, 15-30-210, 15-30-248, AND 39-51-2402, MCA; REPEALING SECTIONS

15-30-249, 15-30-250, 15-30-251, 15-30-256, AND 15-30-257, 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 15-2-302, MCA, is amended to read:

“15-2-302. Direct appeal from department decision to state tax appeal board — hearing. (1) A person may appeal to the state tax appeal board a final decision of the department of revenue involving:

- (a) property centrally assessed under chapter 23;
- (b) classification of property as new industrial property;
- (c) any other tax, other than the property tax, imposed under this title; or
- (d) any other matter in which the appeal is provided by law.

(2) ~~(a) Except as provided in subsection (2)(b), the~~ *The* appeal is made by filing a complaint with the board within 30 days following receipt of notice of the department’s final decision. The complaint must set forth the grounds for relief and the nature of relief demanded. The board shall immediately transmit a copy of the complaint to the department.

~~(b) An appeal from the department’s determination of whether wages earned by an unemployment insurance benefit claimant were properly reported to the department is initiated by filing a complaint with the board within 10 days following receipt of notice of the department’s final determination. The board shall promptly mail a copy of the complaint to each interested party at the last known address of each party.~~

(3) ~~The department shall file with the board an answer within 30 days following filing of a complaint, or in cases involving a determination of whether wages earned by an unemployment insurance benefit claimant were properly reported to the department, any interested party, as defined in 15-30-257(1)(c), and the department may file an answer with the board within 10 days after receipt of a copy of the complaint filed with the board, and at that time mail a copy to the complainant. The answer must set forth the department’s response to each ground for and type of relief demanded in the complaint.~~

(4) ~~(a) Except as provided in subsection (4)(b), the~~ *The* board shall conduct the appeal in accordance with the contested case provisions of the Montana Administrative Procedure Act.

~~(b) (i) In an appeal regarding the determination of whether wages earned by an unemployment insurance claimant were properly reported to the department, the appeal must be conducted informally and may, in the discretion of the board, be conducted by telephone or other electronic means. The appeal is not a contested case under provisions of the Montana Administrative Procedure Act. The board, in conducting the hearing or making its decision, is not bound by the Montana Rules of Evidence.~~

~~(ii) The board shall make its final decision within 45 days of the date the appeal is received by the board.~~

(5) The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303.”

Section 2. Section 15-30-201, MCA, is amended to read:

“15-30-201. Definitions. When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) ~~“Agricultural labor” means all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.~~

(2) ~~“Domestic or household service” 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, but does not include employment beyond the scope of normal household or domestic duties such as home health care or domiciliary care.~~

~~(3)~~ (a) “Employee” means:

(i) *an individual who performs services for another individual or an organization having the right to control the employee as to the services to be performed and as to the manner of performance;*

~~(ii)~~ (ii) an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or Montana;

~~(iii)~~ (iii) an officer of a corporation;

~~(c)~~ ~~any individual who performs services for another individual or organization having the right to control the employee as to the services to be performed and as to the manner of performance;~~

~~(iv)~~ (iv) all classes, grades, or types of employees including minors and aliens, superintendents, managers, and other supervisory personnel.

(b) *The term does not include a sole proprietor performing services for the sole proprietorship.*

~~(4)~~(2) “Employer” means:

(a) the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person *or, if the person for whom the individual performs or performed the services does not have control of the payment of wages for the services, the person having control of the payment of wages;*

(b) a person who pays \$1,000 or more in wages within the current calendar year;

~~(c)~~ a person who pays \$1,000 or more in cash for domestic or household service in any quarter during the current calendar year;

~~(d)~~ any individual or organization *that has or had in its employ one or more individuals performing services for it within this state, including:*

(i) a state government and any of its political subdivisions or instrumentalities;

(ii) a partnership, association, trust, estate, joint-stock company, insurance company, limited liability company, or a ~~limited liability partnership that has filed with the secretary of state, or~~ domestic or foreign corporation;

~~(iii) or the~~ a receiver, trustee, including a trustee in bankruptcy, trustee or the trustee's successor, ~~or;~~ or

~~(iv) a~~ legal representative of a deceased person who has or had in its employ one or more individuals performing services for it within this state; or

~~(e)(c)~~ any person found to be an employer under Title 39, chapter 51, for unemployment insurance purposes, is considered an employer for state income tax withholding purposes or under Title 39, chapter 71, for workers' compensation purposes.

~~(5)~~ "Independent contractor" means an individual who renders service in the course of an occupation and:

~~(a)~~ has been and will continue to be free from control or direction over the performance of the services, both under contract and in fact; and

~~(b)~~ is engaged in an independently established trade, occupation, profession, or business.

~~(6)(3)~~ "Lookback period" means the 12-month period ending the preceding June 30.

~~(7) (a)~~ "Wages", unless specifically exempted under subsection (7)(b), means all remuneration for services performed by an employee for the employer, including the cash value of all remuneration paid in any medium other than cash, and includes but is not limited to the following:

~~(i)~~ commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

~~(ii)~~ severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

~~(iii)~~ except those tips that are exempted in subsection (7)(b)(v), tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

~~(b)~~ The term "wages" does not include:

~~(i)~~ the amount of any payment made by the employer for employees, if the payment was made for:

~~(A)~~ retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

~~(B)~~ sickness or accident disability under a workers' compensation policy;

~~(C)~~ medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

~~(D)~~ death, including life insurance for the employee or the employee's immediate family;

~~(ii)~~ compensation in the form of meals and lodging, provided the compensation is not includable in gross income for state individual income tax purposes;

~~(iii)~~ distributions from a multiple employer welfare arrangement, as defined in 29 U.S.C. 1002(40)(A), to a qualified individual employee;

~~(iv)~~ payments made by an employee to any group plan or program to the extent that the payments are not taxable for state income tax purposes;

~~(v) tips or gratuities that are in accordance with 26 U.S.C. 3402(k) or service charges that are covered by 26 U.S.C. 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging; or~~

~~(vi) payments that may not be taxed under federal law.~~

(4) "Sole proprietor" means an individual doing business in a noncorporate form and includes the member of a single-member limited liability company that is a disregarded entity if the member is an individual.

(5) (a) Except as provided in subsection (5)(b), "wages" has the meaning provided in section 3401 of the Internal Revenue Code, 26 U.S.C. 3401.

(b) The term does not include:

(i) tips and gratuities exempt from taxation under 15-30-111;

(ii) health insurance premiums attributed as income to an employee under federal law that are exempt from taxation under 15-30-111;

(iii) unemployment compensation, including supplemental unemployment compensation treated as wages under section 3402 of the Internal Revenue Code, 26 U.S.C. 3402, that is excluded from gross income as provided in 15-30-101; or

(iv) any amount paid a sole proprietor. (Subsection ~~(7)(b)(v)~~ (5)(b)(i) terminates on occurrence of contingency—sec. 3. Ch. 634, L. 1983.)"

Section 3. Section 15-30-202, MCA, is amended to read:

"15-30-202. Withholding of tax from wages. (1) Each employer, ~~except an independent contractor,~~ making payment of wages ~~for employment as defined in 15-30-256~~ shall withhold from wages a tax determined in accordance with the withholding tax tables prepared and issued by the department.

(2) An employer who maintains two or more separate establishments within this state is considered to be a single employer for the purposes of this part.

(3) *A disregarded entity and its owner are considered to be a single employer for the purposes of this part.*"

Section 4. Section 15-30-203, MCA, is amended to read:

"15-30-203. Employer liable for employment withholding taxes and statements. (1) Each employer is liable for the reports and payments required by 15-30-204, the amounts required to be deducted and withheld under this part, and the *annual statements required by 15-30-206 and 15-30-207. The payments required by 15-30-204 and the amounts required to be deducted and withheld, plus interest due on the amounts,* are a tax. With respect to the tax, the employer is the taxpayer.

(2) The officer of a corporation whose responsibility it is to collect, truthfully account for, and pay to the state the amounts withheld from the corporation's employees and who fails to pay the withholdings is liable to the state for the amounts withheld and the penalty and interest due on the amounts.

(3) (a) Each officer of the corporation is individually liable along with the corporation for filing ~~reports~~ *statements* to the extent that the officer has access to the requisite records and for unpaid taxes, penalties, and interest upon a determination that the officer:

(i) possessed the responsibility to file ~~reports~~ *statements* and pay taxes on behalf of the corporation; and

(ii) possessed the responsibility on behalf of the corporation for directing the filing of tax ~~reports~~ *statements* or the payment of other corporate obligations and exercised that responsibility, resulting in the corporation's failure to file ~~reports~~ *statements* required by this part or pay taxes due as required by this part.

(b) In determining which corporate officer is liable, the department is not limited to considering the elements set forth in subsection (3)(a) to establish individual liability and may consider any other available information.

(4) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the discharge of penalty and interest against the corporation. The individual remains liable for any ~~reports~~ *statements* and the amount of taxes, penalties, and interest unpaid by the corporation.

(5) For the purpose of determining liability for the filing of ~~reports~~ *statements* and the remittance of taxes, penalties, and interest owed under this part,:

(a) *each partner of a partnership is jointly and severally liable, along with the partnership, for any statements, taxes, penalties, and interest due while a partner;*

(b) *each member of a ~~member-managed~~ limited liability company ~~must be that is treated as a partnership with liability for filing reports and remitting or as a corporation for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest owed extending to each member who was a member at the time the report or taxes were due while a member;~~*

(c) *the member of a single-member limited liability company that is disregarded for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member; and*

(6)(d) ~~For determining personal liability for the failure to file reports and remit taxes, penalties, and interest owed by each manager of a manager-managed limited liability company, the managers of the limited liability company are jointly and severally liable, along with the limited liability company, for reports and any statements, taxes, penalties, and interest owed due while a manager.~~

(7) ~~For determining personal liability for the failure to file reports and remit taxes, penalties, and interest owed by a limited liability partnership, the partners of the limited liability partnership are jointly and severally liable, along with the limited liability partnership, for reports and any taxes, penalties, and interest due.~~

(8)(6) If the employer fails to deduct and withhold the amounts specified in 15-30-202 and the tax against which the deducted and withheld amounts would have been credited is paid, the amounts required to be deducted and withheld may not be collected from the employer."

Section 5. Section 15-30-204, MCA, is amended to read:

"15-30-204. Reporting and remittance requirements Schedules for remitting income withholding taxes — records. (1) For the purposes of this section, ~~employers~~ *Each employer* shall remit ~~their~~ *the* taxes in accordance with ~~the appropriate remittance schedule withheld from employee wages~~ as follows:

(a) ~~Employers~~ *An employer* whose total liability for state income tax withholding during the preceding lookback period was \$12,000 or more shall

remit on an "accelerated schedule", which is the same as the employer's federal due dates for federal tax deposits.

(b) ~~Employers~~ *An employer* whose total liability for state income tax withholding during the preceding lookback period was less than \$12,000 but more than \$1,199 shall remit on a "monthly schedule" for which the remittance due date is on or before the 15th day of the month following the payment of wages.

(c) ~~Employers~~ *An employer* whose total liability for state income tax withholding during the preceding lookback period was less than \$1,200 shall remit on a ~~"quarterly schedule"~~ *an "annual schedule"* for which the remittance due date is on or before ~~the last day of the month following the close of each calendar quarter~~ *February 28 of the year following payment of wages*.

~~(d) Employers who are not subject under Title 39, chapter 51, for unemployment insurance and whose total liability for state income tax withholding during the preceding lookback period was less than \$1,200 may remit on an "annual schedule" for which the remittance is due on or before February 28 of the year following payment of wages.~~

~~(2) (a) Every employer is required to file a report quarterly in the form required by the department.~~

~~(b) The report is due on or before the last day of the month following the close of the calendar quarter.~~

~~(c) An employer who is not subject under Title 39, chapter 51, to unemployment insurance may elect to file an annual report on or before February 28 for the preceding calendar year.~~

~~(d) An employer who has no payroll during a quarter may elect to report "no wages paid this quarter" using alternative reporting methods provided in department rules *withholding to remit for a remittance period shall, on or before the due date of the applicable remittance schedule, submit a payment coupon showing that a zero amount is being remitted.*~~

~~(e) An employer, in addition to the scheduled reports and remittances, must file the annual report and wage statements as required by 15-30-207.~~

~~(3) (a) Except as provided in subsection (3)(g), payments are due as required according to the remittance schedule for each employer.~~

~~(b) If an employer subject to the provisions of subsection (1)(d) does not comply with the requirements of this section, the employer may be subject to the quarterly reporting schedule provided in subsection (2)(a) and to the quarterly remittance schedule provided in subsection (1)(c) until the department determines from the employer's subsequent filing and payment history that the employer will file and remit in a timely fashion~~

~~(2) An employer who has not complied with the requirements of this section shall, upon written notice from the department, remit on the monthly schedule described in subsection (1)(b).~~

~~(e)(3) On or before November 1 of each year, the department shall notify the employers subject to the provisions of this section of the employers' remittance schedules for the following calendar year based upon the department's review of the preceding lookback period.~~

~~(d)(4) Except as provided in subsection (3)(g), a~~ *A* new employer or an employer with no filing history is subject to the ~~quarterly~~ *monthly* remittance

schedule in subsection ~~(1)(e)~~ (1)(b) until the department is able to determine the employer's proper remittance schedule by a review of the employer's first complete lookback period.

~~(e)(5) An employer who is subject to the quarterly schedule in subsection (1)(e) may elect to remit payments on a more frequent basis than is required by subsection (1). An employer who is on an annual schedule may elect to remit monthly or quarterly payments.~~

~~(f) An employer who exceeds either threshold, as defined in 15-30-201(4)(b) and (4)(c), must begin withholding state income tax on or before the last day of the month following the quarter in which the wages paid exceeded the threshold requirements. The employer is subject to the quarterly remittance schedule until the department is able to determine the employer's proper remittance schedule by a review of the employer's first complete lookback period.~~

~~(g) An employer who is not subject to unemployment insurance under Title 39, chapter 51, and whose estimated annual state income tax withholding is not expected to exceed \$1,199 for the calendar year may remit according to the annual schedule and report annually on or before February 28.~~

~~(h)(6) An employer may use alternative remittance methods in conjunction with the department's electronic remittance program in accordance with department rules.~~

~~(4)(7) If the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under 15-1-703.~~

~~(5)(8) Each employer shall keep true and accurate payroll records containing the information that the department may prescribe by rule. Those records must be open to inspection and audit and may be copied by the department or its authorized representative at any reasonable time and as often as may be necessary. An employer who maintains its records outside Montana shall furnish copies of those records to the department at the employer's expense."~~

Section 6. Section 15-30-209, MCA, is amended to read:

"15-30-209. Violations by employer — penalties, interest, and remedies. (1) The department shall, as provided in 15-1-216, add penalty and interest to the amount of all delinquent withholding taxes.

~~(2) The first time in any consecutive 3-year period that an employer files a report or remits a tax after the due date, the department shall issue a warning notice explaining to the employer that the employer failed to file a report on the due date as required by law and, if applicable, that the employer failed to remit the tax on the due date as required by law and the department shall notify the employer of the consequences of any further subsequent late reporting or late remittance.~~

~~(3) A late report penalty may not be assessed under 15-1-216 if an employer files the late report prior to the issuance of a notice of delinquent report.~~

~~(4) A late payment penalty may be waived pursuant to 15-1-206 if an acceptable payment agreement is made between the department and the employer. An employer's failure to meet the terms of the payment agreement voids the waiver and the penalty must be recomputed from the due date on the unpaid tax.~~

~~(5) (a) A summons penalty of \$50 must be assessed whenever, as the result of a refusal of an employer to furnish wage information or pay taxes on time, the department issues a summons pursuant to 15-1-301.~~

~~(b) If an employer fails to honor the summons provided in subsection (5)(a), an additional \$100 penalty must be added to the liability.~~

~~(6)(2) In addition to any other penalty provided by law the penalties imposed by 15-1-216, the failure of an employer to furnish a wage and tax statement, as required by 15-30-207(1), subjects the employer to a penalty of \$5 for each failure, with a minimum of \$50.~~

~~(7) Penalties may be waived by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts including a tax lien.~~

~~(8) If any tax imposed by this chapter or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.~~

~~(9) The tax lien provided for in subsection (8) is not valid against any third party owning an interest in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if the third party receives from the most recent grantor of the interest an affidavit stating that all taxes, assessments, penalties, and interest due from the grantor have been paid.~~

~~(10) A grantor who signs and delivers to the third party an affidavit as provided in subsection (9) is subject to the penalties imposed by 15-30-321(1) if any part of the affidavit is untrue. The department may bring an action as provided in 15-30-321(1) in the name of the state to recover the civil penalty and any delinquent taxes.~~

~~(11)(3) All of the remedies available to the state for the administration, enforcement, and collection of income taxes are available and apply to the tax required to be deducted and withheld under the provisions of 15-30-201 through 15-30-208 unless otherwise specifically addressed provided for in this part."~~

Section 7. Section 15-30-210, MCA, is amended to read:

~~"15-30-210. Electronic funds transfer and electronic reporting~~
~~Remitting withholding taxes electronically — employer option — timely remittance.~~ (1) ~~An~~ Subject to subsection (2), an employer, within 30 days of notification of the employer's remittance schedule as required by 15-30-204, may elect to remit and file state income tax withholding electronically. ~~An~~ election form must be provided with the notification of the employer's remittance schedule and, when returned to the department, is valid for the next 12 months. ~~An~~ employer may cancel the election provided in this section by providing written notice of the cancellation to the department.

~~(2) An employer who elects pursuant to subsection (1) to remit tax payments through electronic funds transfer shall electronically submit the returns required by 15-30-204 to the department in a any format established and approved by the department.~~

~~(2) An employer shall obtain the department's prior approval before the employer may remit withholding taxes by electronic funds transfer.~~

~~(3) If an employer remits withholding taxes electronically, the remittance is considered timely if made within 5 days after the due date of the payment."~~

Section 8. Section 15-30-248, MCA, is amended to read:

“15-30-248. Determination of employer status. A final determination by either the department of labor and industry or the workers’ compensation court that an employer-employee relationship existed between the taxpayer and certain individuals subjecting the taxpayer to the requirements of ~~chapter 30, part 2, this chapter~~ is not subject to any further administrative or judicial challenge in any proceeding before or with the department of revenue concerning a determination of the proper amount of state income tax withholding. ~~A final decision of the workers’ compensation court may be appealed as provided in 39-71-2904.”~~

Section 9. Section 39-51-2402, MCA, is amended to read:

“39-51-2402. Initial determination — redetermination. (1) A representative designated by the department and referred to as a deputy shall promptly examine the claim, and; on the basis of the facts the deputy has found, the deputy shall determine whether or not the claim is valid. If the claim is valid, the deputy will determine the week the benefits commence, the weekly benefit amount payable, and the maximum benefit amount. The deputy may refer the claim or any question involved in the claim to an appeals referee who shall make the decision on the claim in accordance with the procedure prescribed in 39-51-2403. ~~With respect to a determination, redetermination, or appeal by a claimant involving wages, the issue must be resolved in accordance with procedures for unemployment insurance benefit claimant appeals, as prescribed in 15-2-302 and 15-30-257 during the time that the department delegated the duties associated with the administration of unemployment insurance contributions to the department of revenue pursuant to 39-51-301.~~ The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons for reaching the decision.

(2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant and other interested parties of the amended decision and the reasons for the decision.

(3) A determination or redetermination of an initial or additional claim may not be made under this section unless 5 days’ notice of the time and place of the claimant’s interview for examination of the claim is mailed to each interested party.

(4) A determination or redetermination is final unless an interested party entitled to notice of the decision applies for reconsideration of the determination or appeals the decision within 10 days after the notification was mailed to the interested party’s last-known address. The 10-day period may be extended for good cause.

(5) Except as provided in subsection (6), a redetermination of a claim for benefits may not be made after 2 years from the date of the initial determination.

(6) A redetermination may be made within 3 years from the date of the initial determination of a claim if the initial determination was based on a false claim, misrepresentation, or failure to disclose a material fact by the claimant or the employer.”

Section 10. Repealer. Sections 15-30-249, 15-30-250, 15-30-251, 15-30-256, and 15-30-257, MCA, are repealed.

Section 11. 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 12. Effective date. [This act] is effective on passage and approval.

Section 13. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to wages paid after December 31, 2004.

Approved March 24, 2005

CHAPTER NO. 68

[HB 160]

AN ACT CLARIFYING THAT ADMINISTRATION, HEARINGS, INJUNCTION, AND ENFORCEMENT AUTHORITY PROVIDED BY THE DEPARTMENT OF LABOR AND INDUSTRY UNDER BUILDING CONSTRUCTION CODES APPLIES TO PLUMBING, ELECTRICAL, AND ELEVATOR CODES; MAKING THE MISDEMEANOR OFFENSE PROVISIONS OF THE STATE PLUMBING, ELECTRICAL, AND ELEVATOR CODES CONSISTENT WITH THE BUILDING CODE; INCREASING BOILER INSPECTION AND CERTIFICATION FEES HANDLED BY THE DEPARTMENT; AMENDING SECTIONS 50-60-103, 50-60-105, 50-60-109, 50-60-110, AND 50-74-219, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATE.

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

Section 1. Section 50-60-103, MCA, is amended to read:

“50-60-103. Administration by department. The department shall administer parts 1 through 4 7 and for that purpose shall:

(1) issue orders necessary to effectuate the purposes of parts 1 through 4 7 and enforce the orders by all appropriate administrative and judicial proceedings;

(2) enter, inspect, and examine buildings or premises necessary for the proper performance of its duties under parts 1 through 4 7;

(3) study the operation of the state building code, local building regulations, and other laws related to the construction of buildings to ascertain their effects upon the cost of building construction and the effectiveness of their provisions for health and safety;

(4) recommend tests or require the testing and approval of materials, devices, and methods of construction to ascertain their acceptability under the requirements of the state building code and issue certification of the acceptability;

(5) appoint experts, consultants, and technical advisers for assistance and recommendations relative to the formulation and adoption of the state building code;

(6) advise, consult, and cooperate with other agencies of the state, local governments, industries, and interested persons or groups; and

(7) consult with the building codes council, established in 50-60-115, on all rules and interpretations of building code provisions and on the checklist for the

examination of single-family dwelling construction plans provided for in 50-60-118.”

Section 2. Section 50-60-105, MCA, is amended to read:

“50-60-105. Hearings authorized. The department may hold hearings relating to the administration of parts 1 through ~~4~~ 7 in accordance with the Montana Administrative Procedure Act.”

Section 3. Section 50-60-109, MCA, is amended to read:

“50-60-109. Injunctions authorized. (1) The construction or use of the building in violation of any provision of the state building, *plumbing, elevator, or electrical* code or county, city, or town building code or of any lawful order of a state building official or a local building department may be enjoined by a judge of the district court in the judicial district in which the building is located.

(2) This section is governed by the Montana Rules of Civil Procedure.”

Section 4. Section 50-60-110, MCA, is amended to read:

“50-60-110. Violation a misdemeanor. Any person served with an order pursuant to the provisions of parts 1 through ~~4~~ 7 who fails to comply with the order not later than 30 days after service or within the time fixed by the department or a local building department for compliance, whichever is the greater, or any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, their agents, or any person taking part or assisting in the construction or use of any building who knowingly violates any of the applicable provisions of the state building, *plumbing, elevator, or electrical* code or county, city, or town building code is guilty of a misdemeanor.”

Section 5. Section 50-74-219, MCA, is amended to read:

“50-74-219. Fee for inspection. (1) Whenever a department inspector inspects a boiler, a fee must be charged and collected by the department prior to issuance of a boiler operating certificate in accordance with the following schedule:

- (a) operating certificate, ~~\$26~~ \$31;
- (b) internal inspection, \$75;
- (c) external inspection:
 - (i) hot water heating and supply, ~~\$30~~ \$35;
 - (ii) steam heating, ~~\$40~~ \$50; and
 - (iii) power boiler, ~~\$55~~ \$70; and
- (d) special inspection, \$50 an hour plus expenses.

(2) If two or more boilers in the same room are inspected at the same time, the total fee imposed for all boilers must be the fee for inspection of one boiler, and the fee is the amount for the type of boiler with the highest fee.

(3) Fees collected under this section must be deposited in ~~a department~~ *the state special revenue fund in an account credited to the department for administration of the boiler inspection program.*”

Section 6. Effective date — applicability. [This act] is effective on passage and approval and applies to inspections conducted on or after [the effective date of this act].

Approved March 24, 2005

CHAPTER NO. 69

[HB 161]

AN ACT REVISING CERTAIN WORKERS' COMPENSATION LAWS; REQUIRING INSOLVENT INSURERS TO PROVIDE CLAIM SUMMARY INFORMATION; CLARIFYING THE PENALTY PROVISIONS FOR LATE REPORT FILING BY INSURERS; REMOVING THE MEDICAL PROVIDER OATH REQUIREMENT FOR DOCUMENTING THE PROVISION OF SERVICES; CLARIFYING THE UNINSURED EMPLOYERS' FUND CLAIM REIMBURSEMENT AUTHORITY; UPDATING TERMINOLOGY RELATING TO HOSPITALS; REVISING SUBSEQUENT INJURY FUND ASSESSMENT PROVISIONS; REVISING PLAN NO. 1 APPROVAL CRITERIA; SPECIFYING THAT INTEREST ON PLAN NO. 1 LIQUIDATED SECURITY DEPOSITS IS TO BE USED TO PAY CLAIMS; REQUIRING AN INSURER TO SUBMIT NOTICE OF COVERAGE AND CANCELLATIONS ELECTRONICALLY TO THE DEPARTMENT OF LABOR AND INDUSTRY; PROHIBITING THE SPLITTING OF WORKERS' COMPENSATION RISKS AMONG VARIOUS INSURANCE PLANS; ELIMINATING THE WORKERS' COMPENSATION REGULATION ADVISORY COUNCIL; AMENDING SECTIONS 39-71-306, 39-71-315, 39-71-504, 39-71-704, 39-71-915, 39-71-2105, 39-71-2108, 39-71-2203, 39-71-2204, 39-71-2205, 39-71-2336, 39-71-2337, AND 39-71-2339, MCA; REPEALING SECTION 2-15-1709, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

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

Section 1. Claim summary and actuarial documentation. If a plan No. 2 insurer becomes insolvent and is placed into receivership, declares bankruptcy, or seeks protection from its creditors, the insurer, upon request of the department, shall submit to the department claim summary and actuary information for the insurer's Montana workers' compensation and occupational disease claims.

Section 2. Section 39-71-306, MCA, is amended to read:

"39-71-306. Insurers to file summary reports of benefits paid for injuries and miscellaneous expenses and statements of medical expenditures. (1) Each insurer shall, on or before the 15th day after each state government fiscal quarter ends, file with the department:

(a) summary reports of benefits for all compensation payments made during the previous state fiscal quarter to injured workers or their beneficiaries or dependents;

(b) statements showing the amounts expended during the previous state fiscal quarter for all medical services for injured workers; and

(c) statements showing all miscellaneous amounts, other than compensation and medical expenditures, paid during the previous state fiscal quarter to or on behalf of injured workers or their beneficiaries or dependents and not otherwise reported as an expenditure for the workers' compensation administration assessment provided for in 39-71-201.

(2) An insurer that fails to file the summary report *required by this section or the annual paid losses report required in 39-71-201* ~~after a 5-day grace period within 5 days~~ after the date on which ~~the~~ *either* report is due may be assessed a penalty in an amount of not less than \$250 or more than \$1,000 to be deposited in the workers' compensation administration fund."

Section 3. Section 39-71-315, MCA, is amended to read:

“39-71-315. Prohibited actions — penalty. (1) The following actions by a medical provider constitute violations and are subject to the penalty in subsection (2):

(a) failing to ~~document, under oath,~~ *certify* the provision of the services or treatment for which compensation is claimed under chapter 72 or this chapter; or

(b) referring a worker for treatment or diagnosis of an injury or illness that is compensable under chapter 72 or this chapter to a facility owned wholly or in part by the provider, unless the provider informs the worker of the ownership interest and provides the name and address of alternate facilities, if any exist.

(2) A person who violates this section may be assessed a penalty of not less than \$200 or more than \$500 for each offense. The department shall assess and collect the penalty. Penalties collected pursuant to this section must be paid into the state general fund. The workers' compensation court has jurisdiction over actions brought to collect the penalty and over disputes concerning the penalty assessment. Disputes brought pursuant to this section are not subject to mediation.

(3) Subsection (1)(b) does not apply to medical services provided to an injured worker by a treating physician with an ownership interest in a managed care organization that has been certified by the department.”

Section 4. Section 39-71-504, MCA, is amended to read:

“39-71-504. Funding of fund — option for agreement between department and injured employee. The fund is funded in the following manner:

(1) (a) The department may require that the uninsured employer pay to the fund a penalty of either up to double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or \$200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment based on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured.

(b) The fund shall collect from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to *or on behalf of* an injured employee of the uninsured employer.

(c) In addition to any amounts recovered under subsections (1)(a) and (1)(b), the fund shall collect a penalty of \$200 from an employer that fails to obtain Montana workers' compensation insurance within 30 days of notice of the requirement.

(2) (a) An uninsured employer that fails to make timely penalty or claim reimbursement payments required under this part must be assessed a late fee of \$50 for each late payment.

(b) Any unpaid balance owed to the fund under this part ~~for penalties or claim reimbursement~~ must accrue interest at 12% a year or 1% a month or fraction of a month. Interest on unpaid balances accrues from the date of the original billing.

(c) Late fees and interest assessed pursuant to this subsection (2) must be deposited into the fund for payment of administrative expenses and benefits.

(3) The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds collected by the department from the uninsured employer pursuant to subsection (1)(b)."

Section 5. Section 39-71-704, MCA, is amended to read:

"39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation. (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.

(b) The insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) (i) The insurer shall reimburse a worker for reasonable travel, lodging, meals, and miscellaneous expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement for state employees.

(ii) Rules adopted under subsection (1)(d)(i) must provide for submission of claims, within 90 days from the date of travel, following notification to the claimant of reimbursement rules, must provide procedures for reimbursement receipts, and must require the use of the least costly form of travel unless the travel is not suitable for the worker's medical condition. The rules must exclude from reimbursement:

(A) 100 miles of automobile travel for each calendar month unless the travel is requested or required by the insurer pursuant to 39-71-605;

(B) travel to a medical provider within the community in which the worker resides;

(C) travel outside the community in which the worker resides if comparable medical treatment is available within the community in which the worker resides, unless the travel is requested by the insurer; and

(D) travel for unauthorized treatment or disallowed procedures.

(iii) An insurer is not liable for injuries or conditions that result from an accident that occurs during travel or treatment, except that the insurer retains liability for the compensable injuries and conditions for which the travel and treatment was required.

(e) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

(f) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition;

(ii) when necessary to monitor the status of a prosthetic device; or

(iii) when the worker's treating physician believes that the care that would otherwise not be compensable under subsection (1)(f) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment. A dispute regarding the compensability of palliative or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers' compensation court has jurisdiction.

(g) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) The department shall annually establish a schedule of fees for medical services not provided at a hospital that are necessary for the treatment of injured workers. Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule.

(3) (a) The department shall establish rates for hospital services necessary for the treatment of injured workers.

(b) Except as provided in subsection (3)(g), rates for services provided at a hospital must be the greater of:

(i) 69% of the hospital's January 1, 1997, usual and customary charges; or

(ii) the discount factor established by the department that was in effect on June 30, 1997, for the hospital. The discount factor for a hospital formed by the merger of two or more existing hospitals is computed by using the weighted average of the discount factors in effect at the time of the merger.

(c) Except as provided in subsection (3)(g), the department shall adjust hospital discount factors so that the rate of payment does not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(d) The department may establish a fee schedule for hospital outpatient services rendered. The fee schedule must, in the aggregate, provide for fees that are equal to the statewide average discount factors paid to hospitals to provide the same or equivalent procedure to workers' compensation hospital outpatients.

(e) The discount factors established by the department pursuant to this subsection (3) may not be less than medicaid reimbursement rates.

(f) For services available in Montana, insurers are not required to pay facilities located outside Montana rates that are greater than those allowed for services delivered in Montana.

(g) For a ~~hospital licensed as a~~ medical assistance facility or a critical access hospital *licensed* pursuant to Title 50, chapter 5, the rate for services is the ~~hospital's~~ usual and customary charge. Fees paid to a ~~hospital licensed as a~~ *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) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

(6) Disputes between an insurer and a medical service provider regarding the amount of a fee for medical services must be resolved by a hearing before the department upon written application of a party to the dispute.

(7) (a) After the initial visit, the worker is responsible for \$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 6. Section 39-71-915, MCA, is amended to read:

"39-71-915. Assessment of insurer — employers — definition — collection. (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Montana Workers' Compensation Act and the Occupational Disease Act of Montana without regard to the application of any deductible, regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each employer insured by plan No. 3, the state fund. The assessment amount is the total amount of ~~paid losses reimbursed from~~ *paid* by the fund in the preceding ~~calendar~~ *fiscal* year and the expenses of administration less other *realized* income *that is deposited in the fund*. The total assessment amount to be collected must be allocated among plan

No. 1 employers, plan No. 2 employers, plan No. 3, the state fund, and plan No. 3 employers, based on a proportionate share of paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before May 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. The amount to be assessed against the state fund must separately identify the amount attributed to claims arising before July 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990. On or before April 30 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is the proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding calendar year bore to the total paid losses for all plans in the preceding calendar year. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the subsequent injury fund assessment that is attributable to claims arising before July 1, 1990.

(6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid by employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).

(7) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (6). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation subsequent injury fund surcharge". Each assessment premium surcharge must be shown as a percentage of the total workers' compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The assessment premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable

to the nonpayment of premium. If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge first and the remaining amount applied to the premium due.

(8) (a) All assessments paid to the department must be deposited in the fund.

(b) Each plan No. 1 employer shall pay its assessment by July 1.

(c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter by not later than 20 days following the end of the quarter.

(d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1, 1990, by July 1.

(e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the fund.

(9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7) must be compared each year to the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator provided for by subsection (6) for the following year's assessment premium surcharge.

(10) If the total assessment is less than \$200,000 for any year, the department may defer the assessment amount for that year and add that amount to the assessment amount for the subsequent year."

Section 7. Section 39-71-2105, MCA, is amended to read:

"39-71-2105. Additional proof of solvency — revocation of order. (1)

The department, with the concurrence of the Montana self-insurers guaranty fund, may at any time require from any employer acting under compensation plan No. 1 additional proof of solvency and financial ability to pay the ~~compensation benefits~~ provided by this chapter ~~and may at any time, upon notice to the employer of not less than 10 or more than 20 days, after and upon a full hearing, revoke any order or approval.~~

(2) The department may, after providing an opportunity for an administrative review conference to consider information submitted by a plan No. 1 employer, revoke any order of approval upon 20 days' notice to the employer. A decision to revoke approval involving a plan No. 1 employer who is a member of the Montana self-insurers guaranty fund requires the concurrence of the guaranty fund. A plan No. 1 employer that is dissatisfied with the decision following the administrative review conference may appeal the decision and request a contested case hearing pursuant to 39-71-2401(2).

(3) A decision revoking an order of approval is final unless the employer files an appeal with the department within 20 days of the issuance of the notice. An employer may not continue to self insure after the 20-day period provided for in subsection (2) has expired unless the department is satisfied that the employer has provided sufficient security and financial ability to pay the benefits provided by this chapter. A decision issued pursuant to this subsection involving a plan

No. 1 employer who is a member of the Montana self-insurers guaranty fund requires the concurrence of the guaranty fund.”

Section 8. Section 39-71-2108, MCA, is amended to read:

“39-71-2108. Failure of employer to pay compensation benefits — duty of department. Upon the failure of the employer to pay any ~~compensation~~ *benefits* provided for in this chapter upon the terms, ~~and~~ in the amounts, and at the times when the ~~same becomes~~ *benefits become* due and payable, the department shall, upon demand of the person to whom ~~compensation is~~ *benefits are* due, apply any deposits made with the department to the payment of the ~~same~~ *benefits*, and the department shall take the proper steps to convert any securities on deposit with the department or sufficient ~~thereof deposits into cash and~~ to pay ~~the same upon~~ the liabilities of the employer accruing under the terms of this chapter, ~~and the~~. *The* department shall, when necessary, collect and enforce the collection of the liability of all sureties upon any bonds ~~which that~~ may be given by the employer to ~~insure~~ *ensure* the payment of ~~his the~~ employer’s liability. ~~To these ends and for these purposes, the~~ *The* department ~~shall be deemed to be~~ *is considered* the owner of the deposit and security and the obligee in the bond in trust for the purposes and may proceed in its own name to recover upon the bonds or foreclose and liquidate the securities. *All interest earnings on liquidated security deposits must be retained by the department for payment of benefits pursuant to this section.”*

Section 9. Section 39-71-2203, MCA, is amended to read:

“39-71-2203. Content of policies — policies subject to approval, change, or revision by department. (1) All policies insuring the payment of compensation under this chapter must contain a clause to the effect that, as between the employee and the insurer,:

(a) the notice to or knowledge of the occurrence of the injury on the part of the insured ~~shall be deemed~~ *constitutes* notice or knowledge, as the case may be, on the part of the insurer;

(b) ~~that~~ jurisdiction of the insured for the purpose of this chapter ~~shall be~~ *is* the jurisdiction of the insurer; and

(c) ~~that~~ the insurer ~~shall~~ *is* in all things be bound by and subject to the awards, orders, judgments, or decrees rendered against ~~such~~ *the* insured.

(2) ~~No such~~ A policy ~~shall~~ *may not* be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments *provided for* in this chapter ~~provided for~~ and that the obligation ~~shall~~ *is not* be affected by any default of the insured after the injury or by any default in the giving of any notice required by ~~such~~ *the* policy or by this chapter or otherwise. ~~Such~~ *The* agreement ~~shall~~ *must* be construed to be a direct promise by the insured to the person entitled to compensation.

(3) Every policy or contract insuring against liability for compensation under compensation plan No. 2 must contain a clause to the effect that the insurer ~~shall be~~ *is* directly and primarily liable to and will pay directly to the employee or in case of death to ~~his the~~ *the employee’s* beneficiaries or major or minor dependents; the compensation, if any, for which the employer is liable.

(4) Every ~~such~~ policy ~~shall~~ *must* at all times be subject to approval, change, or revision by the department and ~~shall~~ *must* contain the clauses, agreements, and promises required by this chapter.

(5) *All Montana operations of an employer, as defined in 39-71-117, covered under plan No. 2 must be insured by the same insurer.*”

Section 10. Section 39-71-2204, MCA, is amended to read:

“39-71-2204. Insurer to submit notice of coverage within thirty days — penalty for failure. (1) The insurer shall, within 30 days after the issuance of the policy of workers’ compensation insurance, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and other information that may be required by the department. *Beginning January 1, 2006, notice to the department under this section must be provided electronically.*

(2) The department:

(a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for authorized workers’ compensation insurers in Montana; and

(b) shall, under terms and conditions acceptable to the department, accept notice of coverage received from the agents recognized under subsection (2)(a) as the insurer’s notice of coverage.

(3) The department may, in its discretion, assess a penalty of no more than \$200 against an insurer that as a general business practice does not comply with the 30-day notice requirement set forth in subsection (1).”

Section 11. Section 39-71-2205, MCA, is amended to read:

“39-71-2205. Policy in effect until canceled or replaced — twenty-day notification of cancellation required — penalty. (1) The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the department at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers’ compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers’ compensation insurance before a replacement policy is issued to the insured. *Beginning January 1, 2006, notice to the department under this section must be provided electronically.*

(2) The department:

(a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for authorized workers’ compensation insurers in Montana; and

(b) shall, under terms and conditions acceptable to the department, accept notice of cancellation received from the agents recognized under subsection (2)(a) as the insurer’s notice of cancellation.

(3) (a) The department may assess a penalty of up to \$200 against an insurer that does not comply with the notice requirement in subsection (1).

(b) An insurer may contest the penalty assessment in a hearing conducted according to department rules.”

Section 12. Section 39-71-2336, MCA, is amended to read:

“39-71-2336. Manner of electing — contract or policy of insurance — payment of premium. The state fund shall prescribe the procedure by which an employer may elect to be bound by compensation plan No. 3, the effective time of the election, and the manner in which the election is terminated for reasons other than default in payment of premiums. Every employer electing to

be bound by compensation plan No. 3 must receive from the state fund a contract or policy of insurance in a form approved by the department. *All Montana operations of an employer, as defined in 39-71-117, covered by compensation plan No. 3 must be insured by the state compensation insurance fund. The premium must be paid by the employer to the state fund at such times as that the state fund prescribes and must be paid over by the state fund to the state treasurer to the credit of the state fund.*

Section 13. Section 39-71-2337, MCA, is amended to read:

“39-71-2337. State fund to submit notice of coverage within thirty days — penalty for failure. (1) The state fund shall, within 30 days after the issuance of an insurance policy, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and other information the department requires. *Beginning January 1, 2006, notice to the department under this section must be provided electronically.*

(2) The department:

(a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for the state fund; and

(b) shall, under terms and conditions acceptable to the department, accept notice of coverage received from the agents recognized under subsection (2)(a) as the state fund’s notice of coverage.

(3) The department may assess a penalty of no more than \$200 against the state fund if, as a general business practice, the state fund does not comply with the 30-day notice requirement.”

Section 14. Section 39-71-2339, MCA, is amended to read:

“39-71-2339. Cancellation of coverage — twenty days’ notice required. (1) The state fund may cancel an employer’s coverage under this part for failure to report payroll or pay the premiums due or for another cause provided in the insurance policy. Cancellation may take effect only by written notice to the named insured and the department at least 20 days prior to the date of cancellation or, in cases of nonreporting of payroll or nonpayment of a premium, by failure of the employer to submit payroll reports or pay a premium within 20 days after the due date. The state fund shall notify the department of the names and effective dates of all policies canceled. However, the policy terminates on the effective date of a replacement or succeeding insurance policy issued to the insured. This section does not prevent the state fund from canceling an insurance policy before a replacement policy is issued to the insured. After the cancellation date, the employer has the same status as an employer who is not enrolled under the Workers’ Compensation Act unless a replacement or succeeding insurance policy has been issued. *Beginning January 1, 2006, notice to the department under this section must be provided electronically.*

(2) The department:

(a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for the state fund; and

(b) shall, under terms and conditions acceptable to the department, accept notice of cancellation received from the agents recognized under subsection (2)(a) as the state fund’s notice of cancellation.

(3) (a) The department may assess a penalty of up to \$200 against the state fund if it does not comply with the notice requirement in subsection (1).

(b) The state fund may contest the penalty assessment in a hearing conducted according to department rules.”

Section 15. Repealer. Section 2-15-1709, MCA, is repealed.

Section 16. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 22, and the provisions of Title 39, chapter 71, part 22, apply to [section 1].

Section 17. Effective dates — applicability. (1) Except as provided in subsection (2), [this act] is effective July 1, 2005.

(2) [Sections 4 and 6 and this section] are effective on passage and approval.

(3) [Sections 9 and 12] apply to policies written or renewed on or after July 1, 2005.

Approved March 24, 2005

CHAPTER NO. 70

[HB 178]

AN ACT REVISING THE LAWS RELATING TO WATER USE; CHANGING THE NAME OF THE WATER RIGHT TRANSFER CERTIFICATE TO THE WATER RIGHT OWNERSHIP UPDATE FORM; CLARIFYING THAT THE DEFINITION OF “APPROPRIATE” MEANS THE USE OF WATER FOR A BENEFICIAL USE; PROVIDING THAT TEMPORARY CHANGES OR LEASES FOR INSTREAM FLOW TO MAINTAIN OR ENHANCE INSTREAM FLOW TO BENEFIT THE FISHERY RESOURCE IS AN APPROPRIATION; CLARIFYING THAT CERTAIN ACTIONS ON AN APPLICATION FOR A CHANGE IN APPROPRIATION RIGHT ARE THE SAME AS ACTIONS ON AN APPLICATION FOR A PERMIT; CLARIFYING THAT REVOCATION OR MODIFICATION APPLIES TO CHANGES IN APPROPRIATION RIGHTS; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION NOTIFY THE COUNTY CLERK AND RECORDER OF EACH TRANSFER FILED; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT PROVIDE AN ADEQUATE SUPPLY OF WATER RIGHT TRANSFER CERTIFICATE FORMS TO EACH COUNTY CLERK AND RECORDER IN THE STATE; ELIMINATING THE REQUIREMENT THAT UPON REQUEST OF THE DEPARTMENT THE COUNTY CLERK AND RECORDER SHALL SEND TO THE DEPARTMENT A COPY OF ANY REALTY TRANSFER CERTIFICATES THAT DISCLOSE A TRANSFER OF WATER RIGHTS; ELIMINATING THE ADJUSTMENT OF FEES TO COVER THE COSTS INCURRED BY THE COUNTY CLERK AND RECORDERS IN PROCESSING WATER RIGHT OWNERSHIP UPDATE FORMS; AMENDING SECTIONS 15-7-305, 15-7-308, 85-2-102, 85-2-117, 85-2-307, 85-2-308, 85-2-310, 85-2-314, 85-2-316, 85-2-421, 85-2-423, 85-2-424, 85-2-426, AND 85-2-431, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 15-7-305, MCA, is amended to read:

“15-7-305. Realty transfer certificate required. (1) The county clerk and recorder shall require the parties to the transaction or their agents or representatives to complete a certificate declaring the consideration paid or to be paid for the real estate transferred.

(2) An instrument or deed evidencing a transfer of real estate may not be accepted for recordation until the certificate has been received by the county clerk and recorder. The validity or effectiveness of an instrument or deed between the parties to it is not affected by failure to comply with the provisions in this part.

(3) (a) Except as provided in 85-2-423, the form of certificate must be prescribed by the department of revenue, and the department shall provide an adequate supply of forms to each county clerk and recorder in the state.

(b) The department shall coordinate with the department of natural resources and conservation and the water court to develop and provide the *water right ownership update* forms ~~required under 85-2-423 and this part~~. *The water right ownership update form must be part of or attached to the realty transfer certificate.*

(4) The clerk and recorder shall prepare a certificate for each contract for deed filed for recording.

(5) The clerk and recorder shall transmit each executed certificate to the department.”

Section 2. Section 15-7-308, MCA, is amended to read:

“15-7-308. Disclosure of information restricted — water right transfer certificate ownership update form exception. (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 ~~transfer certificate ownership update 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 3. 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) in the Upper Clark Fork River basin, to maintain and enhance streamflows to benefit the fishery resource in accordance with 85-2-439; or

(e) *temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408.*

(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 pursuant to a lease authorized under 85-2-436; or

(d) a use of water to maintain and enhance streamflows to benefit the fishery resource in the Upper Clark Fork River basin as part of the Upper Clark Fork River basin instream flow pilot program authorized under 85-2-439; or

(e) *a use of water through a temporary change 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, 2005—sec. 14, Ch. 487, L. 1995.)

85-2-102. (Effective July 1, 2005) 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 beneficial use*;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

(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; ~~and or~~

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.

(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 beneficial use*; or

(b) in the case of a public agency, to reserve water in accordance with 85-2-316.

(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; or

(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.

(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 4. Section 85-2-117, MCA, is amended to read:

"85-2-117. Water right records for filing with local clerk and recorder. Upon payment of a fee established pursuant to 85-2-113, a county

clerk and recorder of the county where the point of diversion or place of use is located or in which a transfer of water right occurred may require the department to provide a report of all water permits, certificates, change approvals, or water right transfer certificates *ownership update forms* issued or processed by the department pursuant to Title 85, chapter 2, parts 3 and 4.”

Section 5. Section 85-2-307, MCA, is amended to read:

“85-2-307. Notice of application for permit or change in appropriation right. (1) (a) Upon receipt of a correct and complete application for a permit or change in appropriation right, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice once in a newspaper of general circulation in the area of the source.

(b) Before the date of publication, the department shall also serve the notice by first-class mail upon:

(i) an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation;

(ii) any purchaser under contract for deed, as defined in 70-20-115, of property that, according to the records of the department, may be affected by the proposed appropriation; and

(iii) any public agency that has reserved waters in the source under 85-2-316.

(c) The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation.

(d) The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than 15 days or more than 60 days after the date of publication) persons may file with the department written objections to the application.

(3) The requirements of subsections (1) and (2) ~~of this section~~ do not apply if the department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons.”

Section 6. Section 85-2-308, MCA, is amended to read:

“85-2-308. Objections. (1) (a) An objection to an application *under this chapter for a permit* 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 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 7. Section 85-2-310, MCA, is amended to read:

“85-2-310. Action on application for permit or change in appropriation right. (1) The department shall grant, deny, or condition an application for a permit *or change in appropriation right* in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received. However, in either case the time may be extended upon agreement of the applicant; or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, *may be extended* by not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons for the extension by first-class mail upon the applicant and each person who has filed an objection as provided by 85-2-308.

(2) However, an application may not be *denied or* approved in a modified form or upon terms, conditions, or limitations specified by the department ~~or denied~~, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application but the department is of the opinion that the application should be *denied or* approved in a modified form or upon terms, conditions, or limitations specified by it ~~or that the application should be denied~~, the department shall prepare a statement of its opinion and its reasons for the opinion. The department shall serve a statement of its opinion by first-class mail upon the applicant, with a notice that the applicant may obtain a hearing by filing a request within 30 days after the notice is mailed. The notice must further state that the application will be modified in a specified manner or denied; unless a hearing is requested.

(3) The department may cease action upon an application for a permit *or change in appropriation right* and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for either of these reasons must be accompanied by a statement of the reasons for which it was returned, and *for a permit application* there is not a right to a priority date

based upon the filing of the application. Returning an application pursuant to this subsection is a final decision of the department.

(4) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

- (a) an application is not corrected and completed as required by 85-2-302;
- (b) the appropriate filing fee is not paid;
- (c) the application does not document:
 - (i) a beneficial use of water;
 - (ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable timeline for the completion of the project and the actual application of the water to a beneficial use.

(iv) for appropriations not covered in subsection (4)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and

(v) if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement fee, if any, is not paid as required by 85-2-124.”

Section 8. Section 85-2-314, MCA, is amended to read:

“85-2-314. Revocation or modification of permit or change in appropriation right. If the work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension thereof or of the time stated in the permit, if the water is not being applied to the beneficial use contemplated in the permit or change in appropriation right, or if the permit or change in appropriation right is otherwise not being followed, the department may, after notice, require the permittee or the holder of the change in appropriation right to show cause why the permit or change in appropriation right should not be modified or revoked. If the permittee or holder of the change in appropriation right fails to show sufficient cause, the department may modify or revoke the permit or change in appropriation right.”

Section 9. Section 85-2-316, MCA, is amended to read:

“85-2-316. State reservation of waters. (1) The state, any political subdivision or agency of the state, or the United States or any agency of the United States may apply to the department to acquire a state water reservation for existing or future beneficial uses or to maintain a minimum flow, level, or

quality of water throughout the year or at periods or for a length of time that the department designates.

(2) (a) Water may be reserved for existing or future beneficial uses in the basin where it is reserved, as described by the following basins:

(i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) A state water reservation may be made for an existing or future beneficial use outside the basin where the diversion occurs only if stored water is not reasonably available for water leasing under 85-2-141 and the proposed use would occur in a basin designated in subsection (2)(a).

(3) Upon receiving a correct and complete application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided for in 85-2-309, the department shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, must be paid by the applicant. In addition, a reasonable proportion of the department's cost of preparing an environmental impact statement must be paid by the applicant unless waived by the department upon a showing of good cause by the applicant.

(4) (a) The department may not adopt an order reserving water unless the applicant establishes to the satisfaction of the department by a preponderance of evidence:

(i) the purpose of the reservation;

(ii) the need for the reservation;

(iii) the amount of water necessary for the purpose of the reservation;

(iv) that the reservation is in the public interest.

(b) In determining the public interest under subsection (4)(a)(iv), the department may not adopt an order reserving water for withdrawal and transport for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(ii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(i) and (4)(b)(ii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a state water reservation to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, use, and reservation of water.

(5) If the purpose of the state water reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the department by a preponderance of evidence that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(6) The department shall limit any state water reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams may be allocated at the discretion of the department.

(7) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may issue the permit subject to terms and conditions that it considers necessary for the protection of the objectives of the reservation.

(8) (a) A person desiring to use water reserved to a conservation district for agricultural purposes shall make application for the use with the district, and the district, upon approval of the application, shall inform the department of the approved use and issue the applicant an authorization for the use. The department shall maintain records of all uses of water reserved to conservation districts and be responsible, when requested by the districts, for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the preparation and processing of the applications for the conservation districts. The department shall, within its staffing and budgeting limitations, complete any feasibility study requested by the districts within 12 months of the time that the request was made. The department shall extend the time allowed to develop a plan identifying projects for using a district's reservation as long as the conservation district makes a good faith effort, within its staffing and budget limitations, to develop a plan.

(b) Upon actual application of water to the proposed beneficial use, the authorized user shall notify the conservation district. The notification must contain a certified statement by a person with experience in the design, construction, or operation of project works for agricultural purposes describing how the reserved water was put to use. The department or the district may then inspect the appropriation to determine if it has been completed in substantial accordance with the authorization.

(9) Except as provided in 85-2-331, the priority of appropriation of a state water reservation and the relative priority of the reservation to permits with a later priority of appropriation must be determined according to this subsection (9), as follows:

(a) A state water reservation under this section has a priority of appropriation dating from the filing with the department of a notice of intention to apply for a state water reservation in a basin in which no other notice of intention to apply is currently pending. The notice of intention to apply must specify the basin in which the applicant is seeking a state water reservation.

(b) Upon receiving a notice of intention to apply for a state water reservation, the department shall identify all potential state water reservation applicants in the basin specified in the notice and notify each potential applicant of the opportunity to submit an application and to receive a state water reservation with the priority of appropriation as described in subsection (9)(a).

(c) To receive the priority of appropriation described in subsection (9)(a), the applicant shall submit a correct and complete state water reservation application within 1 year after the filing of the notice of intention to apply. Upon a showing of good cause, the department may extend the time for preparing the application.

(d) The department may by order subordinate a state water reservation to a permit or a certificate for ground water development issued pursuant to this part if:

(i) the permit application or the notice of completion of ground water development was accepted by the department before the date of the order granting the reservation;

(ii) the effect of subordinating the reservation to one or more permits or certificates for ground water development does not interfere substantially with the purpose of the reservation; and

(iii) in the case of a certificate for ground water development, the reservant consents to the subordination.

(e) The department shall by order establish the relative priority of state water reservations approved under this section that have the same day of priority. A state water reservation may not adversely affect any rights in existence at that time.

(10) The department shall, periodically but at least once every 10 years, review existing state water reservations to ensure that the objectives of the reservations are being met. When the objectives of a state water reservation are not being met, the department may extend, revoke, or modify the reservation. Any undeveloped water made available as a result of a revocation or modification under this subsection is available for appropriation by others pursuant to this part.

(11) The department may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate the state water reservation or portion of the reservation to an applicant who is a qualified reservant under this section. Reallocation of water reserved pursuant to a state water reservation may be made by the department following notice and hearing if the department finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water may not

adversely affect the priority date of the reservation, and the reservation retains its priority date despite reallocation to a different entity for a different use. The department may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

(12) A reservant may not make a change in a state water reservation under this section, except as permitted under 85-2-402 and this subsection. If the department approves a change, the department shall give notice and require the reservant to establish that the criteria in subsection (4) will be met under the approved change.

(13) A state water reservation may be transferred to another entity qualified to hold a reservation under subsection (1). Only the entity holding the reservation may initiate a transfer. The transfer occurs upon the filing of a water right ~~transfer certificate~~ *ownership update form* with the department, together with an affidavit from the entity receiving the reservation establishing that the entity is a qualified reservant under subsection (1), that the entity agrees to comply with the requirements of this section and the conditions of the reservation, and that the entity can meet the objectives of the reservation as granted. If the transfer of a state water reservation involves a change in an appropriation right, the necessary approvals must be acquired pursuant to subsection (12).

(14) This section does not vest the department with the authority to alter a water right that is not a state water reservation.

(15) The department shall undertake a program to educate the public, other state agencies, and political subdivisions of the state as to the benefits of the state water reservation process and the procedures to be followed to secure the reservation of water. The department shall provide technical assistance to other state agencies and political subdivisions in applying for reservations under this section.

(16) Water reserved under this section is not subject to the state water leasing program established under 85-2-141.”

Section 10. 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 ~~on both the state and local levels~~ by requiring that water right ~~transfers~~ *ownership update forms* be filed with the department and that the department notify the water court ~~and the county clerk and recorder~~ of each ~~transfer~~ *water right ownership update form* filed.”

Section 11. Section 85-2-423, MCA, is amended to read:

“85-2-423. Water right ~~transfer certificate~~ *ownership update form.*
(1) The chief water judge and the department shall prescribe the form and content of the water right ~~transfer certificate~~ *ownership update form*.

~~(2) The department shall provide an adequate supply of such forms to each county clerk and recorder in the state.”~~

Section 12. 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 ~~transfer certificate~~ *ownership update form* within 60 days of recording a deed or other instrument evidencing a transfer of real property.

(2) Except in the case of a transfer of real property served by a public service water supply, when any person presents for recording a deed or other instrument evidencing a transfer of real property, the realty transfer certificate shall contain a water rights disclosure whereby the transferor shall acknowledge, at or before closing, 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. If the realty transfer certificate discloses a transfer of water rights, a water right ~~transfer certificate ownership update form~~ must be completed and filed with the department. The recording of the deed or other instrument may not be delayed because of the transfer of the water rights.

~~(3) Upon request of the department, the county clerk and recorder shall send to the department, on a monthly basis, a copy of the clerk and recorder's copy of any realty transfer certificate that discloses a transfer of water rights."~~

Section 13. 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 ~~and the county clerk and recorder~~ of processing the ~~transfer certificate water right ownership update form~~. The fee must be paid at the time of filing of the water right ~~transfer certificate ownership update form~~.

(2) The fee must be deposited in the water right appropriation account provided for in 85-2-318."

Section 14. 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 ~~transfer certificate 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) is liable for a civil penalty of not more than \$50.

(3) An action to recover the penalty must be brought by the department and filed in the district court for the first judicial district.

(4) Any penalty fee collected under this section must be deposited in the water right appropriation account provided for in 85-2-318."

Section 15. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 16. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 71

[HB 180]

AN ACT REVISING CERTAIN PROCEDURES FOR FILING APPLICATIONS WITH THE SECRETARY OF STATE REGARDING THE NAME OF CERTAIN CORPORATIONS, LIMITED LIABILITY COMPANIES, AND PARTNERSHIPS; ELIMINATING CERTAIN REQUIREMENTS THAT DUPLICATE COPIES OF CERTAIN APPLICATIONS, CERTIFICATES, AND REGISTRATIONS WITH RESPECT TO THE NAME OF CERTAIN

CORPORATIONS, LIMITED LIABILITY COMPANIES, AND PARTNERSHIPS BE FILED WITH THE SECRETARY OF STATE; SPECIFYING REQUIREMENTS FOR REGISTRATION OF A FOREIGN LIMITED PARTNERSHIP; AMENDING SECTIONS 30-13-204, 30-13-208, 30-13-210, 30-13-212, 32-1-112, 35-1-1309, 35-2-119, 35-2-1109, 35-8-205, 35-8-206, 35-8-212, 35-10-113, 35-10-622, 35-10-627, 35-12-606, 35-12-1302, AND 35-12-1304, MCA; AND REPEALING SECTION 35-1-1207, MCA.

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

Section 1. Section 30-13-204, MCA, is amended to read:

“30-13-204. Filing application for registration — issuance of certificate. (1) ~~One original and one copy of~~ *The applicant shall complete and submit an application for registration of an assumed business name shall be executed and delivered along with all applicable fees to the secretary of state. If the secretary of state finds that the application complies with the provisions of this part, he the secretary of state shall, when all fees have been paid as provided in this part:*

(a) ~~endorse on the original and the copy application~~ *endorse on the original and the copy application the word “filed” and the month, day, and year of the filing thereof date on which the application was filed;*

(b) ~~file the original application in his the secretary of state’s office; and~~

(c) ~~issue a certificate of registration, to which he shall affix the copy.~~

~~(2) The certificate of registration, together with the copy of the application for registration of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant.~~

~~(3)(2) The registration of an assumed business name remains in effect until canceled.”~~

Section 2. Section 30-13-208, MCA, is amended to read:

“30-13-208. Filing of application for renewal of registration of assumed business name — issuance of certificate thereon. ~~(1) If the secretary of state finds that the application complies with the provisions of this part and that all fees have been paid, he the secretary of state shall, when all fees have been paid as provided in this part:~~

~~(a)(1) endorse on the original and the copy application~~ *endorse on the original and the copy application the word “filed” and the month, day, and year of the filing thereof date on which the application was filed;*

~~(b)(2) file the original application in his the secretary of state’s office; and~~

~~(c)(3) issue a certificate of renewal, to which he shall affix the copy.~~

~~(2) The certificate of renewal, together with the copy of the application for renewal of registration of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant.”~~

Section 3. Section 30-13-210, MCA, is amended to read:

“30-13-210. Filing amendment to registration of assumed business name — issuance of certificate. (1) ~~One original and one copy of an amendment to the registration of an assumed business name must be delivered to the secretary of state. The An application for amended registration of an assumed business name must be filed with the secretary of state and must include but is not limited to the following information:~~

(a) *the* complete assumed business name prior to adoption of *the* amendment;

(b) *the* complete new assumed business name, if applicable;

(c) *the* name and address of the registrant, including street name and number of the *registrant's* business office;

(d) if the name of any person having an interest in the business with a registered assumed business name is to be changed, the new name of the person having an interest in the business with the registered assumed business name;

(e) if a person ~~or persons having~~ *who has had* an interest in a business with a registered assumed name withdraws or dies, a statement of that ~~fact~~ *the person has withdrawn or died*; ~~and~~

(f) a statement that the amended registration of assumed business name supersedes the original registration and all amendments to the original registration; *and*

(g) *all other information determined by the secretary of state to be necessary.*

(2) If the secretary of state finds that the application for amended registration of the assumed business name complies with this part *and that all applicable fees have been paid*, the secretary of state shall, ~~when all fees have been paid as provided in this part:~~

(a) endorse on the ~~original and the copy~~ *application for amendment* the word "filed" and the month, day, and year of the *filing date on which the application for amendment was filed*;

(b) file the original *application for amendment* in the secretary of state's office; and

(c) issue a certificate of amendment, ~~to which the secretary of state shall affix the copy.~~

~~(3) The certificate of amendment, together with the copy of the amendment required in subsection (1), must be returned to the registrant.~~

~~(4)(3) The failure of~~ *If the registrant of an assumed business name fails to comply with the requirements of this section, the secretary of state shall cancel results in the cancellation by the secretary of state of the registration."*

Section 4. Section 30-13-212, MCA, is amended to read:

"30-13-212. Filing application for reservation of assumed business name — issuance of certificate thereon. ~~(1) One original and one copy of~~ *The applicant shall complete and submit an application for reservation of an assumed business name, duly executed by the applicant, shall be delivered and all applicable fees to the secretary of state. If the secretary of state finds the application complies with the provisions of this part, he the secretary of state shall, when all fees have been paid as provided in this part:*

~~(a)(1)~~ *endorse on the original and the copy application the word "filed" and the month, day, and year of the filing thereof date on which the application was filed;*

~~(b)(2)~~ *file the original application in his the secretary of state's office; and*

~~(c)(3)~~ *issue a certificate of reservation, to which he shall affix the copy.*

~~(2) The certificate of reservation, together with the copy of the application for reservation of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant."~~

Section 5. Section 32-1-112, MCA, is amended to read:

“32-1-112. Applicability of corporation law. (1) Except as provided in subsection (2), the provisions of Title 35, chapter 1, apply to banks unless a section in this title or a rule or order issued under this chapter is inconsistent with Title 35, chapter 1.

(2) The provisions of 35-1-114, 35-1-115(4) through (10), 35-1-308(1), 35-1-623(2), 35-1-936, 35-1-1106, 35-1-1107, ~~35-1-1207~~, and Title 35, chapter 1, part 10, do not apply to banks.”

Section 6. 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”, ~~together with the secretary of state’s name, official title, and the date and time of receipt, on the original, the document copy, and the receipt was received by the secretary of state for the filing fee.~~ Except as provided in 35-1-315 and 35-1-1034, after filing a document, the secretary of state shall deliver a ~~confirmation~~ *certification* letter to the domestic or foreign corporation or its representative, ~~along with the filing fee receipt or as acknowledgment of receipt if no fee is required 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 ~~its~~ *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 7. Section 35-2-119, MCA, is amended to read:

“35-2-119. Filing requirements. All of the following requirements must be met before a document ~~is entitled to~~ *may* be filed under this section by the secretary of state:

(1) A document that is required or permitted by this chapter to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by this chapter. It may contain other information as well.

(3) The document must be typewritten or printed.

(4) The document must be in the English language. However, a corporate name ~~need~~ *does not need* to be in English if it is written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations ~~need~~ *does not need* to be in English if it is accompanied by a reasonably authenticated English translation.

(5) The document must be executed:

(a) by the presiding officer of ~~its~~ *the corporation's* board of directors, its president, or another of its officers;

(b) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(6) The person executing the document shall sign it and state beneath or opposite the signature ~~his~~ *the person's* name and the capacity in which the person signs. The document may but ~~need~~ *does not need* to contain the corporate seal, an attestation by the secretary or an assistant secretary, or an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for a document under 35-2-1108.

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by:

~~(a) one copy, except as provided in 35-2-311 and 35-2-829;~~

~~(b)~~(a) the correct filing fee; and

~~(c)~~(b) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law.”

Section 8. 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”, ~~together with the secretary of state's name,~~ official title, and the date and the time of receipt, ~~on the original, the copy of the secretary of state received the document, and the receipt for the filing fee.~~ Except as provided in 35-2-314 and 35-2-830, after filing a document, the secretary of state shall deliver ~~the document copy~~ *a certification letter* to the domestic or foreign corporation or its representative, ~~together with the filing fee receipt or acknowledgment of receipt if no fee is required~~ *as acknowledgment that the document has been filed and the fee has been paid.*

(3) ~~Upon refusing~~ *If the secretary of state refuses* to file a document, the secretary of state shall return ~~it~~ *the document* to the domestic or foreign corporation or its representative within 10 days after the document was delivered, ~~together with~~ *to the secretary of state and include* a brief written explanation of the reason ~~or reasons~~ 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 9. Section 35-8-205, MCA, is amended to read:

“35-8-205. Filing with secretary of state. (1) ~~The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or confirmed copy, of the articles of organization or any other document required to be filed pursuant to this chapter must be delivered to the secretary of state. If the secretary of state determines that the documents conform to the filing provisions of this chapter and that all required filing fees have been paid, the secretary of state shall, when all required filing fees have been paid:~~

(a) ~~endorse on each the signed original and duplicate copy document the word “filed” and the date and time of its acceptance of accepting the document for filing;~~

(b) ~~retain the signed original document in the secretary of state’s files; and~~

(c) ~~return the duplicate copy send a certification letter to the person who filed the document or to the person’s representative.~~

(2) If the secretary of state is unable to make the determination required for filing by subsection (1) at the time any documents are delivered for filing, the documents are considered to have been filed at the time of delivery if the secretary of state subsequently determines that the documents as delivered conform to the filing provisions of 35-8-201 through 35-8-211.”

Section 10. Section 35-8-206, MCA, is amended to read:

“35-8-206. Effect of delivery or filing of articles of organization. (1) A limited liability company is formed when the articles of organization are ~~delivered to filed with~~ the secretary of state for filing.

(2) ~~Each copy of the~~ The articles of organization *that are* stamped “filed” and marked with the filing date ~~is are~~ conclusive evidence that all conditions precedent required to be performed by the organizers have been complied with and that the limited liability company has been legally organized and formed under this chapter.”

Section 11. Section 35-8-212, MCA, is amended to read:

“35-8-212. License fee Filing fees. (1) In addition to the filing fee authorized by 35-8-211, the secretary of state shall charge and collect from each foreign limited liability company:

(a) ~~a license an additional filing fee~~ at the time of filing its articles of organization; and

(b) ~~a license an additional filing fee~~ at the time of filing an application for a certificate of authority to transact business.

(2) The fees authorized in this section must be set and deposited in accordance with 2-15-405.”

Section 12. Section 35-10-113, MCA, is amended to read:

“35-10-113. Filing with secretary of state. (1) ~~The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or confirmed copy, of any A signed statement filed pursuant to this chapter must be delivered to the secretary of state. If the secretary of state determines that the documents conform statement conforms to the filing provisions of this chapter and all required filing fees have been paid, the secretary of state shall:~~

(a) ~~endorse on each the signed original and duplicate copy statement the word “filed” and the date and time of acceptance for filing;~~

(b) ~~retain the signed original statement in the secretary of state’s files; and~~

(c) ~~return the duplicate copy~~ *send a certification letter* to the person who filed ~~it~~ *the statement* or the person's representative.

(2) The secretary of state may by rule prescribe and furnish forms or computer formats for any statement to be filed with the secretary of state under this chapter. If the secretary of state requires *it*, the use of any forms or formats is mandatory.

(3) All partnerships filing statements pursuant to this chapter shall first register the business name as an assumed business name pursuant to Title 30, chapter 13, part 2."

Section 13. Section 35-10-622, MCA, is amended to read:

"35-10-622. Statement of dissociation — filing. (1) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(2) *If a statement of dissociation is filed, the statement must be filed with the same entity with which the original partnership agreement was filed.*

~~(2)~~(3) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of 35-10-310(4) and (5).

~~(3)~~(4) For the purposes of 35-10-301, 35-10-620, and 35-10-621(2), a person *who is* not a partner is considered to have notice of the dissociation 90 days after the statement of dissociation is filed."

Section 14. Section 35-10-627, MCA, is amended to read:

"35-10-627. Statement of dissolution. (1) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(2) *If a statement of dissolution is filed, the statement must be filed with the same entity with which the original partnership agreement was filed.*

~~(2)~~(3) A statement of dissolution cancels a filed statement of partnership authority for the purposes of 35-10-310(4) and is a limitation on authority for the purposes of 35-10-310(5).

~~(3)~~(4) For the purposes of 35-10-301 and 35-10-626, a person *who is* not a partner is considered to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 90 days after it is filed.

~~(4)~~(5) After filing and, if appropriate, recording a statement of dissolution, the dissolved partnership may file and, if appropriate, record a statement of partnership authority that will operate with respect to a person *who is* not a partner as provided in 35-10-310(4) and (5) in any transaction, whether or not the transaction is appropriate for winding up the partnership business."

Section 15. Section 35-12-606, MCA, is amended to read:

"35-12-606. Filing in the office of the secretary of state. (1) The certificate of limited partnership and of any certificates of amendment, restatement, or cancellation or of any judicial decree of amendment, restatement, or cancellation must be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary ~~need~~ *does not need* to exhibit evidence of the person's authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law the secretary of state shall:

(a) endorse on the document the word "filed" and the ~~day, month, and year of the filing date on which the document was filed;~~

(b) file the ~~original~~ document in the secretary of state's office; and

(c) ~~return the copy~~ send a certification letter to the person who filed ~~it~~ the document or the person's representative.

(2) Upon the filing of a certificate of amendment, restatement, or judicial decree of amendment in the office of the secretary of state, the certificate of limited partnership is amended or restated as set forth in the certificate. Upon the effective date of a certificate of cancellation or a judicial decree of cancellation, the certificate of limited partnership is canceled."

Section 16. Section 35-12-1302, MCA, is amended to read:

"35-12-1302. Registration. Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state the application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) the name of the foreign limited partnership ~~and, if different, the name under which it proposes to transact business and register in this state or the fictitious name adopted by a foreign limited partnership authorized to transact business in this state because its real name is unavailable;~~

(2) the state in which ~~it~~ the foreign limited partnership was formed and the date of ~~its~~ the foreign limited partnership's formation;

(3) the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership desires to appoint; ~~which.~~ An agent appointed under this section must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business in this state;

(4) a statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if an agent has not been appointed pursuant to subsection (3) or, if an agent was appointed, the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence;

(5) the address of the office required to be maintained in the state of ~~its~~ the foreign limited partnership's organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;

(6) the name and business address of each general partner; and

(7) the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn."

Section 17. Section 35-12-1304, MCA, is amended to read:

"35-12-1304. Name. (1) A foreign limited partnership may register with the secretary of state under ~~any~~ a name ~~(whether or not it is the name under which it is registered in its state of organization)~~ that includes the words "limited partnership" and that could be registered by a domestic limited partnership if the foreign limited partnership name is distinguishable in the records of the secretary of state from:

(a) *the name of another limited partnership authorized to transact business in this state; and*

(b) *any assumed business name, limited liability company name, limited liability partnership name, corporation, trademark, or service mark registered with the secretary of state.*

(2) *A foreign limited partnership may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (1)(b). The secretary of state shall authorize use of the name applied for if:*

(a) *the limited partnership that has previously registered the name with the secretary of state consents to the use in writing and submits an undertaking, in a form satisfactory to the secretary of state, to change its name to a name that is distinguishable in the records of the secretary of state from the name of the limited partnership that is applying for the name; or*

(b) *the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name for which the applicant applied."*

Section 18. Repealer. Section 35-1-1207, MCA, is repealed.

Approved March 24, 2005

CHAPTER NO. 72

[HB 183]

AN ACT PERMITTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO SEEK A FEDERAL HOME AND COMMUNITY-BASED SERVICES WAIVER OF THE MEDICAID STATE PLAN IN ORDER TO INCREASE FLEXIBILITY IN PROVIDING SERVICES FOR SERIOUSLY EMOTIONALLY DISTURBED CHILDREN; AND AMENDING SECTIONS 53-6-401 AND 53-6-402, MCA.

WHEREAS, the 58th legislative session in House Joint Resolution No. 13 directed the Department of Public Health and Human Services to conduct a study regarding the health programs administered by the Department and to provide recommendations to the 59th legislative session; and

WHEREAS, the Department formed an advisory committee that examined the structure and values of the state's Medicaid system; and

WHEREAS, the advisory committee advised the Department to seek a home and community-based services waiver from the Secretary of the Department of Health and Human Services for services to seriously emotionally disturbed children.

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

Section 1. Section 53-6-401, MCA, is amended to read:

"53-6-401. Definitions. As used in this part, the following definitions apply:

(1) "Community-based medicaid services" means those long-term medical, habilitative, rehabilitative, and other services that are available to medicaid-eligible persons in a community setting or in a person's home as a

substitute for medicaid services provided in long-term care facilities and that are allowed under the state medicaid plan in order to avoid institutionalization.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "*Home and community-based services*", as provided for in section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n(c) and any regulations implementing that statute, means long-term medical, habilitative, rehabilitative, and other services provided in personal residences or in community settings.

(3)(4) "Long-term care facilities" means facilities that are certified by the department to provide skilled or intermediate nursing care services, including intermediate nursing care services for persons with developmental disabilities.

(4)(5) "Long-term care medicaid services" means community-based medicaid services and those medicaid services provided in long-term care facilities.

(5)(6) "Long-term care preadmission screening and resident review" means an evaluation that results in a determination as to whether a person requires the services provided in long-term care facilities and whether community-based medicaid services would be an appropriate substitute for medicaid services that are available in long-term care facilities."

Section 2. Section 53-6-402, MCA, is amended to read:

"53-6-402. Community-based long-term care facilities medicaid services — powers and duties of department. (1) The department may operate, for persons eligible for medicaid, a program of community-based medicaid services as an alternative to long-term care facility services in accordance with the provisions of Title XIX of the Social Security Act, as may be amended.

(2) The department may conduct long-term care preadmission screenings and resident reviews. Long-term care preadmission screenings and resident reviews are required for all medicaid-eligible persons entering long-term care facilities and community-based medicaid services and for all persons who become eligible for medicaid after entering long-term care facilities, before payment for services in such settings are is authorized under medicaid. Preadmission screenings and resident review of persons not applying for medical assistance under this part must be on a voluntary basis, except as required under the Social Security Act.

(3) The department shall annually advise medical doctors and current residents of long-term care facilities of the program provided in subsection (1).

(4) *The department may seek and obtain any necessary authorization provided under federal law to implement home and community-based services for seriously emotionally disturbed children pursuant to a waiver of federal law as permitted by section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n(c). The home and community-based services system must strive to incorporate the following components:*

(a) *flexibility in design of the system to attempt to meet individual needs;*

(b) *local involvement in development and administration;*

(c) *encouragement of culturally sensitive and appropriately trained mental health providers;*

(d) *accountability of recipients and providers; and*

(e) *development of a system consistent with the state policy as provided in 52-2-301.*

(4)(5) The department may adopt rules necessary to implement a program of community-based medicaid services *and home and community-based services* and to establish a system of long-term care preadmission screenings and resident reviews as part of that program.”

Approved March 24, 2005

CHAPTER NO. 73

[HB 184]

AN ACT REVISING THE LAWS RELATING TO LIBRARY FEDERATIONS; REMOVING THE DESIGNATION OF FEDERATION HEADQUARTERS LIBRARY; REVISING THE ESTABLISHMENT OF LIBRARY FEDERATIONS; CLARIFYING LIBRARIES' PARTICIPATION IN, AND FUNDING FOR, LIBRARY FEDERATIONS; ESTABLISHING THAT LIBRARY TRUSTEES BE APPOINTED ACCORDING TO FEDERATION BYLAWS; AMENDING SECTIONS 1-11-301, 22-1-103, 22-1-402, AND 22-1-404, MCA; AND REPEALING SECTION 22-1-403, MCA.

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

Section 1. Section 1-11-301, MCA, is amended to read:

“1-11-301. Publication and sale of Montana Code Annotated — free distribution. (1) The legislative council, with the advice of the code commissioner, shall decide on the quantity, quality, style, format, and grade of all publications prior to having the code commissioner call for bids for the printing and binding and contract for their publication. The code commissioner shall follow the requirements of state law relating to contracts and bids, except as provided in this section.

(2) The methods of sale to the public of the Montana Code Annotated and supplements or other subsequent and ancillary publications may be included as an alternative specification and bid and as a part of a contract to be let by bids by the code commissioner.

(3) The sales price to the public of all Montana Code Annotated material must be fixed by the legislative council but may not exceed the cost price plus 25%. All revenue generated from the sale of the Montana Code Annotated or ancillary publications must be deposited in the state special revenue fund. Appropriations from the fund may be made for the use of the office and facilities of the legislative council under this chapter.

(4) Sets of the Montana Code Annotated purchased by the state, Montana local governmental agencies that are supported by public funds, and nonprofit organizations may not exceed the cost price of the sets plus 5%.

(5) (a) ~~The~~ *One copy of the Montana Code Annotated and supplements, and other subsequent and ancillary publications except annotations, must be provided at no cost to the following:*

(i) each library designated as a depository library under 22-1-214, ~~one copy;~~

~~(ii) each library designated as a federation headquarters library under 22-1-402, one copy.~~

(b) The state law library in Helena must be provided with four copies of the Montana Code Annotated and supplements, including annotations and other subsequent and ancillary publications.

(c) The legislative council shall include in the cost price of the code the cost of providing the copies under this subsection.”

Section 2. Section 22-1-103, MCA, is amended to read:

“22-1-103. State library commission — authority. The state library commission may:

(1) give assistance and advice to all tax-supported or public libraries in the state and to all counties, cities, towns, or regions in the state that propose to establish libraries, as to the best means of establishing and improving those libraries;

(2) maintain and operate the state library and make provision for its housing;

(3) (a) accept and expend in accordance with the terms of a grant any grant of federal funds that is available to the state for library purposes;

(b) accept, receive, and administer any gifts, donations, bequests, and legacies made to the Montana state library. Unless otherwise provided by the donor, gifts, donations, bequests, and legacies must be deposited in the Montana state library trust established in 22-1-225.

(4) make rules and establish standards for the administration of the state library and for the control, distribution, and lending of books and materials;

(5) serve as the agency of the state to accept and administer any state, federal, or private funds or property appropriated for or granted to it for library service or foster libraries in the state and establish regulations under which funds must be disbursed;

(6) provide library services for the blind and for individuals with physical disabilities;

(7) furnish, by contract or otherwise, library assistance and information services to state officials, state departments, and residents of those parts of the state inadequately serviced by libraries;

(8) act as a state board of professional standards and library examiners, develop standards for public libraries, and adopt rules for the certification of librarians;

(9) designate areas for ~~the and establishment of~~ *establish* federations of libraries ~~and designate the headquarters library for the federations.”~~

Section 3. Section 22-1-402, MCA, is amended to read:

“22-1-402. Library federations — definition. (1) A library federation is a combination of libraries serving a multicounty, multicity, or city-county area within a federation area designated by the state library commission. Any other public, school, special, college, or university library or town, city, or county within the federation area may participate in a federation.

(2) ~~The governing body of a public library may agree by contract to form a federation with the governing board of another public, school, special, college, or university library if one of the parties is or maintains a library that has been~~

~~designated by the state library commission as a headquarters library for that federation area. any library may agree to participate in the federation. The participating entities may retain the autonomy over their respective libraries specified in the contract.~~

(3) The expense of providing library services for the library federation must be based on funds received from the state or participating libraries ~~as agreed upon in the contract. The funds of the federation must be maintained as a separate account as provided in the contract. Participating libraries shall transfer semiannually to the account all money collected for the federation in their respective jurisdiction.~~

(4) A participating entity may withdraw from a federation according to the terms for withdrawal provided in the ~~contract by the action of its governing body~~ *federation's bylaws.*

(5) A federation may contract with other federations, libraries, or the state library to provide federation services.”

Section 4. Section 22-1-404, MCA, is amended to read:

“22-1-404. Board of trustees — coordinator. (1) In a library federation, there must be a board of trustees ~~with advisory powers only, the operation of the library federation having been specified by contract,~~ *with advisory powers only, appointed according to the federation's bylaws.* The state library commission, provided for in 22-1-101, shall adopt rules governing the composition of the federation board of trustees. A majority of the members of each federation board of trustees must be trustees of a public library, as defined in 22-1-326.

(2) ~~The library director or a designee of the headquarters library shall serve as the coordinator of the federation and federation membership shall appoint a coordinator of the federation who shall serve as a nonvoting member of the federation advisory board of trustees.”~~

Section 5. Repealer. Section 22-1-403, MCA, is repealed.

Approved March 24, 2005

CHAPTER NO. 74

[HB 187]

AN ACT REVISING AND EXTENDING THE OLD FORTS TRAIL; AMENDING SECTION 60-1-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 60-1-207, MCA, is amended to read:

“60-1-207. Old forts trail. ~~Beginning~~ *The old forts trail is established as follows:*

(1) *beginning at the Old Fort old fort park in Fort Benton, proceeding west via 20th street to Saint Charles street, along Saint Charles street to state highway 387, along state highway 387 to U.S. highway 87 to Havre, and continuing along state highway 233 and into Canada on Saskatchewan 21, the Old Forts Trail is established; and*

(2) *beginning at the old fort park in Fort Benton and proceeding west via 20th street to Saint Charles street, along Saint Charles street to state highway 223*

north, southwest on U.S. highway 87 to the junction with state highway 564, north on state highway 564 to the junction with state highway 365, west on state highway 365 to the junction with state highway 225, north on state highway 225 to the junction with state highway 366, west on state highway 366 to the junction with state highway 417, north on state highway 417 to the junction with U.S. highway 2, west on U.S. highway 2 to the junction with interstate highway 15, north on interstate highway 15, and into Canada on Alberta highway 4.”

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

Approved March 24, 2005

CHAPTER NO. 75

[HB 198]

AN ACT DEFINING “STUDENT INTERN” IN THE CONTEXT OF STATE EMPLOYMENT, INCLUDING PAY, BENEFITS, AND OTHER EMPLOYEE RIGHTS AND RESPONSIBILITIES; AMENDING SECTIONS 2-18-101, 2-18-111, 2-18-601, 2-18-611, 2-18-701, 2-18-809, 2-18-1101, 2-18-1202, 2-18-1303, 39-29-101, AND 39-30-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-18-101, MCA, is amended to read:

“2-18-101. Definitions. As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

(1) “Agency” means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) “Anniversary date”, except as modified in part 3 of this chapter, means the month and day on which an employee began the most recent period of uninterrupted state service.

(3) “Base salary” means the amount of compensation paid to an employee, excluding:

(a) state contributions to group benefits provided in 2-18-703;

(b) overtime;

(c) fringe benefits as defined in 39-2-903; and

(d) the longevity allowance provided in 2-18-304.

(4) “Board” means the board of personnel appeals established in 2-15-1705.

(5) “Class” means one or more positions substantially similar with respect to the kind or nature of duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may be used to designate each position allocated to the class, similar qualifications may be required of persons appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.

(6) “Class series benchmark” means a representative position within a class series that is used to illustrate the application of the job evaluation factors that are used to classify positions in the classification plan. A benchmark description describes the duties and responsibilities assigned and the factors applied to the class series benchmark.

(7) "Class specification" means a written descriptive statement of the duties and responsibilities characteristic of a class of positions and includes the education, experience, knowledge, skills, abilities, and qualifications necessary to perform the work of the class.

(8) "Compensation" means the annual or hourly wage or salary and includes the state contribution to group benefits under the provisions of 2-18-703.

(9) "Competencies" means sets of measurable and observable knowledge, skills, abilities, and behaviors that contribute to success in a job.

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

(11) (a) Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 or 2-18-104 from the statewide classification system.

(b) *The term does not include a student intern.*

(12) "Entry salary" means the entry-level base salary for each grade provided in 2-18-312.

(13) "Grade" means the number assigned to a pay range within a pay schedule in part 3 of this chapter.

(14) "Job sharing" means the sharing by two or more persons of a position.

(15) "Market ratio" means an employee's base salary divided by the market salary for the employee's pay grade.

(16) "Market salary" means the midpoint in a pay grade provided in 2-18-312, based on the average base salary that other employers pay to employees in comparable occupations as determined by the department's salary survey of the relevant labor market.

(17) "Permanent employee" means an employee who is designated by an agency as permanent and who has attained or is eligible to attain permanent status.

(18) "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period.

(19) "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

(20) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

(21) "Program" means a combination of planned efforts to provide a service.

(22) "Seasonal employee" means a permanent employee who is designated by an agency as seasonal, who performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits accrued during the preceding season.

(23) "Short-term worker" means a person who:

(a) is hired by an agency for an hourly wage established by the agency;

(b) may not work for the agency for more than 90 days in a continuous 12-month period;

(c) is not eligible for permanent status;

(d) may not be hired into another position by the agency without a competitive selection process; and

(e) is not eligible to earn the leave and holiday benefits provided in part 6 of this chapter or the group insurance benefits provided in part 7 of this chapter.

(24) "Student intern" means a person who:

(a) has been accepted in or is currently enrolled in an accredited school, college, or university and is hired directly by an agency in a student intern position;

(b) is not eligible for permanent status;

(c) is not eligible to become a permanent employee without a competitive selection process;

(d) must be covered by the hiring agency's workers' compensation insurance;

(e) is not eligible to earn the leave and holiday benefits provided for in part 6 of this chapter or the group insurance benefits provided in part 7 of this chapter; and

(f) may be discharged without cause.

~~(24)~~(25) "Temporary employee" means an employee who:

(a) is designated as temporary by an agency for a definite period of time not to exceed 12 months;

(b) performs temporary duties or permanent duties on a temporary basis;

(c) is not eligible for permanent status;

(d) is terminated at the end of the employment period; and

(e) is not eligible to become a permanent employee without a competitive selection process."

Section 2. Section 2-18-111, MCA, is amended to read:

"2-18-111. Hiring preference for residents of Indian reservations for state jobs within reservation — rules. (1) A state agency that operates within an Indian reservation shall give a preference in hiring for employment with the state agency to an Indian resident of the reservation who has substantially equal qualifications for the position.

(2) The commissioner of labor and industry shall enforce this section and investigate complaints of its violation and may adopt rules to implement this section.

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

(a) "Employment" means being employed as a permanent, temporary, or seasonal employee as defined in 2-18-101 for a state position. The term does not include:

(i) a state elected official;

(ii) appointment by an elected official to a body, such as a board, commission, committee, or council;

(iii) appointment by an elected official to a public office if the appointment is provided for by law; ~~or~~

(iv) engagement as an independent contractor or employment by an independent contractor; *or*

(v) *engagement as a student intern.*

(b) "Indian" means a person who is enrolled or who is a lineal descendant of a person enrolled upon an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian tribe, domiciled in the United States.

(c) "State agency" means a department, office, board, bureau, commission, agency, or other instrumentality of the executive or judicial branches of the government of this state."

Section 3. Section 2-18-601, MCA, is amended to read:

"2-18-601. Definitions. For the purpose of this part, except 2-18-620, the following definitions apply:

(1) (a) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision of the state.

(b) The term does not mean the state compensation insurance fund.

(2) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

(3) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(4) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, and persons contracted as independent contractors or hired under personal services contracts, *and student interns.*

(5) "Full-time employee" means an employee who normally works 40 hours a week.

(6) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

(7) "Part-time employee" means an employee who normally works less than 40 hours a week.

(8) "Permanent employee" means a permanent employee as defined in 2-18-101.

(9) "Seasonal employee" means a seasonal employee as defined in 2-18-101.

(10) "Short-term worker" means a short-term worker as defined in 2-18-101.

(11) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or a member of the employee's immediate family or for a permanent state employee who is eligible for parental leave under the provisions of 2-18-606.

(12) "*Student intern*" means a student intern as defined in 2-18-101.

~~(12)~~(13) "Temporary employee" means a temporary employee as defined in 2-18-101.

~~(13)~~(14) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

~~(14)~~(15) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."

Section 4. Section 2-18-611, MCA, is amended to read:

“2-18-611. Annual vacation leave. (1) Each permanent full-time employee shall earn annual vacation leave credits from the first day of employment. Vacation leave credits earned must be credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of 6 calendar months.

(2) Seasonal employees earn vacation credits. However, seasonal employees must be employed for 6 qualifying months before they may use the vacation credits. In order to qualify, seasonal employees shall immediately report back for work when operations resume in order to avoid a break in service.

(3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have worked the qualifying period.

(4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

(5) Temporary employees earn vacation leave credits but may not use the credits until after working for 6 qualifying months.

(6) A short-term worker *or a student intern*, as both terms are defined in 2-18-101, may not earn vacation leave credits, and time worked as a short-term worker *or as a student intern* does not apply toward the person’s rate of earning vacation leave credits.”

Section 5. Section 2-18-701, MCA, is amended to read:

“2-18-701. Definitions. In this part, as it applies to a person employed in the executive, judicial, or legislative branches of state government;

(1) “employee” means:

~~(1)~~(a) a permanent full-time employee, as provided in 2-18-601;

~~(2)~~(b) a permanent part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week;

~~(3)~~(c) a seasonal full-time employee, as provided in 2-18-601, who is regularly scheduled to work 6 months or more a year or who works for a continuous period of more than 6 months a year although not regularly scheduled to do so;

~~(4)~~(d) a seasonal part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week for 6 months or more a year or who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so;

~~(5)~~(e) elected officials;

~~(6)~~(f) officers and permanent employees of the legislative branch;

~~(7)~~(g) judges and permanent employees of the judicial branch;

~~(8)~~(h) academic, professional, and administrative personnel having individual contracts under the authority of the board of regents of higher education or the state board of public education;

~~(9)~~(i) a temporary full-time employee, as provided in 2-18-601:

~~(a)~~(i) who is regularly scheduled to work more than 6 months a year;

~~(b)~~(ii) who works for a continuous period of more than 6 months a year although not regularly scheduled to do so; or

(e)(iii) whose temporary status is defined through collective bargaining;

~~(10)(j)~~ a temporary part-time employee, as provided in 2-18-601:

~~(a)(i)~~ who is regularly scheduled to work 20 hours or more a week for 6 months or more a year;

~~(b)(ii)~~ who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so; or

~~(c)(iii)~~ whose temporary status is defined through collective bargaining; and

~~(11)(k)~~ 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) "employee" does not include a student intern, as defined in 2-18-101."

Section 6. Section 2-18-809, MCA, is amended to read:

"2-18-809. Definitions. As used in this part, the following definitions apply:

(1) "Advisory council" means the state employee group benefits advisory council provided for in 2-15-1016.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Flexible spending account" means a funding and accounting arrangement allowed by federal law that:

(a) gives a state employee a choice between receiving taxable salary or having a part of the employee's salary withheld; and

(b) provides for depositing any portion of the state employee's salary withheld and any employer contribution designated by the employee into an account and receiving from that account nontaxable reimbursement for certain out-of-pocket medical expenses of the state employee or a dependent of the employee.

(4) "Group benefits" means group hospitalization, health, medical, surgical, disability, life, and other similar and related group benefits provided to officers and employees of the state, including flexible spending account benefits. The term "group benefits" does not include casualty insurance, defined in 33-1-206; marine insurance, authorized in 33-1-209 and 33-1-221 through 33-1-229; property insurance, defined in 33-1-210; surety insurance, defined in 33-1-211; and title insurance, defined in 33-1-212.

(5) (a) "State employee" means an employee of the state, specifically including a member or employee of the legislative branch of state government.

(b) The term "state employee" does not include employees of counties, cities, towns, school districts, or the Montana university system or a student intern, as defined in 2-18-101."

Section 7. Section 2-18-1101, MCA, is amended to read:

"2-18-1101. Definitions. As used in this part, the following definitions apply:

(1) "Agency head" means a director, commissioner, or constitutional officer in charge of an executive, legislative, or judicial branch agency or an agency of the Montana university system. The term includes the president or other person

in charge of a public retirement board or a unit of the Montana university system.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) (a) "Employee" means an employee of the executive, legislative, or judicial branch or the Montana university system.

(b) *The term does not include a student intern, as defined in 2-18-101.*

(4) "Group or team of employees" means a group, team, or work unit of employees working cooperatively."

Section 8. Section 2-18-1202, MCA, is amended to read:

"2-18-1202. Definitions. As used in this part, the following definitions apply:

(1) "Agency" has the meaning provided in 2-18-101 but does not include the Montana university system.

(2) (a) "Employee" means a person employed by the state who has achieved permanent status, as defined in 2-18-101, or officers and employees of the legislative branch and teachers under the authority of the department of corrections or department of public health and human services who have been employed for at least 6 continuous months.

(b) *The term does not include a student intern, as defined in 2-18-101.*

(3) "Privatization" means contracting with the private sector to provide a service normally or traditionally provided directly by an employee of an agency."

Section 9. Section 2-18-1303, MCA, is amended to read:

"2-18-1303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Common association" means an association of employees established pursuant to 2-18-1310 for the purposes of employer and employee participation in the plan.

(2) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with the department to participate in the plan.

(3) "Department" means the department of administration established in 2-15-1001.

(4) "Employee" means a person employed by an employer but does not include an independent contractor, or a person hired by the employer under a personal services contract, or a student intern, as defined in 2-18-101.

(5) "Employer" means a legally constituted department, board, or commission of the state, a county, an incorporated city or town, or any political subdivision of the state, including a school district or a unit of the university system.

(6) "Health care expense trust account" or "account" means an account established for the payment of qualified health care expenses under the plan.

(7) "Member" means an employee who belongs to a voluntary employees' beneficiary association established under 2-18-1310.

(8) "Plan" means the employee welfare benefit plan established under Internal Revenue Code section 501(c)(9) pursuant to 2-18-1304.

(9) "Qualified health care expenses" means expenses paid by a member for medical care, as defined by 26 U.S.C. 213(d), for the member or the member's dependent as defined by 26 U.S.C. 152."

Section 10. Section 39-29-101, MCA, is amended to read:

"39-29-101. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Armed forces" means the:

(a) United States army, navy, air force, marine corps, and coast guard;

(b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the department of veterans affairs; and

(c) Montana army and air national guard.

(2) "Disabled veteran" means a person:

(a) whether or not the person is a veteran who was separated under honorable conditions from military duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or a pension because of a law administered by the department of veterans affairs, a military department, or the state of Montana; or

(b) who has received a purple heart medal.

(3) "Eligible relative" means:

(a) the unmarried surviving spouse of a veteran or disabled veteran;

(b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

(c) the mother of a veteran who died under honorable conditions while serving in the armed forces if:

(i) the mother's spouse is totally and permanently disabled; or

(ii) the mother is the widow of the father of the veteran and has not remarried;

(d) the mother of a service-connected permanently and totally disabled veteran if:

(i) the mother's spouse is totally and permanently disabled; or

(ii) the mother is the widow of the father of the veteran and has not remarried.

(4) "Military duty" means duty with military pay and allowances in the armed forces.

(5) (a) "Position" means a position occupied by a permanent, temporary, or seasonal employee, as defined in 2-18-101, for the state or a similar permanent, temporary, or seasonal employee with a public employer other than the state.

(b) The term does not include:

(i) a state or local elected office;

(ii) appointment by an elected official to a body, such as a board, commission, committee, or council;

(iii) appointment by an elected official to a public office if the appointment is provided for by law;

(iv) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; ~~or~~

(v) engagement as an independent contractor or employment by an independent contractor; *or*

(vi) a position occupied by a student intern, as defined in 2-18-101.

(6) "Public employer" means:

(a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;

(b) a unit of the Montana university system;

(c) a school district or community college; and

(d) a county, city, or town.

(7) "Scored procedure" means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that results in a numerical score to which percentage points may be added.

(8) (a) "Under honorable conditions" means a discharge or separation from military duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges.

(b) The term does not include dishonorable discharges or other administrative discharges characterized as other than honorable.

(9) "Veteran" means a person who:

(a) was separated under honorable conditions from active federal military duty in the armed forces after having served more than 180 consecutive days, other than for training;

(b) as a member of a reserve component under an order of federal duty pursuant to 10 U.S.C. 12301(a), (d), or (g), 10 U.S.C. 12302, or 10 U.S.C. 12304 served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from duty under honorable conditions; or

(c) is or has been a member of the Montana army or air national guard and who has satisfactorily completed a minimum of 6 years of service in the armed forces, the last 3 years of which have been served in the Montana army or air national guard."

Section 11. Section 39-30-103, MCA, is amended to read:

"39-30-103. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Eligible spouse" means the spouse of a person with a disability determined by the department of public health and human services to have a 100% disability and who is unable to use the employment preference because of the person's disability.

(2) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in this subsection (2), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in this subsection (2), or current participants in a federally authorized employment program is not an initial hiring.

(3) (a) "Mental impairment" means:

(i) a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

(4) "Person with a disability" means an individual certified by the department of public health and human services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to obtain, retain, or advance in employment.

(5) "Position" means a position occupied by a permanent or seasonal employee as defined in 2-18-101 for the state or a position occupied by a similar permanent or seasonal employee with a public employer other than the state. However, the term does not include:

(a) a position occupied by a temporary employee as defined in 2-18-101 for the state or a similar temporary employee with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal adviser, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; ~~or~~

(g) engagement as an independent contractor or employment by an independent contractor; *or*

(h) *a position occupied by a student intern, as defined in 2-18-101.*

(6) (a) “Public employer” means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(7) “Substantially equal qualifications” means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.”

Section 12. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 76

[HB 207]

AN ACT REVISING FOR PURPOSES OF THE UNIFORM TOD SECURITY REGISTRATION LAWS THE DEFINITION OF “SECURITY ACCOUNT” TO INCLUDE CASH EQUIVALENTS AND INVESTMENT MANAGEMENT AND CUSTODY ACCOUNTS HELD IN TRUST; AMENDING SECTION 72-6-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 72-6-301, MCA, is amended to read:

“72-6-301. Definitions. As used in this part, the following definitions apply:

(1) “Beneficiary form” means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) “Register”, including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(3) “Registering entity” means a person who originates or transfers a security title by registration and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(4) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer and includes a certificated security, an uncertificated security, and a security account.

(5) "Security account" means:

(a) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, *cash equivalents*, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; ~~or~~

(b) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death; *or*

(c) *an investment management or custody account with a trust company or trust division of a bank with trust powers, including the securities in the account, a cash balance in the account, and cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death.*"

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

Approved March 24, 2005

CHAPTER NO. 77

[HB 209]

AN ACT PROVIDING THAT FINANCIAL INSTITUTIONS THAT ARE SUBJECT TO AND IN COMPLIANCE WITH REGULATION E OF THE FEDERAL ELECTRONIC FUND TRANSFER ACT MUST BE CONSIDERED TO BE IN COMPLIANCE WITH THE PROVISIONS OF THE MONTANA ELECTRONIC FUNDS TRANSFER ACT; AMENDING SECTION 32-6-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 32-6-102, MCA, is amended to read:

"32-6-102. Electronic funds transfer systems — applicability. (1) The legislature has determined that electronic funds transfer systems are technologies offered by all types of financial depository institutions. These technologies provide the consumer with both convenience and efficiency in making financial transactions. Regulation E of the federal Electronic Fund Transfer Act, (15 U.S.C. 1693, et seq.,) addresses many of the consumer issues relating to these systems. This chapter applies to financial institutions chartered under the United States Code or Title 32, chapter 1, parts 1 through 5, to the extent that those laws permit.

(2) *Financial institutions that are subject to and in compliance with Regulation E of the federal Electronic Fund Transfer Act must be considered to be in compliance with the provisions of this chapter.*"

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

Approved March 24, 2005

CHAPTER NO. 78

[HB 215]

AN ACT CHANGING THE REFERENCES TO THE DEVELOPMENTAL DISABILITIES PLANNING AND ADVISORY COUNCIL TO REFERENCES TO THE MONTANA COUNCIL ON DEVELOPMENTAL DISABILITIES; REORGANIZING ASSOCIATED STATUTES; AMENDING SECTIONS 2-15-1869, 2-15-1870, 53-20-202, 53-20-203, AND 53-20-205, MCA; REPEALING SECTION 53-20-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-15-1869, MCA, is amended to read:

“2-15-1869. ~~Developmental Montana council on developmental disabilities planning and advisory council.~~ (1) The governor shall appoint a *Montana council on developmental disabilities planning and advisory council* in accordance with the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, codified at 42 U.S.C. 15001, et seq.

(2) In addition to the members appointed under subsection (1), the council must include one member of the senate and one member of the house of representatives.

(3) (a) Except as provided in subsection (3)(b), members of the council serve 1-year terms.

(b) Of the members described in 42 U.S.C. 15025(b)(3) who represent persons with developmental disabilities and parents or relatives of persons with developmental disabilities, the governor shall appoint:

(i) not less than one-half of the members to serve for terms concurrent with the gubernatorial term and until their successors are appointed; and

(ii) the remaining members to serve for terms ending on January 1 of the third year of the succeeding gubernatorial term and until their successors are appointed.

(4) Members appointed to the council may also be selected to represent the geographical regions and the racial and ethnic composition of the state, including American Indians.

(5) *A council member, unless the member is a full-time salaried officer or employee of this state or any of the political subdivisions of this state, is entitled to be paid in an amount to be determined by the council, not to exceed \$25, for each day in which the member is actually and necessarily engaged in the performance of council duties. A council member is also entitled to be reimbursed for travel expenses incurred while in the performance of council duties as provided for in 2-18-501 through 2-18-503. Members who are full-time salaried officers or employees of this state or any political subdivisions of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.*

(6) *The council shall:*

(a) *advise the department of public health and human services, other state agencies, tribal governments, councils, local governments, and private organizations on programs for services to persons with developmental disabilities; and*

(b) *serve in any capacity required by the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, or by other federal law for the administration of federal programs for services to persons with developmental disabilities.*

~~(5)~~(7) (a) ~~Except~~ *Unless the state enters a contract with a nonprofit corporation as provided in 2-15-1870, the council:*

(i) *is allocated to the department of commerce for administrative purposes only and, unless inconsistent with the provisions of 53-20-206 and this section, the provisions of 2-15-121 apply;*

(ii) *may elect from among its members the officers necessary for the proper management of the council;*

(iii) *may adopt rules governing its own organization and procedures, and a majority of the members of the council constitutes a quorum for the transaction of business; and*

(iv) *shall employ and fix the compensation and duties of necessary staff and control the location of its office.*

(b) *The department of commerce shall remain the designated state agency for funding purposes if the responsibilities of the council are delegated by contract to a nonprofit corporation as provided in 2-15-1870.”*

Section 2. Section 2-15-1870, MCA, is amended to read:

“2-15-1870. State Montana council on developmental disabilities planning and advisory council — contract with nonprofit corporation. The state may contract with a nonprofit corporation for the purposes of carrying out the responsibilities delegated to the ~~statewide~~ *Montana council on developmental disabilities planning and advisory council* appointed pursuant to 2-15-1869 in accordance with the Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402, and this section. Approval of the contract delegating the responsibilities of the council to a nonprofit corporation must be in the form of a letter signed by the secretary of the federal department of health and human services or the secretary’s designee.”

Section 3. Section 53-20-202, MCA, is amended to read:

“53-20-202. Definitions. As used in this part, the following definitions apply:

(1) “Comprehensive developmental disability system” means a system of services, including but not limited to the following basic services, with the intention of providing alternatives to institutionalization:

- (a) evaluation services;
- (b) diagnostic services;
- (c) treatment services;
- (d) day-care services;
- (e) training services;
- (f) education services;
- (g) employment services;
- (h) recreation services;
- (i) personal-care services;
- (j) domiciliary-care services;

- (k) special living arrangements services;
- (l) counseling services;
- (m) information and referral services;
- (n) follow-along services;
- (o) protective and other social and sociolegal services; and
- (p) transportation services.

(2) "Department" means the department of public health and human services.

(3) "Developmental disabilities" means disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals if the disability originated before the person attained age 18, has continued or can be expected to continue indefinitely, and results in the person having a substantial disability.

(4) "Developmental disabilities facility" means any service or group of services offering care to persons with developmental disabilities on an inpatient, outpatient, residential, clinical, or other programmatic basis.

~~(5) "Planning and advisory council" or "council" means the developmental disabilities planning and advisory council created in 2-15-1869."~~

Section 4. Section 53-20-203, MCA, is amended to read:

"53-20-203. Responsibilities of department. The department shall:

- (1) take cognizance of matters affecting the citizens of the state who are persons with developmental disabilities;
- (2) initiate a preventive developmental disabilities program that must include but not be limited to the implementation of developmental disabilities care, treatment, prevention, and research as can best be accomplished by community-centered services. Every means must be used to initiate and operate the service program in cooperation with local agencies under the provisions of 53-20-205.
- (3) collect and disseminate information relating to developmental disabilities;
- (4) prepare, ~~with the assistance of the planning and advisory council,~~ an annual comprehensive plan for the initiation and maintenance of developmental disabilities services in the state. The services must include but not be limited to community comprehensive developmental disabilities services as referred to in 53-20-202.
- (5) provide by rule for the evaluation of persons who apply for services or persons admitted into a program at a developmental disability facility;
- (6) receive from agencies of the government of the United States and other agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions to initiate and maintain developmental disabilities services within the state;
- (7) require that habilitation plans be developed, implemented, and continuously maintained for all persons with developmental disabilities who are served through a community-based program funded by the state; and

(8) use funds available for cases in which special medical or material assistance is necessary to rehabilitate children with developmental disabilities or children with physical disabilities if the assistance is not otherwise provided for by law.”

Section 5. Section 53-20-205, MCA, is amended to read:

“53-20-205. Community services. (1) The department may establish and administer community comprehensive services, programs, clinics, or other facilities throughout the state for the purpose of aiding in the prevention, diagnosis, amelioration, or treatment of developmental disabilities. Programs, clinics, or other services may be provided directly by state agencies or indirectly through contract or cooperative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons, or accredited health or long-term care facilities.

(2) The department may contract for programs for developmental disabilities services. Contracts entered into by the department must contain specific conditions for performance by the contractor. The department shall set minimum standards for programs and establish appropriate qualifications for persons employed in ~~such~~ *the* programs.

(3) All developmental disabilities facilities and services must comply with existing federal guidelines and with requirements that will enable the services and facilities to qualify for available aid funds. However, this section does not require facilities serving persons with developmental disabilities to meet the same or equal standards as licensed medical facilities unless the developmental disabilities facility is providing professional or skilled medical care.

(4) Comprehensive services, programs, clinics, or other facilities established or provided by the department under this part must conform as nearly as possible to the plans of the ~~advisory~~ council created under 2-15-1869.

(5) The department may promote scientific and medical research investigations relative to the incidence, cause, prevention, and care of persons with developmental disabilities.”

Section 6. Repealer. Section 53-20-206, MCA, is repealed.

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

Approved March 24, 2005

CHAPTER NO. 79

[HB 224]

AN ACT ALLOWING OPERATION OF A QUADRICYCLE WITHOUT A MOTORCYCLE ENDORSEMENT; AND AMENDING SECTIONS 61-5-102 AND 61-5-110, MCA.

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

Section 1. Section 61-5-102, MCA, is amended to read:

“61-5-102. Drivers to be licensed. (1) Except as provided in 61-5-104, a person may not drive a motor vehicle upon a highway in this state unless the person has a valid Montana driver’s license. A person may not receive a Montana driver’s license until the person surrenders to the department all valid driver’s licenses issued by any other jurisdiction. A person may not have in the

person's possession or under the person's control more than one valid Montana driver's license at any time.

(2) (a) A license is not valid for the operation of a motorcycle ~~or quadricycle~~ unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement". ~~A motorcycle endorsement is required for the operation of a quadricycle.~~

(b) A license is not valid for the operation of a commercial motor vehicle unless the holder of the license has completed the requirements of 61-5-110, 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 2. Section 61-5-110, MCA, is amended to read:

"61-5-110. Records check of applicants — examination of applicants — cooperative driver testing programs. (1) Prior to examining an applicant for a driver's license, the department shall conduct a check of the applicant's driving record by querying the national driver register, established under 49 U.S.C. 30302, and the commercial driver's license information system, established under 49 U.S.C. 31309.

(2) The department shall examine each applicant for a driver's license or motorcycle endorsement, except as otherwise provided in this section. The examination must include a test of the applicant's eyesight, a knowledge test examining the applicant's ability to read and understand highway signs and the applicant's knowledge of the traffic laws of this state, and, except as provided in 61-5-118, a road test or a skills test demonstrating the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle, ~~quadricycle~~, or motorcycle. The knowledge test or road test, or both, may be waived by the department upon certification of the applicant's successful completion of the test by a certified cooperative driver testing program, as provided in subsection (3).

(3) The department is authorized to certify as a cooperative driver testing program any state-approved high school traffic education course offered by or in cooperation with a school district that employs an approved instructor who has current endorsement from the superintendent of public instruction as a teacher of traffic education or any motorcycle safety training course approved by the board of regents and that employs an approved instructor of motorcycle safety training and who agrees to:

(a) administer standardized knowledge and road tests required by the department to students participating in the district's high school traffic education courses or motorcycle safety training courses approved by the board of regents;

(b) certify the test results to the department; and

(c) comply with regulations of the department, the superintendent of public instruction, and the board of regents.

(4) (a) Except as otherwise provided by law, a resident who has a valid driver's license issued by another jurisdiction may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the required fees and successful completion of a vision examination. In addition, a resident surrendering a commercial driver's license issued by another jurisdiction shall successfully complete any examination required by federal regulations before being issued a commercial driver's license by the department.

(b) The department may require an applicant who surrenders a valid driver's license issued by another jurisdiction to submit to a knowledge and skills test if:

(i) the applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the surrendered license does not include readily discernible adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify a restriction imposed on the surrendered license.

(c) When a license from another jurisdiction is surrendered, the department shall notify the issuing agency from the other jurisdiction that the applicant has surrendered the license. If the applicant wants to retain the license from another jurisdiction for identification or other nondriving purposes, the department shall place a distinctive mark on the license, indicating that the license may be used for nondriving purposes only, and return the marked license to the applicant."

Approved March 24, 2005

CHAPTER NO. 80

[HB 242]

AN ACT ALLOWING A TERMINALLY ILL RESIDENT OR NONRESIDENT YOUTH UNDER 17 YEARS OF AGE TO RECEIVE A FREE ONE-TIME MONTANA HUNTING LICENSE; PROVIDING TERMS AND CONDITIONS REGARDING LICENSURE; AMENDING SECTIONS 87-2-105 AND 87-2-805, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-2-105, MCA, is amended to read:

"87-2-105. Safety instruction required. (1) ~~A~~ *Except for a youth who qualifies for a license pursuant to 87-2-805(4), a hunting license may not be issued to a person who is born after January 1, 1985, unless the person authorized to issue the license determines proof of completion of:*

(a) a Montana hunter safety and education course established in subsection (4) or (6); or

(b) a hunter safety course in any other state or province.

(2) A hunting license may not be issued to a member of the regular armed forces of the United States or to a member of the armed forces of a foreign government attached to the armed forces of the United States who is assigned to

active duty in Montana and who is otherwise considered a resident under 87-2-102(1) or to a member's dependents, as defined in 15-30-113, who reside in the member's Montana household, unless the person authorized to issue the license determines proof of completion of a hunter safety course approved by the department or a hunter safety course in any state or province.

(3) A bow and arrow license may not be issued to a resident or nonresident unless the person authorized to issue the license receives an archery license issued for a prior hunting season or determines proof of completion of a bowhunter education course from the national bowhunter education foundation or any other bowhunter education program approved by the department. Neither the department nor the license agent is required to provide records of past archery license purchases. As part of the department's bow and arrow licensing procedures, the department shall notify the public regarding bowhunter education requirements.

(4) The department shall provide for a hunter safety and education course that includes instruction in the safe handling of firearms and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of hunter safety and education. The department may designate as an instructor any person it finds to be competent to give instructions in hunter safety and education, including the handling of firearms. A person appointed shall give the course of instruction and shall issue a certificate of completion from Montana's hunter safety and education course to a person successfully completing the course.

(5) The department shall provide for a course of instruction from the national bowhunter education foundation or any other bowhunter education program approved by the department and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of bow hunting tackle. The department may designate as an instructor any person it finds to be competent to give bowhunter education instruction. A person appointed shall give the course of instruction and shall issue a certificate of completion to any person successfully completing the course.

(6) The department may develop an adult hunter safety and education course.

(7) The department may adopt rules regarding how a person authorized to issue a license determines proof of completion of a required course."

Section 2. Section 87-2-805, MCA, is amended to read:

"87-2-805. Persons under eighteen years of age — youth combination sports license — terminally ill youth under seventeen years of age. (1) Resident minors who are 12 years of age or older and under 15 years of age may fish and may hunt upland game and migratory game birds during the open season with only a conservation license. Resident minors who are 15 years of age may hunt migratory game birds with only a conservation license. Resident minors who are under 12 years of age may fish without a license. A nonresident person under 15 years of age may not fish in or on any Montana waters without first having obtained a Class B, B-4, or B-5 fishing license unless the nonresident person under 15 years of age is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

(2) A resident, as defined by 87-2-102, under 15 years of age may purchase Class A-3 and A-5 licenses at a price equal to one-half the fee paid by a resident who is 15 years of age or older and under 62 years of age.

(3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license at a price that, rounded to the nearest dollar, is 46% of the fee paid for the Class AAA combination sports license by a resident who is 18 years of age or older and under 62 years of age. A resident who is 12 years of age or older and under 18 years of age and who applies for any hunting license for the first time is entitled to receive a youth combination sports license free of charge.

(b) The youth combination sports license includes:

- (i) a conservation license;
- (ii) a fishing license;
- (iii) an upland game bird license;
- (iv) an elk license; and
- (v) a deer license.

(c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license at a price that is 50% of the fee paid by a resident who is 18 years of age or older and under 62 years of age.

(d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license at 50% of the fee paid by a resident who is 18 years of age or older and under 62 years of age.

(e) A person who lawfully purchases or is granted a free youth combination sports license at 17 years of age, but who reaches 18 years of age during that license year, may legally use the license during that license year. A person who hunts or fishes using a youth combination sports license purchased or granted free after the person reaches 18 years of age is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:

- (i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and
- (ii) a monetary fine of not less than \$500 and not more than \$5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.

(f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license.

(4) (a) *The department may issue a free resident or nonresident big game combination license, as applicable, to a resident or nonresident youth under 17 years of age who has been diagnosed with a terminal illness. In order for a youth to qualify for the free license, the department must receive documentation from a licensed physician verifying that the youth is terminally ill. The free license may be issued to a youth on a one-time basis for only one hunting season.*

(b) *In exercising hunting privileges, the youth must be in the company of an adult in possession of a valid Montana hunting license or a licensed Montana outfitter and conduct all hunting within the terms and conditions of the license issued.*

(c) The department may waive hunter safety and education and bowhunter education requirements in 87-2-105 for a qualified youth under this subsection (4) and, in appropriate circumstances, may also allow the qualified youth to hunt from a vehicle in the manner described in 87-2-803.”

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

Approved March 24, 2005

CHAPTER NO. 81

[HB 255]

AN ACT AMENDING THE DEFINITION OF “MENTAL DISORDER”; SPECIFYING THAT A MENTAL DISORDER MAY CO-OCCUR WITH ADDICTION OR CHEMICAL DEPENDENCY; AND AMENDING SECTIONS 53-21-102 AND 53-21-126, MCA.

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

Section 1. Section 53-21-102, MCA, is amended to read:

“53-21-102. Definitions. As used in this part, the following definitions apply:

(1) “Abuse” means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

(2) “Behavioral health inpatient facility” means a licensed facility of 16 beds or less designated by the department that:

(a) may be a freestanding licensed hospital or a distinct part of another licensed hospital and that is capable of providing inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency; and

(b) has contracted with the department to provide services to persons who have been involuntarily committed for care and treatment of a mental disorder pursuant to this title.

(3) “Board” or “mental disabilities board of visitors” means the mental disabilities board of visitors created by 2-15-211.

(4) “Commitment” means an order by a court requiring an individual to receive treatment for a mental disorder.

(5) “Court” means any district court of the state of Montana.

(6) “Department” means the department of public health and human services provided for in 2-15-2201.

(7) “Emergency situation” means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

(8) “Friend of respondent” means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in

dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

(9) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term does not include:

- (i) addiction to drugs or alcohol;
- (ii) drug or alcohol intoxication;
- (iii) mental retardation; or
- (iv) epilepsy.

(c) *A mental disorder may co-occur with addiction or chemical dependency.*

(10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(11) "Mental health professional" means:

- (a) a certified professional person;
- (b) a physician licensed under Title 37, chapter 3;
- (c) a professional counselor licensed under Title 37, chapter 23;
- (d) a psychologist licensed under Title 37, chapter 17;
- (e) a social worker licensed under Title 37, chapter 22; or

(f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

(12) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

- (i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;
- (ii) failure to follow a prescribed plan of care and treatment; or
- (iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

(13) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(14) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

(16) "Professional person" means:

(a) a medical doctor;

(b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing; or

(c) a person who has been certified, as provided for in 53-21-106, by the department.

(17) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(18) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

(19) "State hospital" means the Montana state hospital."

Section 2. Section 53-21-126, MCA, is amended to read:

"53-21-126. Trial or hearing on petition. (1) The respondent must be present unless the respondent's presence has been waived as provided in 53-21-119(2), and the respondent must be represented by counsel at all stages of the trial. The trial must be limited to the determination of whether or not the respondent is suffering from a mental disorder and requires commitment. At the trial, the court shall consider all the facts relevant to the issues of whether the respondent is suffering from a mental disorder. If the court determines that the respondent is suffering from a mental disorder, the court shall then determine whether the respondent requires commitment. In determining whether the respondent requires commitment and the appropriate disposition under 53-21-127, the court shall consider the following:

(a) whether the respondent, because of a mental disorder, is substantially unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety;

(b) whether the respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others;

(c) whether, because of a mental disorder, there is an imminent threat of injury to the respondent or to others because of the respondent's acts or omissions; and

(d) whether the respondent's mental disorder, as demonstrated by the respondent's recent acts or omissions, will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which the respondent will become a danger to self or to others or will be unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by the respondent's relevant medical history.

(2) The standard of proof in a hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters. However, the respondent's mental disorder must be proved to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others must be proved by overt acts or

omissions, sufficiently recent in time as to be material and relevant as to the respondent's present condition.

(3) The professional person appointed by the court must be present for the trial and subject to cross-examination. The trial is governed by the Montana Rules of Civil Procedure. However, if the issues are tried by a jury, at least two-thirds of the jurors shall concur on a finding that the respondent is suffering from a mental disorder and requires commitment. The written report of the professional person that indicates the professional person's diagnosis may be attached to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely because it is contained in the report. The court may order the trial closed to the public for the protection of the respondent.

(4) The professional person may testify as to the ultimate issue of whether the respondent is suffering from a mental disorder and requires commitment. This testimony is insufficient unless accompanied by evidence from the professional person or others that:

(a) the respondent, because of a mental disorder, is substantially unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety;

(b) the respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others;

(c) because of a mental disorder, there is an imminent threat of injury to the respondent or to others because of the respondent's acts or omissions; or

(d) (i) the respondent's mental disorder:

(A) has resulted in recent acts, omissions, or behaviors that create difficulty in protecting the respondent's life or health;

(B) is treatable, with a reasonable prospect of success;

(C) has resulted in the respondent's refusing or being unable to consent to voluntary admission for treatment; and

(ii) will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which the respondent will become a danger to self or to others or will be unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by the respondent's relevant medical history.

(5) The court, upon the showing of good cause and when it is in the best interests of the respondent, may order a change of venue.

(6) *An individual with a primary diagnosis of a mental disorder who also has a co-occurring diagnosis of chemical dependency may satisfy criteria for commitment under this part.*

Approved March 24, 2005

CHAPTER NO. 82

[HB 273]

AN ACT EXEMPTING RURAL TRANSPORTATION PROVIDERS FROM PUBLIC SERVICE COMMISSION AUTHORITY; AMENDING SECTION 69-12-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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, 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; ~~or~~

(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 ~~disabled or elderly~~ 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,

(i) “disabled” means an individual who has a physical or mental impairment that substantially limits one or more major life activities;

(ii) “elderly” means a person 60 years of age or older; and

~~(iii)~~ “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.”

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

Approved March 24, 2005

CHAPTER NO. 83

[HB 285]

AN ACT ALLOWING A VICTIM OF PARTNER OR FAMILY MEMBER ASSAULT, SEXUAL ASSAULT, OR STALKING OR A PERSON ELIGIBLE TO PETITION FOR AN ORDER OF PROTECTION TO PARTICIPATE IN A PROGRAM THAT PROVIDES THE VICTIM OR ELIGIBLE PERSON WITH THE OPPORTUNITY TO REQUEST AND BE GRANTED A SUBSTITUTE ADDRESS THAT CAN BE USED FOR CERTAIN OFFICIAL PURPOSES; ESTABLISHING ELIGIBILITY FOR INDIVIDUALS TO PARTICIPATE IN THE PROGRAM; PROVIDING FOR THE ADMINISTRATION OF THE PROGRAM; ASSIGNING CERTAIN DUTIES TO THE DEPARTMENT OF JUSTICE; PROVIDING FOR CESSATION OF PARTICIPATION IN THE PROGRAM; AND PROVIDING AUTHORITY TO THE DEPARTMENT OF JUSTICE TO ADOPT RULES TO IMPLEMENT THE PROGRAM.

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

Section 1. Policy — program. (1) It is the policy of this state to ensure the safety and security of a victim of partner or family member assault, sexual assault, or stalking or a person eligible to petition for an order of protection under 40-15-102 by providing the victim or eligible person with certain, limited services.

(2) The assistance and services provided by the state to implement the policy stated in subsection (1) are limited to a program administered by the department that provides to a participant:

- (a) a substitute address that can be used by the participant for official purposes; and
- (b) a service that allows the department to:
 - (i) receive service of process and mail addressed to the participant; and
 - (ii) forward to the participant any process served on the participant and all mail received on the participant’s behalf.

Section 2. Definitions. As used in [sections 1 through 7], the following definitions apply:

- (1) “Applicant” means a victim and includes a parent or guardian who acts on behalf of a victim.

(2) "Department" means the department of justice.

(3) "Participant" means an applicant who has submitted an application pursuant to [section 3] that has been approved by the department.

(4) "Partner or family member assault" has the meaning provided in 45-5-206.

(5) "Sexual assault" means sexual assault as defined in 45-5-502, sexual intercourse without consent as defined in 45-5-503, incest as defined in 45-5-507, or sexual abuse of children as defined in 45-5-625.

(6) "Stalking" has the meaning provided in 45-5-220.

(7) "Victim" means an individual who has been a victim of partner or family member assault, sexual assault, or stalking or who is otherwise eligible to file a petition for an order of protection under 40-15-102.

Section 3. Substitute address for participant — application — duties of department — penalty. (1) A victim who is a resident of this state may apply to the department to have a substitute address designated by the department to serve as the official address of the applicant.

(2) An application for the issuance of a substitute address must include:

(a) proof that the victim is a resident of this state and specific evidence showing that, before the applicant files the application, the applicant has been a victim;

(b) the address that is requested to be kept confidential;

(c) a telephone number at which the department may contact the applicant;

(d) a question asking whether the applicant wishes to register to vote or, if registered, to change the applicant's address for voter registration;

(e) a designation of the department as agent for the applicant for the purposes of service of process and receipt of mail;

(f) the signature of the applicant;

(g) the date on which the applicant signed the application; and

(h) any other information required by the department.

(3) The department shall approve or disapprove an application within 5 business days after the application is filed.

(4) (a) The department:

(i) shall approve an application that is accompanied by specific evidence that the applicant has been a victim within 4 years prior to filing the application; and

(ii) may approve an application if the applicant does not provide specific evidence or the crime against the applicant was committed more than 4 years prior to the applicant filing the application.

(b) Specific evidence that would meet the requirements of this subsection (4) includes but is not limited to a copy of an applicable record of conviction, a temporary restraining order, a protective order granted by a court of competent jurisdiction, or a sworn statement of the victim.

(5) If a participant indicates in response to the question asked in subsection (2)(d) that the participant wishes to register to vote or to change the participant's address used for voter registration:

(a) the department shall furnish the participant with a form developed by the department to register the participant or change the participant's address for voter registration; and

(b) the participant shall complete and sign the form and return it to the department.

(6) A person who knowingly attests falsely or provides incorrect information in the application is guilty of false swearing under 45-7-202.

Section 4. Designation of substitute address — forwarding of mail — disclosure of confidential address. (1) Upon approving an application, the department shall:

(a) designate a substitute address for the participant;

(b) receive mail addressed to the participant;

(c) forward mail that the department receives on behalf of the participant to the participant.

(2) The department may not divulge in any manner the name of a participant or the confidential address or substitute address of a participant unless:

(a) the participant's name, confidential address, or substitute address is requested by a law enforcement agency, in which case the department shall provide the name, confidential address, or substitute address to the law enforcement agency; or

(b) a court of competent jurisdiction orders the department to make the name, confidential address, or substitute address available, in which case the department shall provide the name, confidential address, or substitute address to the person identified in the order.

Section 5. Cancellation of substitute address — cessation of duty. (1) Except as provided in subsections (2) and (3), the department shall cancel the substitute address of a participant 4 years after the date on which the department approved the participant's application.

(2) The department may not cancel the substitute address of a participant if, before the substitute address of the participant is canceled, the participant shows to the satisfaction of the department that the participant remains in imminent danger of becoming a victim.

(3) The department may cancel the substitute address of a participant at any time if:

(a) the participant changes the participant's confidential address from the confidential address listed in the application and fails to notify the department within 48 hours after the change of confidential address; or

(b) the department determines that the participant knowingly provided false or incorrect information in the application.

(4) When the department cancels the substitute address of a participant, the duty of the department to provide the services described in [section 1(2)] to the participant ceases.

Section 6. Rules. The department shall adopt rules to carry out the provisions of [sections 1 through 7], including rules establishing:

(1) a form on which a victim may apply to participate in the program described in [section 1(2)];

(2) a form on which an applicant may declare whether the applicant wishes to register to vote or, if registered, to change the applicant's address for voter registration. The form may be a separate form or may be included as an integral part of the application provided for in subsection (1).

(3) procedures necessary to implement the program.

Section 7. Implementation by state and local government agencies. The department shall issue the participant a substitute address card containing the participant's name, substitute address, and other information that the department determines appropriate. Any state or local government agency that needs or requires the participant's address shall accept and use the address on the card. The agency may make and file a photocopy of the card.

Section 8. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 40, chapter 15, part 1, and the provisions of Title 40, chapter 15, part 1, apply to [sections 1 through 7].

Approved March 24, 2005

CHAPTER NO. 84

[HB 298]

AN ACT DIRECTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO USE AVAILABLE MONEY FROM THE FUTURE FISHERIES IMPROVEMENT PROGRAM, THE BULL TROUT AND CUTTHROAT TROUT ENHANCEMENT PROGRAM, THE RIVER RESTORATION PROGRAM, OR OTHER DEPARTMENT FUNDS AVAILABLE FOR VOLUNTARY LEASES OR OTHER WATER AUGMENTATION MEASURES TO MATCH FUNDS FROM THE U.S. FISH AND WILDLIFE SERVICE STATE WILDLIFE GRANT PROGRAM OR OTHER AVAILABLE FEDERAL FUNDS IN ORDER TO ENTER INTO VOLUNTARY LEASES OR OTHER WATER AUGMENTATION MEASURES FOR EMERGENCY INSTREAM FLOWS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Emergency instream flows — funding. (1) The legislature recognizes the propriety of establishing voluntary leases or other authorized water augmentation measures for instream flows so that mechanisms will be in place to maintain streamflows sufficient for fisheries and aquatic resources during emergency low-flow conditions.

(2) Funding for voluntary leases and other water augmentation measures authorized under subsection (1) may come from any uncommitted funds allocated to the state under the U.S. fish and wildlife service state wildlife grant program or other available federal funds, matched by the department with up to \$500,000 from the future fisheries improvement program provided for in 87-1-272, from the bull trout and cutthroat trout enhancement program provided for in 87-1-283, from the river restoration program provided for in 87-1-257, from a combination of funds from these programs, or from any other department funds available for voluntary leases or other water augmentation measures.

(3) All leasing or other authorized water augmentation measures for instream flow must comply with all requirements provided in Title 85, chapter 2, parts 3 and 4.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 1].

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

Approved March 24, 2005

CHAPTER NO. 85

[HB 308]

AN ACT INCLUDING MAINTAINING OR ENHANCING STREAMFLOWS TO BENEFIT THE FISHERY RESOURCE IN THE DEFINITION OF "APPROPRIATE"; INCLUDING A USE OF WATER FOR INSTREAM FLOW TO BENEFIT THE FISHERY RESOURCE IN THE DEFINITION OF "BENEFICIAL USE"; REMOVING THE SPECIFIC STATUTORY GUIDANCE RELATED TO THE UPPER CLARK FORK RIVER BASIN AND INCLUDING THOSE REQUIREMENTS IN EXISTING STATUTES; REMOVING THE LIMITATION ON THE NUMBER OF TIMES THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MAY RENEW A TEMPORARY CHANGE APPLICATION; PROVIDING THAT AN APPROPRIATOR MUST PROVIDE NOTICE TO THE DEPARTMENT TO RENEW A TEMPORARY CHANGE AND INCREASING THE PERIOD FOR SUBMISSION OF NEW EVIDENCE OF ADVERSE EFFECTS TO OTHER WATER RIGHTS; PROVIDING THAT A TEMPORARY CHANGE AUTHORIZATION APPLICANT MUST INCLUDE CERTAIN INFORMATION REGARDING STREAM REACH, LOCATION, AND A STREAMFLOW MEASURING PLAN; REMOVING THE REQUIREMENT THAT AN APPLICANT FOR A TEMPORARY CHANGE PROVIDE NOTICE 30 DAYS PRIOR TO SUBMISSION OF APPLICATION; PROVIDING THAT THE MAXIMUM QUANTITY OF WATER THAT MAY BE DIVERTED TO MAINTAIN OR ENHANCE STREAMFLOWS TO BENEFIT THE FISHERY RESOURCES MAY NOT EXCEED THE HISTORICALLY DIVERTED AMOUNT, EXCEPT THAT ONLY THE AMOUNT HISTORICALLY CONSUMED, OR A SMALLER AMOUNT IF SPECIFIED IN THE LEASE AUTHORIZATION, MAY BE USED TO MAINTAIN OR ENHANCE STREAMFLOWS BELOW THE LESSOR'S POINT OF DIVERSION; REPEALING THE TERMINATION DATE FOR TEMPORARY CHANGES TO MAINTAIN OR ENHANCE STREAMFLOWS TO BENEFIT THE FISHERY; REPEALING THE TERMINATION DATE ON LEASING FOR THE PURPOSE OF MAINTAINING OR ENHANCING STREAMFLOWS TO BENEFIT THE FISHERY; AMENDING SECTIONS 85-2-102, 85-2-338, 85-2-402, 85-2-404, 85-2-407, 85-2-408, 85-2-419, AND 85-2-436, MCA; REPEALING SECTIONS 85-2-409, 85-2-439, AND 85-2-440, MCA, SECTION 6, CHAPTER 322, LAWS OF 1995, SECTION 14, CHAPTER 487, LAWS OF 1995, SECTION 3, CHAPTER 433, LAWS OF 2001, AND SECTION 3, CHAPTER 122, LAWS OF 2003; 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 in accordance with 85-2-436; or

~~(d) in the Upper Clark Fork River basin, to maintain and enhance streamflows to benefit the fishery resource in accordance with 85-2-439 to maintain or enhance streamflows 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 pursuant to a lease authorized under 85-2-436; or

~~(d) a use of water to maintain and enhance streamflows to benefit the fishery resource in the Upper Clark Fork River basin as part of the Upper Clark Fork River basin instream flow pilot program authorized under 85-2-439 a use of water through a change in appropriation right or lease for 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, 2005—sec. 14, Ch. 487, L. 1995.~~)

85-2-102. (Effective July 1, 2005) 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;

~~(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or~~

~~(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.~~

~~(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; and~~

~~(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.~~

~~(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*; ~~or~~

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; *or*

(c) *to maintain or enhance streamflows 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; ~~or~~

(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 change in appropriation right or lease for 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 85-2-338, MCA, is amended to read:

"85-2-338. Upper Clark Fork River basin steering committee — membership and duties — comprehensive management plan. (1) There is an Upper Clark Fork River basin steering committee. The steering committee has 22 members, who must be appointed as follows:

(a) Each of the six conservation districts in the basin may appoint a member.

(b) Each of the six county commissions in the basin may appoint a member.

(c) The department director shall appoint the remaining 10 committee members and any additional committee members not appointed under subsections (1)(a) and (1)(b) and shall ensure that committee membership includes a balance of affected basin interests and is in conformance with subsection (2).

(2) Steering committee members must be selected on the basis of their knowledge of water use, water management, fish, wildlife, recreation, water quality, and water conservation. Representation on the committee must include but is not limited to representatives from affected:

(a) agriculture;

(b) conservation districts;

(c) departments of state government;

(d) environmental organizations;

(e) industries;

(f) local governments;

(g) reservation applicants;

(h) utilities; and

(i) water users not otherwise represented.

(3) Except as provided in subsection (4), steering committee members shall serve 4-year terms and may serve more than one term.

(4) Initial term lengths must be staggered in conformance with the following:

(a) conservation district appointees shall initially serve for 4 years;

(b) county commissioner appointees shall initially serve for 2 years; and

(c) as determined by the department, half of the department appointees shall initially serve for 2 years and the remainder shall initially serve for 4 years.

(5) The steering committee, consistent with the Upper Clark Fork River basin comprehensive management plan, shall:

(a) review the Upper Clark Fork River basin closure and exceptions as provided in 85-2-336 no less than every 5 years after April 14, 1995, and make recommendations to the legislature regarding necessary changes;

~~(b) prepare and submit a report evaluating the Upper Clark Fork River basin instream flow pilot program as provided in 85-2-439;~~

~~(b)~~(b) prepare and submit a report concerning the relationship between surface water and ground water and the cumulative impacts of ground water withdrawals in each subbasin;

~~(d)~~(c) provide a forum for all interests to communicate about water issues;

~~(e)~~(d) provide education about water law and water management issues;

~~(f)~~(e) identify short-term and long-term water management issues and problems and identify alternatives for resolving them;

~~(g)~~(f) identify the potential beneficiaries of and a funding mechanism for new and expanded water storage sites;

~~(h)~~(g) assist in facilitating the resolution of water-related disputes;

~~(i)~~(h) provide coordination with other basin management and planning efforts;

~~(j)~~(i) advise government agencies about water management and permitting activities;

~~(k)~~(j) consult with local governments within the Upper Clark Fork River basin; and

~~(l)~~(k) report periodically to the legislature.”

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 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 lease authorization pursuant to 85-2-436, or a temporary change in appropriation right authorization for instream use to maintain or

enhance streamflows to benefit the fishery resource pursuant to 85-2-408, ~~or water use pursuant to 85-2-439 when authorization does not require appropriation works~~, 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 pursuant to 85-2-436 or a temporary change *in appropriation right* authorization pursuant to 85-2-408 ~~or 85-2-439 for instream flow to benefit the fishery resource~~, 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.

~~(Terminates June 30, 2005—sec. 6, Ch. 322, L. 1995; sec. 14, Ch. 487, L. 1995.)~~

85-2-402. (Effective July 1, 2005) 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 lease authorization pursuant to 85-2-436 that does not require appropriation works, 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) 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 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 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 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. (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 85-2-404, 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 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, ~~the use of water pursuant to 85-2-439~~, 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, 2005—sec. 14, Ch. 487, L. 1995.)~~

~~**85-2-404. (Effective July 1, 2005) 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 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 pursuant to 85-2-407 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 ~~his~~ *an* appropriation right with the intention of wholly or partially abandoning the right or if ~~he~~ *the* ~~appropriator~~ ceases using ~~his~~ *the* appropriation right according to its terms and

conditions with the intention of not complying with those terms and conditions, the appropriation right ~~shall~~ *is*, to that extent, ~~be deemed~~ considered abandoned and ~~shall~~ *must* immediately expire.

(2) If an appropriator ceases to use all or part of ~~his~~ *an* appropriation right or ceases using ~~his~~ *the* appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for ~~his~~ use, there ~~shall be~~ *is* a prima facie presumption that the appropriator has abandoned ~~his~~ *the* right for the part not used.

(3) If an appropriator ceases to use all or part of ~~his~~ *an* appropriation right 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 5. Section 85-2-407, MCA, is amended to read:

“85-2-407. ~~(Temporary)~~ Temporary changes in appropriation right.

(1) Except as provided in 85-2-410, an appropriator may not make a temporary change in appropriation right for the appropriator’s use or another’s use except with department approval in accordance with 85-2-402 and this section.

(2) Except as provided in subsection (9), a temporary change in appropriation right may be approved for a period not to exceed 10 years. A temporary change in appropriation right may be approved for consecutive or intermittent use.

(3) ~~An~~ *An* authorization for a temporary change in appropriation right may be renewed by the department for a period not to exceed 10 years. *There is no limitation on the number of renewals the appropriator may seek.* Renewal of an authorization for a temporary change in appropriation right requires ~~application~~ *notice* to the department by the appropriator. Upon ~~application receipt of the notice~~, the department shall notify other appropriators potentially affected by the renewal and shall allow ~~30~~ *90* days for submission of new evidence of adverse effects to other water rights. A temporary change authorization may not be renewed by the department if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(4) (a) During the term of the original temporary change authorization, the department may modify or revoke its authorization for a temporary change if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(b) An appropriator, other than an appropriator identified in subsection (7), may object:

- (i) during the initial temporary change application process;
- (ii) during the temporary change renewal process; and
- (iii) once during the term of the temporary change permit.

(5) The priority of appropriation for a temporary change in appropriation right is the same as the priority of appropriation of the right that is temporarily changed.

(6) Neither a change in appropriation right nor any other authorization right is required for reversion of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the period for which a temporary change was authorized expires.

(7) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a temporary change in appropriation right under this section may not object to the exercise of the temporary change according to its terms, the renewal of the authorization for the temporary change, or the reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage. Persons described in this subsection must be notified of the existence of any temporary change authorizations from the same source of supply.

(8) If a water right for which a temporary change *in appropriation right* has been approved is transferred as an appurtenance of real property, the temporary change remains in effect unless another change in appropriation right is authorized by the department.

(9) If the quantity of water that is subject to a temporary change *in appropriation right* is made available from the development of a new water conservation or storage project, a temporary change in appropriation right pursuant to 85-2-408 or 85-2-439 may be approved for a period equal to the expected life of the project, not to exceed 30 years *not to exceed 30 years unless a renewal is obtained pursuant to subsection (3).* (Terminates June 30, 2005—see 3, Ch. 433, L. 2001; see 3, Ch. 122, L. 2003.)

~~85-2-407. (Effective July 1, 2005) Temporary changes in appropriation right. (1) Except as provided in 85-2-410, an appropriator may not make a temporary change in appropriation right for the appropriator's use or another's use except with department approval in accordance with 85-2-402 and this section.~~

~~(2) A temporary change in appropriation right may be approved for a period not to exceed 10 years. A temporary change in appropriation right may be approved for consecutive or intermittent use.~~

~~(3) An authorization for a temporary change in appropriation right may be renewed by the department for a period not to exceed 10 years. Renewal of an authorization for a temporary change in appropriation right requires application to the department by the appropriator. Upon application, the department shall notify other appropriators potentially affected by the renewal and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A temporary change authorization may not be renewed by the department if it determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.~~

~~(4) (a) During the term of the original temporary change authorization, the department may modify or revoke its authorization for a temporary change if it~~

determines that the right of an appropriator, other than an appropriator described in subsection (7), is adversely affected.

(b) An appropriator, other than an appropriator identified in subsection (7), may object:

- (i) ~~during the initial temporary change application process;~~
- (ii) ~~during the temporary change renewal process; and~~
- (iii) ~~once during the term of the temporary change permit.~~

(5) The priority of appropriation for a temporary change in appropriation right is the same as the priority of appropriation of the right that is temporarily changed.

(6) ~~Neither a change in appropriation right nor any other authorization right is required for reversion of the appropriation right to the permanent purpose, place of use, point of diversion, or place of storage after the period for which a temporary change was authorized expires.~~

(7) ~~A person issued a water use permit with a priority of appropriation after the date of filing of an application for a temporary change in appropriation right under this section may not object to the exercise of the temporary change according to its terms, the renewal of the authorization for the temporary change, or the reversion of the appropriation right to its permanent purpose, place of use, point of diversion, or place of storage. Persons described in this subsection must be notified of the existence of any temporary change authorizations from the same source of supply.~~

(8) ~~If a water right for which a temporary change has been approved is transferred as an appurtenance of real property, the temporary change remains in effect unless another change in appropriation right is authorized by the department."~~

Section 6. Section 85-2-408, MCA, is amended to read:

"85-2-408. (Temporary) Temporary change authorization for instream flow — additional requirements. (1) The department shall accept and process an application for a temporary change in appropriation rights to maintain or enhance instream flow to benefit the fishery resource under the provisions of 85-2-402, 85-2-407, and this section. *The application must:*

(a) *include specific information on the length and location of the stream reach in which the streamflow is to be maintained or enhanced; and*

(b) *provide a detailed streamflow measuring plan that describes the point where and the manner in which the streamflow must be measured.*

(2) (a) ~~A temporary change authorization under the provisions of this section is allowable only if the owner of the water right voluntarily agrees to:~~

(i) ~~change the purpose of a consumptive use water right to instream flow for the benefit of the fishery resource; or~~

(ii) ~~lease a consumptive use water right to another person for instream flow to benefit the fishery resource.~~

(b) ~~For the purpose of this section, "person" means and is limited to an individual, association, partnership, or corporation.~~

(2) (a) *A temporary change authorization under the provisions of this section is allowable only if the owner of the water right voluntarily agrees to:*

(i) *change the purpose of a consumptive use water right to instream flow for the benefit of the fishery resource; or*

(ii) *lease a consumptive use water right to another person for instream flow to benefit the fishery resource.*

(b) *For the purpose of this subsection (2), "person" means and is limited to an individual, association, partnership, or corporation.*

~~(3)~~(3) In addition to the requirements of 85-2-402 and 85-2-407, an applicant for a change authorization under this section shall prove by a preponderance of evidence that:

(a) the temporary change authorization for water to maintain and enhance instream flow to benefit the fishery resource, as measured at a specific point, will not adversely affect the water rights of other persons; and

(b) the amount of water for the proposed use is needed to maintain or enhance instream flows to benefit the fishery resource.

~~(4)~~(4) The department shall approve the method of measurement of the water to maintain and enhance instream flow to benefit the fishery resource through a temporary change authorization as provided in this section.

~~(5) For the purpose of identifying and consulting with individuals or groups that may be affected by the proposed change authorization, the applicant shall, 30 days before submitting the application to the department, publish notice of the proposed change authorization in a local newspaper of general circulation in the county or counties affected.~~

~~(6)~~(5) Only the owner of the water right may seek enforcement of the temporary change authorization or object under 85-2-308.

~~(7)~~(6) A temporary change authorization under this section does not create a right of access across private property or allow any infringement of private property rights.

(7) *The maximum quantity of water that may be changed to maintain and enhance streamflows to benefit the fishery resource is the amount historically diverted. However, only the amount historically consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows to benefit the fishery resource below the existing point of diversion. (Terminates June 30, 2005—sec. 6, Ch. 322, L. 1995.)*

Section 7. 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. 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, or 85-2-439."

Section 8. Section 85-2-436, MCA, is amended to read:

"85-2-436. (Temporary) Water leasing study. (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.

(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). ~~Except as provided in 85-2-439, for~~ 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) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of maintaining or enhancing streamflows for the benefit of fisheries in stream reaches determined eligible by the department pursuant to 85-2-437.

(c) Upon receipt of a correct and complete application for a lease 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 may file an objection as provided in 85-2-308. A lease may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a lease of an existing right for the purpose of maintaining or enhancing streamflows for the benefit of fisheries if the applicant submits a correct and complete application and meets the requirements of 85-2-402.

(d) The application for a lease authorization must include specific information on the length and location of the stream reach in which the streamflow must be 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) The maximum quantity of water that may be leased 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 authorization, may be used to maintain or enhance streamflows below the lessor's point of diversion.

(f) The lease may not be issued for a term of more than 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 a term equal to the expected life of the project but to not more than 30 years. Upon

receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A lease authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (2)(j) submits evidence of adverse effects to the appropriator's rights that has not been considered previously. If new evidence is submitted, a lease authorization must be obtained according to the requirements of 85-2-402.

(g) During the term of the lease, the department may modify or revoke the lease authorization if an appropriator other than an appropriator described in subsection (2)(j) proves by a preponderance of evidence that the appropriator's water right is adversely affected.

(h) The priority of appropriation for a lease under this section is the same as the priority of appropriation of the right that is leased.

(i) Neither a change in appropriation right nor any other authorization is required for the reversion of the appropriation right to the lessor's previous use.

(j) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a lease authorization under this section may not object to the exercise of the lease according to its terms or the reversion of the appropriation right to the lessor according to the lessor's previous use.

(k) 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 under this section.

(3) (a) The department of fish, wildlife, and parks shall complete and submit to the department, commission, and environmental quality council an annual study progress report by December 1 of each year. 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.

(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) This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired. (Terminates June 30, 2009—sec. 9, Ch. 123, L. 1999.)”

Section 9. Repealer. (1) Sections 85-2-409, 85-2-439, and 85-2-440, MCA, are repealed.

(2) Section 6, Chapter 322, Laws of 1995, section 14, Chapter 487, Laws of 1995, section 3, Chapter 433, Laws of 2001, and section 3, Chapter 122, Laws of 2003, are repealed.

Section 10. Effective date. [This act] is effective on passage and approval.

Approved March 24, 2005

CHAPTER NO. 86

[HB 312]

AN ACT DIRECTING THE EXPENDITURE OF THE PORTION OF SMITH RIVER USER FEES DEPOSITED IN THE SMITH RIVER CORRIDOR ENHANCEMENT ACCOUNT FOR SPECIFIC PURPOSES RELATED TO THE PRESERVATION AND ENHANCEMENT OF THE SMITH RIVER CORRIDOR; AMENDING SECTION 23-2-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 23-2-409, MCA, is amended to read:

“23-2-409. Allocation of user fees — expenditure of Smith River corridor enhancement account. (1) All money collected as recreational and commercial user fees for floating and camping on the Smith River waterway pursuant to 23-2-408 must be deposited in the state treasury in *an account in the state special revenue fund* to the credit of the department.

(2) *Money deposited in the Smith River corridor enhancement account must be expended to:*

(a) *protect and enhance the integrity of the natural and scenic beauty of the Smith River waterway and its recreational, fisheries, and wildlife values through the lease or acquisition of property, including lease or acquisition of partial interests in property by the department within the Smith River corridor;*

(b) *pursue projects that serve to protect, enhance, and restore fisheries habitat, streambank stabilization, erosion control, and recreational values within the Smith River corridor, including Smith River tributaries; and*

(c) *pursue projects that serve to maintain and enhance instream flows for recognized recreational and aquatic ecosystem values in the Smith River corridor.”*

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 March 24, 2005

CHAPTER NO. 87

[HB 313]

AN ACT INCREASING THE MAXIMUM PERIOD OF TIME THAT THE DEPARTMENT OF CORRECTIONS MAY CONTRACT WITH PRERELEASE CENTERS FROM 10 YEARS TO 20 YEARS; AND AMENDING SECTION 53-1-203, MCA.

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

Section 1. 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, 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 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, 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.

(d) ~~utilize~~ 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;

(h) collect and disseminate information relating to youth in need of intervention and delinquent youth;

(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;

(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 ~~10~~ 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~~ 20 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

(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 youth correctional facilities.”

Approved March 24, 2005

CHAPTER NO. 88

[HB 347]

AN ACT EXTENDING THE PERIOD OF TIME DURING WHICH REAL PROPERTY CAN BE CONVERTED OR DIVERTED FROM OPEN-SPACE LANDS; AMENDING SECTION 76-6-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 76-6-107, MCA, is amended to read:

“76-6-107. Conversion or diversion of open-space land. (1) ~~No~~ ~~open-space~~ *Open-space* land, the title to or interest or right in which has been acquired under this chapter, ~~shall~~ *may not* be converted or diverted from open-space land use unless the conversion or diversion is:

(a) necessary to the public interest;

(b) not in conflict with the program of comprehensive planning for the area; and

(c) permitted by the conditions imposed at the time of the creation of the conservation easement, *in the terms of the acquisition agreement, or by the governing body resolution.*

(2) Other real property of at least equal fair market value and of as nearly as feasible equivalent usefulness and location for use as open-space land ~~shall~~ *must* be substituted within a reasonable period not exceeding ~~1 year~~ *3 years* for any real property converted or diverted from open-space land use. Property substituted is subject to the provisions of this chapter.”

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

Approved March 24, 2005

CHAPTER NO. 89

[HB 350]

AN ACT INCREASING THE BID DEPOSIT FOR STATE LAND LEASES; AMENDING SECTION 77-6-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 77-6-203, MCA, is amended to read:

“77-6-203. Bid deposit. (1) A person bidding for the lease of state lands shall deposit with the department, as evidence of good faith, a certified check, cashier’s check, or money order in an amount equal to ~~20%~~ *100%* of the annual rental bid in the case of grazing land and an amount equal to ~~\$1~~ *\$20* per acre for each acre of agricultural land contained in the lease in the case of agricultural land on which the bid is made on a crop share basis.

(2) The department shall retain the deposit of the successful bidder, apply it on the rental for the first year of the lease only, and return any balance of the deposit at the end of the first year to the successful bidder. The department shall return the deposits of the unsuccessful bona fide bidders. If the department finds a bid has been submitted that is frivolous, forged, or a bad faith bid or a bid submitted for purposes of harassment, the deposit is forfeited. The department shall make a reasonable attempt to notify the bidder in writing of the forfeiture and reasons therefor.

(3) If the successful bidder fails to execute the lease for any reason, ~~his~~ *the* deposit ~~shall be~~ *is* forfeited.

(4) The department shall credit all forfeited deposits to the interest and income account of the proper trust.”

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

Approved March 24, 2005

CHAPTER NO. 90

[HB 354]

AN ACT CLARIFYING THAT A LANDLORD MAY STORE AN ABANDONED MOBILE HOME ON THE PREMISES OF THE MOBILE HOME PARK; REQUIRING THAT THE SALE OF AN ABANDONED MOBILE HOME BE CONDUCTED PURSUANT TO SECTION 30-9A-610, MCA, OR AT A SHERIFF’S SALE; PROVIDING THAT THE LANDLORD HAS A LIEN ON THE MOBILE HOME AND THE PROCEEDS FROM THE SALE OF THE MOBILE HOME FOR CERTAIN AMOUNTS OWED TO THE LANDLORD BY THE MOBILE HOME OWNER; AND AMENDING SECTION 70-24-432, MCA.

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

Section 1. Section 70-24-432, MCA, is amended to read:

“70-24-432. Disposition of abandoned mobile home occupying a mobile home park space. (1) If a tenancy terminates and the landlord reasonably believes that the tenant has abandoned a mobile home occupying a mobile home park space and ~~a period of time of~~ at least 5 days ~~has~~ *have* elapsed since the occurrence of events upon which the landlord formed ~~that 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 ~~moves~~ *does not keep* the mobile home ~~from~~ *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 ~~a~~ reasonable removal and storage ~~charge~~ *charges.*

(3) ~~If~~ *Regardless of where* the landlord stores the mobile home, the landlord shall:

(a) notify the local law enforcement office of the ~~removal and~~ 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 ~~found by~~ the landlord ~~determines to have~~ *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 under subsection (4).

(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 ~~storage where it is stored~~ and does not do so within 20 days after delivery of the owner's response, the mobile home ~~is~~ *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 enough* 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 ~~may deduct from~~ *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, and sale, ~~and any~~ or delinquent rent or damages owing on the premises. ~~and 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 sale 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.”

Approved March 24, 2005

CHAPTER NO. 91

[HB 397]

AN ACT CLARIFYING THE GOVERNANCE STRUCTURE AND CLASSIFICATION FOR HIGH SCHOOL DISTRICTS WITH HIGH SCHOOL BUILDINGS LOCATED IN MORE THAN ONE ELEMENTARY DISTRICT; AMENDING SECTIONS 20-3-351 AND 20-6-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 20-3-351, MCA, is amended to read:

“20-3-351. Number of trustee positions in high school districts. (1) Except as provided in 20-3-352(3) and subsection (2) of this section, the trustees of a high school district must be composed of:

(a) the trustees of the elementary district in which the high school building is located or, if there is more than one elementary district in which *the operating* high school buildings are located, the trustees of the elementary district ~~designated by the high school boundary commission in which the operating high school building that was first constructed is located;~~ and

(b) the additional trustee positions determined in accordance with 20-3-352(2).

(2) There must be seven trustee positions for each county high school.”

Section 2. Section 20-6-301, MCA, is amended to read:

“20-6-301. High school district classification. The classification of a high school district ~~shall~~ *must* be the same as the classification of the elementary district (20-6-201) where the high school building is located. *If there is more than one elementary district in which operating high school buildings are located, the classification of the high school district must be the same as the classification of the elementary district described in 20-6-201 in which the operating high school building that was first constructed is located.* Whenever the classification of such elementary district is changed, the classification of a high school district ~~shall~~ *must* be changed accordingly and the county superintendent shall adjust the number of additional high school district trustee positions in accordance with the method prescribed in 20-3-354 for the determination of the number of additional trustee positions required for a high school district. An increased number of trustee positions ~~shall~~ *must* be filled by the appointment of the county superintendent, and ~~such those~~ *such* positions ~~shall be~~ *are* subject to election at the next regular trustee election. When the number of positions is decreased, the next additional high school trustee positions that become vacant under any circumstances ~~shall~~ *may* not be filled until the number of trustee positions has been reduced to the number required by law.”

Section 3. Coordination instruction. If Senate Bill No. 24 and [this act] are both passed and approved and if both amend section 20-3-351, then [section 26 of Senate Bill No. 24], amending section 20-3-351, is void.

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

Approved March 24, 2005

CHAPTER NO. 92

[HB 400]

AN ACT INCREASING AN INDIVIDUAL'S MINIMUM WEEKLY UNEMPLOYMENT BENEFIT AMOUNT FROM 15 PERCENT TO 19 PERCENT OF THE AVERAGE WEEKLY WAGE; AMENDING SECTION 39-51-2201, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 39-51-2201, MCA, is amended to read:

“39-51-2201. Weekly benefit amount — determination of average weekly wage. (1) An individual's weekly benefit amount must be an amount equal to 1% of the total base period wages or equal to 1.9% of the total wages paid in the 2 calendar quarters in which wages were the highest during the base period. The weekly benefit amount, if not a multiple of \$1, must be rounded to the nearest lower full dollar amount. However, the amount may not be less than the minimum or more than the maximum weekly benefit amount.

(2) On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before that date for the preceding calendar year must be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on the contribution reports. The amount obtained is the average annual wage. The average annual wage divided by 52, rounded to the nearest cent, is the average weekly wage. The maximum weekly benefit amount is 66.5% of the average weekly wage and must be applied to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year. The maximum weekly benefit amount, if not a multiple of \$1, must be computed to the nearest lower full dollar amount.

(3) The minimum weekly benefit amount must be ~~15%~~ 19% of the average weekly wage. The minimum weekly benefit amount, if not a multiple of \$1, must be computed to the nearest lower full dollar amount.”

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved March 24, 2005

CHAPTER NO. 93

[HB 401]

AN ACT REVISING THE REQUIREMENTS FOR CRANE AND HOIST ENGINEERS' LICENSES; REQUIRING INSPECTIONS OF CRANES, HOISTS, AND OTHER EQUIPMENT; PROVIDING THAT A DEPARTMENT OF LABOR AND INDUSTRY CRANE INSPECTOR MAY REQUIRE THE SUSPENSION OF OPERATION OF CRANES, HOISTS, AND OTHER

EQUIPMENT UNTIL DEFECTIVE CONDITIONS ARE CURED; PROVIDING THAT OPERATING A CRANE, HOIST, OR OTHER EQUIPMENT BEFORE CURING A DEFECTIVE CONDITION IS A MISDEMEANOR; AND AMENDING SECTIONS 50-76-103, 50-76-109, 50-76-110, AND 50-76-112, MCA.

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

Section 1. Section 50-76-103, MCA, is amended to read:

“50-76-103. Crane and hoist license required. (1) (a) It is unlawful for a person to operate any crane and hoist equipment, when used in hoisting or lowering personnel or material, that has a manufacturer’s *load chart* rating of 6 tons or more ~~and a boom length of more than 25 feet or to operate a tower crane of any capacity~~ without first obtaining a license from the department. ~~This~~ *The crane and hoist* equipment includes overhead trolley and gantry cranes used *only* in construction ~~only~~ and excludes equipment with excavation attachments or log loading equipment when in use.

(b) In emergencies, 50-74-317 applies to the operation of the equipment named in this section.

(2) Licensing is as follows:

(a) ~~First-class Licensed first-class~~ crane and hoist engineers ~~are licensed to~~ *may* operate any hoisting equipment in industrial or construction operations.

(b) (i) An applicant for a first-class crane and hoist engineer’s license must be *at least* 18 years of age ~~or older~~ and, *except as provided in [section 2]:*

(A) ~~must have no~~ *may not have* less than ~~3 years’~~ *1 year of* experience operating equipment requiring a second-class crane and hoist engineer’s license or shall demonstrate equivalent competency by examination; and

(B) ~~is required to~~ *shall* pass a written test prescribed by the department.

(ii) A biennial physical exam is required of all *first-class* licensees.

(c) ~~Second-class Licensed second-class~~ crane and hoist engineers ~~are~~ *licensed to* *may* operate crane and hoist equipment with a manufacturer’s *load chart* rating of *between* 6 tons and a boom length of 25 feet ~~up to~~ *equipment with a rating of 15* 17.5 tons ~~and a boom length of 60 feet or a tower crane of any capacity.~~

(d) (i) An applicant for a second-class crane and hoist engineer’s license must be *at least* 18 years of age ~~or older~~ and, *and except as provided in [section 2]:*

(A) ~~must have no~~ *may not have* less than ~~2 years’~~ *1 year of* experience in actual operation of crane and hoist equipment covered by this section or shall demonstrate equivalent competency by examination; and

(B) ~~is required to successfully~~ *shall* pass a written examination prescribed by the department.

(ii) A biennial physical exam is required of all *second-class* licensees.

(e) ~~Third-class Licensed third-class~~ crane and hoist engineers ~~are licensed to~~ *may* move all truck cranes driven by any power and of any capacity. This license requirement *also* applies to truck crane oilers who move truck cranes.

(f) An applicant for a third-class crane and hoist engineer’s license is required to successfully pass a written test prescribed by the department and must be *at least* 18 years of age ~~or older~~ before receiving a license.

(3) The department shall reexamine each ~~licensed engineer or operator licensee~~ every 5 years during the anniversary month of the issuance of the license if the licensee has not worked at the trade for 5 years.”

Section 2. Recognition of national certification. (1) The department shall issue a first-class or second-class crane and hoist engineer’s license to any individual who is certified by the national commission for the certification of crane operators as having qualifications that are at least substantially equivalent to the requirements of this state for licensing as a first-class or second-class crane and hoist engineer.

(2) An individual licensed under this section is subject to all requirements of this chapter pertaining to licensed first-class or second-class crane and hoist engineers, including license fees, biennial physical exams, and 5-year reexaminations.

Section 3. Failure of licensee to have possession of license or proof of license while operating equipment. (1) A person may not operate any equipment covered by licensure under this chapter unless the person has possession of the license or proof of licensure at the time the person is operating the equipment.

(2) The department shall issue a citation to any person violating the provisions of subsection (1). The department may direct an employee of the department to conduct onsite inspections to determine compliance with subsection (1) and to issue citations for violations of subsection (1).

(3) The citation must include:

(a) the time and date on which the citation is issued;

(b) the name, address, and mailing address of the person receiving the citation;

(c) information explaining the procedure for paying the fine or for providing the department with proof of licensure;

(d) a statement that the amount of the fine is \$100 and that the person receiving the citation has 30 days from the date of the citation to pay the fine or to submit proof of licensure to the department; and

(e) a statement that failure to pay the fine or to provide proof of licensure may result in revocation of the license of the person receiving the citation.

(4) The department shall waive the fine for any person who provides proof of licensure within the 30-day period provided in subsection (3)(d).

Section 4. Section 50-76-109, MCA, is amended to read:

“50-76-109. Violation of chapter a — misdemeanor. ~~Every~~ (1) A person who operates ~~any of the engines and machinery named a crane, hoist, or other equipment described in 50-76-102 or 50-76-103 for which a crane and hoist engineer’s license is required without first obtaining a license, as required by the sections referred to above and every owner, employer, or manager of any such the engines or machinery~~ crane, hoist, or other equipment who permits ~~any an~~ unlicensed person to operate ~~such the crane, hoist, or other equipment engines or machinery or any person who violates any of the provisions of this chapter is~~ is guilty of a misdemeanor.

(2) *A person who knowingly operates or an owner, employer, or manager who knowingly allows the operation of a crane, hoist, or other equipment in violation of the rules adopted pursuant to 50-76-110(2) is guilty of a misdemeanor.”*

Section 5. Section 50-76-110, MCA, is amended to read:

“50-76-110. Crane inspector — qualifications — inspections. (1) The department shall employ at least one crane inspector. ~~The A crane inspector shall hold a first-class hoisting engineer’s license under this chapter for a minimum of 1 year and~~ must have a minimum of 3 years’ years of experience operating cranes *and must have been licensed for at least 1 year as a first-class crane and hoist engineer.*

(2) *The department may adopt by rule applicable operating and safety standards established by the American national standards institute.*

(3) *A crane inspector may require that a crane, hoist, or other equipment subject to this chapter that is not being operated in compliance with an operating or safety standard adopted by rule pursuant to subsection (2) be declared to be out of service and that the crane, hoist, or other equipment not be operated until the noncompliance is cured.”*

Section 6. Section 50-76-112, MCA, is amended to read:

“50-76-112. Rulemaking authority. (1) The department may adopt rules consistent with the purposes of this chapter for the administration of the following classes of crane and hoist operators:

- ~~(1)~~(a) crane and hoist oiler;
- ~~(2)~~(b) crane and hoist hoisting;
- ~~(3)~~(c) crane and hoist hydraulic;
- ~~(4)~~(d) crane gantry and trolley;
- ~~(5)~~(e) hoists;
- ~~(6)~~(f) mine hoists;
- ~~(7)~~(g) hydraulic and boom trucks; ~~and~~
- ~~(8)~~(h) tower crane; *and*

(i) *air tugger winches, other than air tugger winches on equipment used to drill oil, natural gas, or water wells.*

(2) *In adopting rules pertaining to inspections and safety requirements, the department may consult with engineering authorities and organizations concerned with safety codes, rules, and regulations governing the operation, testing, maintenance, and inspection of cranes, hoists, and other equipment subject to the provisions of this chapter.”*

Section 7. Codification instruction. [Sections 2 and 3] are intended to be codified as an integral part of Title 50, chapter 76, part 1, and the provisions of Title 50, chapter 76, part 1, apply to [sections 2 and 3].

Approved March 24, 2005

CHAPTER NO. 94

[HB 437]

AN ACT ALLOWING PAYMENT OF PUBLIC ASSISTANCE GRANTS BY ELECTRONIC TRANSFER; AND AMENDING SECTION 53-2-608, MCA.

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

Section 1. Section 53-2-608, MCA, is amended to read:

“53-2-608. Method of issuing assistance grants. (1) ~~Checks in payment of public assistance must be issued by the department of public health and human services upon approved certificates of award and reports of changes of eligible grantees as are forwarded by the county to the state department, and all checks must be mailed to the individual recipient or the appropriate vendor. The checks in payment of public assistance must be issued in the full approved amount for each eligible approved grantee, and the original monthly payment must be from the state public assistance accounts. When an individual or household is determined to be eligible for public assistance under this title, the department shall make payments to the individual or household or to a vendor on behalf of the individual or household in the full amount approved. Payment may be made by check or by electronic transfer, which includes but is not limited to direct deposits to an account at a financial institution and electronic benefit transfer cards. All public assistance checks represent cash on demand at full par value to the recipient and vendor.~~

(2) ~~Whenever the department of public health and human services, acting pursuant to standards established by the department, determines that any otherwise eligible recipient of public assistance has, by reason of any physical or mental condition, such an inability to manage funds and that making payments to the recipient would be contrary to the recipient’s welfare, the department may, under standards established under the state plan, make the public assistance payment on behalf of the recipient to another person found by the department to be interested in or concerned with the welfare of the recipient.”~~

Approved March 24, 2005

CHAPTER NO. 95

[HB 439]

AN ACT DISALLOWING THE INDIVIDUAL INCOME TAX CREDIT FOR TAXES IMPOSED BY FOREIGN COUNTRIES IF A FEDERAL INCOME TAX CREDIT WAS TAKEN FOR THE FOREIGN TAXES; AMENDING SECTION 15-30-124, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 15-30-124, MCA, is amended to read:

“15-30-124. Credit allowed resident taxpayers for income taxes imposed by foreign states or countries. (1) Subject to the conditions provided in subsections (2) through ~~(5)~~ (6), a resident of this state is allowed a credit against the taxes imposed by this chapter for:

(a) income taxes imposed by and paid to another state or country on income taxable under this chapter;

(b) the resident’s pro rata share of any income tax imposed by and paid to another state or country by an S. corporation of which the resident is a shareholder; and

(c) the resident’s distributive share, whether separately or nonseparately stated, of any income tax imposed by and paid to another state or country by a partnership of which the resident is a partner.

(2) The credit is allowed only for taxes paid to another state or country on income derived from sources within the other state or country that is taxable under the laws of the other state or country regardless of the residence or domicile of the taxpayer.

(3) The credit is not allowed if the other state or country allows residents of this state a credit against the taxes imposed by the other state or country for taxes paid or payable under this chapter.

(4) *The credit is not allowed on taxes imposed by a foreign country to the extent that a credit for the taxes imposed by the foreign country was claimed for federal income tax purposes.*

~~(4)~~(5) The allowable credit must be computed by a formula prescribed by the department.

~~(5)~~(6) For the purposes of the credit under subsections (1)(b) and (1)(c):

(a) "income tax" has the same meaning as provided in Article II of 15-1-601;

(b) the S. corporation must have made and have in effect on the last day of its tax year a valid election under subchapter S. of Chapter 1 of the Internal Revenue Code; and

(c) the credit applies only to taxes paid by the S. corporation or partnership on income taxable under this chapter."

Section 2. Applicability. [This act] applies to tax years beginning after December 31, 2005.

Approved March 24, 2005

CHAPTER NO. 96

[HB 508]

AN ACT REVISING THE DEFINITION OF "EMPLOYER" FOR PURPOSES OF A VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION; AND AMENDING SECTION 2-18-1303, MCA.

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

Section 1. Section 2-18-1303, MCA, is amended to read:

"2-18-1303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Common association" means an association of employees established pursuant to 2-18-1310 for the purposes of employer and employee participation in the plan.

(2) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with the department to participate in the plan.

(3) "Department" means the department of administration established in 2-15-1001.

(4) (a) "Employee" means a person employed by an employer ~~but~~.

(b) *The term* does not include an independent contractor or person hired by the employer under a personal services contract.

(5) "Employer" means a legally constituted department, board, ~~or~~ commission, *or any other administrative unit of the state government*, a county,

an incorporated city or town, or any *other* political subdivision of the state, including a school district, or a unit of the university system.

(6) "Health care expense trust account" or "account" means an account established for the payment of qualified health care expenses under the plan.

(7) "Member" means an employee who belongs to a voluntary employees' beneficiary association established under 2-18-1310.

(8) "Plan" means the employee welfare benefit plan established under Internal Revenue Code section 501(c)(9) pursuant to 2-18-1304.

(9) "Qualified health care expenses" means expenses paid by a member for medical care, as defined by 26 U.S.C. 213(d), for the member or the member's dependent as defined by 26 U.S.C. 152."

Approved March 24, 2005

CHAPTER NO. 97

[HB 557]

AN ACT RESTRICTING THE AMOUNT OF INSURANCE THAT A LENDER MAY REQUIRE A BORROWER TO MAINTAIN ON A LOAN SECURED BY REAL PROPERTY; AND AMENDING SECTION 32-5-306, MCA.

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

Section 1. 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 ~~shall~~ *must* be obtained through an insurance company authorized to conduct business in Montana by a ~~duly~~ licensed ~~agent~~ *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, 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 ~~shall be~~ *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.

(5) The insurance authorized by this section may be sold, obtained, or provided by or through a licensee, and the premium or identifiable charge for the insurance may be included in the principal amount of the loan; ~~provided, however~~ *However*, ~~that~~ a licensee may not require a borrower to purchase insurance from the licensee or from any particular ~~agent~~ *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) *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 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].

Approved March 24, 2005

CHAPTER NO. 98

[HB 564]

AN ACT ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO TRANSFER OWNERSHIP OF THE MONTANA AGRICULTURAL CENTER AND MUSEUM OF THE NORTHERN GREAT PLAINS TO A QUALIFIED LOCAL GOVERNMENT ENTITY FOR LESS THAN FAIR MARKET VALUE; REQUIRING THE DEPARTMENT TO RETAIN THE RIGHT TO RECLAIM OWNERSHIP OF THE PROPERTY AT NO COST TO THE STATE IF THE PROPERTY CEASES TO BE USED AS AN AGRICULTURAL CENTER AND MUSEUM; AMENDING SECTION 23-1-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 23-1-109, MCA, is amended to read:

“23-1-109. Establishment of Montana agricultural center and museum of the Northern Great Plains. There is a Montana agricultural

center and museum of the Northern Great Plains located in Fort Benton. The department of fish, wildlife, and parks shall ~~have jurisdiction, custody, and control of~~ *acquire* the center and museum, but *the department* may lease the facility to a qualified local government entity or nonprofit corporation or *transfer ownership of the facility to a qualified local government entity for less than fair market value* for so long as the local government entity or nonprofit corporation, *as applicable*, provides for development, operation, and maintenance of the center and museum without cost to the state of Montana. *As part of any transfer of ownership of the facility, the department of fish, wildlife, and parks retains the right to reclaim ownership of the property at no cost to the state if the property ceases to be used as an agricultural center and museum for more than 1 year.*"

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

Approved March 24, 2005

CHAPTER NO. 99

[HB 598]

AN ACT DELAYING THE EFFECTIVE DATE AND APPLICABILITY DATE OF THE LAW REVISING THE LAWS RELATING TO THE SELECTION OF TRIAL JURIES; AMENDING SECTIONS 9 AND 10, CHAPTER 441, LAWS OF 2003; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 9, Chapter 441, Laws of 2003, is amended to read:

"Section 9. Effective date. [This act] is effective October 1, ~~2005~~ 2007."

Section 2. Section 10, Chapter 441, Laws of 2003, is amended to read:

"Section 10. Applicability. [This act] applies to combined jury lists compiled partly from the lists submitted under [section 1] by the department of justice to the clerks of the district courts on and after the second Monday of May ~~2006~~ 2008."

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

Approved March 24, 2005

CHAPTER NO. 100

[HB 609]

AN ACT PROVIDING THAT INJUNCTIVE RELIEF IS AVAILABLE FOR A PERSON TRYING TO ENFORCE A WATER RIGHT; PROVIDING THAT A PERSON TRYING TO ENFORCE A WATER RIGHT MUST BE AWARDED REASONABLE COSTS AND ATTORNEY FEES; AMENDING SECTION 85-2-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 85-2-125, MCA, is amended to read:

"85-2-125. (Temporary) Recovery of attorney fees by prevailing party. (1) ~~(a)~~ In the Upper Clark Fork River basin, as defined in 85-2-335, the

prevailing party in a hearing under 85-2-309 on an application for a permit or change approval may bring an action in district court for costs and attorney fees. The court shall award the prevailing party reasonable costs and attorney fees.

(b)(2) (a) If a final decision of the department on an application for a change approval in the Upper Clark Fork River basin is appealed to a district court, the district court shall award the prevailing party reasonable *costs and* attorney fees.

(2)(b) If a final decision of the department on an application for a permit is appealed to district court, the district court shall award the prevailing party reasonable attorney fees.

(3) *The party obtaining injunctive relief in an action to enforce a water right must be awarded reasonable costs and attorney fees. For the purposes of this section, "enforce a water right" means an action by a party with a water right to enjoin the use of water by a person that does not have a water right.* (Terminates June 30, 2005—sec. 14, Ch. 487, L. 1995.)

85-2-125. (Effective July 1, 2005) Recovery of attorney fees by prevailing party. (1) If a final decision of the department on an application for a permit is appealed to district court, the district court shall award the prevailing party reasonable *costs and* attorney fees.

(2) *The party obtaining injunctive relief in an action to enforce a water right must be awarded reasonable costs and attorney fees. For the purposes of this section, "enforce a water right" means an action by a party with a water right to enjoin the use of water by a person that does not have a water right.*

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 March 24, 2005

CHAPTER NO. 101

[HB 612]

AN ACT REVISING APPLICATION PROCEDURES FOR COMMERCIAL TIMBER REMOVAL; REQUIRING LIABILITY INSURANCE AND PERFORMANCE BONDS; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO REVIEW COMPLETED APPLICATIONS WITHIN 30 DAYS; AND AMENDING SECTION 77-5-212, MCA.

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

Section 1. Section 77-5-212, MCA, is amended to read:

"77-5-212. Commercial permits for timber removal sale. (1) Permits may be issued to citizens of the state for commercial purposes, at commercial rates, without advertising, *and* under ~~such~~ restrictions and rules ~~as~~ *that* the board may approve for *the sale of* timber:

(a) in quantities of less than 100,000 ~~feet~~ board ~~measure~~ *feet*; and

(b) in cases of emergency due to fire, insect, fungus, parasite, or blowdown and no other, in quantities of less than 200,000 ~~feet~~ board ~~measure~~ *feet*.

(2) *To apply for a permit under this section, an individual shall:*

(a) *complete a permit application on a form provided by the department and submit the completed application to the department office that is responsible for management of the state land where the proposed sale is located;*

(b) *using ribbon, mark the area of the proposed sale; and*

(c) *designate on a U.S. geological survey map or other approved map the area proposed for sale and existing roads that would be used to remove timber from the site.*

(3) *For sales of less than 30,000 board feet, an individual shall provide proof of vehicle liability insurance and \$1 million in commercial general liability insurance, naming the state of Montana as additionally insured, and shall provide a performance bond in an amount not to exceed \$1,000.*

(4) *For sales of 30,000 board feet or more, an individual shall provide proof of vehicle liability insurance and \$1 million in commercial general liability insurance, naming the state of Montana as additionally insured, and shall provide a performance bond in accordance with 77-5-202.*

(5) *Unless the timber proposed for sale is already sold or is part of another proposed sale being reviewed by the department, the department shall review completed permit applications within 30 days of the application's submittal. If the proposed sale complies with existing state and federal laws and regulations, the department shall perform an appraisal within 60 days of the application's submittal.*

(6) *The department shall issue a permit within 5 working days of the date that the applicant agrees to the terms of the proposed sale, unless the parties mutually agree upon a time extension.*

~~(7)~~ (7) *Repeated permits of this kind shall may not be issued to avoid advertising and the consequent competition secured thereby by advertising.*

(8) *Permit applications pursuant to subsection (1)(b) are categorical exclusions as defined by rule, and the department is not required to comply with the provisions of 75-1-201(1) in reviewing those applications.*

(9) *Proposed timber sales under subsection (1)(b) do not take precedence over the timely sale and harvest of green timber pursuant to 77-5-207.*

(10) *Permit applications made pursuant to this section may be subject to further environmental review, and the number of permits may be limited if the department determines that sales may have a cumulative effect on geographic area."*

Approved March 24, 2005

CHAPTER NO. 102

[SB 6]

AN ACT REVISING THE MONTANA SAFE HAVEN NEWBORN PROTECTION ACT; CLARIFYING THE AVAILABILITY OF INFORMATION CONCERNING COUNSELING; AMENDING SECTION 40-6-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 40-6-405, MCA, is amended to read:

“40-6-405. Surrender of newborn to emergency services provider — temporary protective custody. (1) If a parent surrenders an infant who may be a newborn to an emergency services provider, the emergency services provider shall comply with the requirements of this section under the assumption that the infant is a newborn. The emergency services provider shall, without a court order, immediately accept the newborn, taking the newborn into temporary protective custody, and shall take action necessary to protect the physical health and safety of the newborn.

(2) The emergency services provider shall make a reasonable effort to do all of the following:

(a) if possible, inform the parent that by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption according to law;

(b) if possible, inform the parent that the parent has 60 days to petition the court to regain custody of the newborn;

(c) if possible, ascertain whether the newborn has a tribal affiliation; and, if so, ascertain relevant information pertaining to any Indian heritage of the newborn;

(d) provide the parent with written material approved by or produced by the department, which includes but is not limited to all of the following statements:

(i) by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption and the department shall initiate court proceedings according to law to place the newborn for adoption, including proceedings to terminate parental rights;

(ii) the parent has 60 days after surrendering the newborn to petition the court to regain custody of the newborn;

(iii) the parent may not receive personal notice of the court proceedings begun by the department;

(iv) information that the parent provides to an emergency services provider will not be made public;

(v) a parent may contact the ~~safe delivery line established under 40-6-415~~ department for more information and counseling; and

(vi) any Indian heritage of the newborn brings the newborn within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.

(3) After providing a parent with the information described in subsection (1), if possible, an emergency services provider shall make a reasonable effort to:

(a) encourage the parent to provide any relevant family or medical information, including information regarding any tribal affiliation;

(b) provide the parent with ~~the pamphlet produced under 40-6-415 and inform the parent~~ information that the parent may receive counseling or medical attention;

(c) inform the parent that information that the parent provides will not be made public;

(d) ask the parent for the parent's name;

(e) inform the parent that in order to place the newborn for adoption, the state is required to make a reasonable attempt to identify the other parent and

to obtain relevant medical family history and then ask the parent to identify the other parent;

(f) inform the parent that the department can provide confidential services to the parent; and

(g) inform the parent that the parent may sign a relinquishment for the newborn to be used at a hearing to terminate parental rights.”

Section 2. Coordination instruction. If both Senate Bill No. 24 and [this act] are passed and approved and if both bills amend 40-6-405, then the amendments to 40-6-405 in Senate Bill No. 24 are void.

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

Approved March 24, 2005

CHAPTER NO. 103

[SB 8]

AN ACT SIMPLIFYING AND CLARIFYING TERMINOLOGY AND PROCEDURES IN THE WORKERS' COMPENSATION ACT; SPECIFYING THAT STATUTORY AND COMMON-LAW RULES OF EVIDENCE ARE NOT APPLICABLE AT DEPARTMENT OF LABOR AND INDUSTRY HEARINGS UNDER THE WORKERS' COMPENSATION ACT; CLARIFYING WITH WHOM AND BY WHOM REPORTS OF ACCIDENTS, INJURIES, AND OCCUPATIONAL DISEASE ARE TO BE FILED; PROVIDING THE DEPARTMENT OF LABOR AND INDUSTRY WITH RULEMAKING AUTHORITY FOR REPORTING REQUIREMENTS FOR INJURY OR OCCUPATIONAL DISEASE; CLARIFYING WHICH INSURER PAYS BENEFITS WHEN THERE IS A DISPUTE BETWEEN MULTIPLE INSURERS; CLARIFYING HOW LUMP-SUM PAYMENTS ARE ADDRESSED; REPEALING STATUTES ON PAYROLL COMPUTATION AND WAGE DEFINITIONS COVERED BY OTHER STATUTES; REMOVING THE REQUIREMENT FOR ASSESSMENTS ON CERTAIN PUBLIC CORPORATIONS THAT FAIL TO FILE PAYROLL REPORTS; AMENDING SECTIONS 39-71-105, 39-71-107, 39-71-201, 39-71-204, 39-71-307, 39-71-407, 39-71-608, 39-71-703, 39-71-741, 39-71-743, AND 39-71-1006, MCA; REPEALING SECTIONS 39-71-302, 39-71-303, 39-71-308, AND 39-71-318, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 39-71-105, MCA, is amended to read:

“39-71-105. Declaration of public policy. For the purposes of interpreting and applying Title 39, chapters 71 and 72, the following is the public policy of this state:

(1) It is an objective of the Montana workers' compensation system to provide, without regard to fault, ~~wage supplement~~ *wage-loss* and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole; they are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

(2) A worker's removal from the work force due to a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, it is an objective of the workers' compensation system to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

(3) Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

(4) Title 39, chapters 71 and 72, must be construed according to their terms and not liberally in favor of any party.

(5) It is the intent of the legislature that stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, ~~as is the case with repetitive injury claims~~, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system."

Section 2. Section 39-71-107, MCA, is amended to read:

"39-71-107. Insurers to act promptly on claims — in-state adjusters.

(1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to injured workers, to employers, and to providers who are the customers of the workers' compensation system.

(2) All workers' compensation and occupational disease claims filed pursuant to the Workers' Compensation Act and the Occupational Disease Act of Montana must be adjusted by a person in Montana. For a claim to be considered as adjusted by a person in Montana, the person adjusting the claim is required to determine the entitlement to benefits, authorize payment of all benefits due, manage the claim, have authority to settle the claim, maintain an office located in Montana, and adjust Montana claims from that office. Use of a mailbox or maildrop in Montana does not constitute maintaining an office in Montana.

(3) An insurer shall maintain the documents related to each claim filed with the insurer under the Workers' Compensation Act and the Occupational Disease Act of Montana at the Montana office of the person adjusting the claim in Montana until the claim is settled. The documents may be either original documents or duplicates of the original documents and must be maintained in a manner that allows the documents to be retrieved from that office and copied at the request of the claimant or the department. Settled claim files stored outside of the adjuster's office must be made available within 48 hours of a request for the file. Electronic or optically imaged documents are permitted.

(4) An insurer shall provide to the claimant:

(a) a written statement of the reasons that a claim is being denied at the time of denial;

(b) whenever benefits requested by a claimant are denied, a written explanation of how the claimant may appeal an insurer's decision; and

(c) a written explanation of the amount of wage loss benefits being paid to the claimant, along with an explanation of the calculation used to compute those benefits. The explanation must be sent within 7 days of the initial payment of the benefit.

(5) An insurer shall:

(a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying benefits and specifies the information needed; and

(b) pay settlements within 30 days of the date the department issues an order approving the settlement.

~~(6) An insurer may not make payments pursuant to 39-71-608 or any other reservation of rights for more than 90 days without:~~

~~(a) written consent of the claimant; or~~

~~(b) approval of the department.~~

~~(7)(6)~~ The department may adopt rules to implement this section.

~~(8)(7)~~ For purposes of this section, "settled claim" means a department-approved or court-ordered compromise of benefits between a claimant and an insurer or a claim that was paid in full. The term does not include a claim in which there has been only a lump-sum advance of benefits."

Section 3. Section 39-71-201, MCA, is amended to read:

"39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts the department is required to administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administration fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, ~~39-71-308~~, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment of 3% of paid losses, plus administrative fines and interest provided by this section.

(2) For the purposes of this section, paid losses include the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act and the Occupational Disease Act of Montana without regard to the application of any deductible whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment

rendered to an injured worker, including hospital treatment and prescription drugs.

(3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 1 in the form and containing the information required by the department a report of paid losses pursuant to subsection (2).

(4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation plan No. 3, the state fund, shall pay a proportionate share of all costs of administering and regulating the Workers' Compensation Act and the Occupational Disease Act of Montana and the statutory occupational safety acts that the department is required to administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund. In addition, compensation plan No. 3, the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before July 1, 1990.

(5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the plan No. 1 employer or \$500, whichever is greater. Any entity, other than the department, that assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the purposes of this section.

(b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled under compensation plan No. 1.

(c) Payment of the assessment provided for by this subsection (5) must be paid by the employer in:

- (i) one installment due on July 1; or
- (ii) two equal installments due on July 1 and December 31 of each year.

(d) If an employer fails to timely pay to the department the assessment under this section, the department may impose on the employer an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative and regulatory costs attributable to claims arising before July 1, 1990. The assessment is equal to 3% of the paid losses paid in the preceding calendar year for claims arising before July 1, 1990. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the assessment for administrative and regulatory costs that is attributable to claims arising before July 1, 1990.

(b) Payment of the assessment must be paid in:

- (i) one installment due on July 1; or
- (ii) two equal installments due on July 1 and December 31 of each year.

(c) If the state fund fails to timely pay to the department the assessment under this section, the department may impose on the state fund an

administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(7) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall pay a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be collected by each plan No. 2 insurer and by plan No. 3, the state fund, from each employer that it insures. The premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed upon insured employers.

(b) The amount to be funded by the premium surcharge is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of all plan No. 2 insurers and 3% of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be calculated annually by the department by not later than April 30. The resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in the next fiscal year.

(c) On or before April 30, 2001, and on each succeeding April 30, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay to the department all money collected as a premium surcharge within 20 days of the end of the calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge collected under this section, the department may impose on the insurer an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(e) If an employer fails to remit to an insurer the total amount due for the premium and premium surcharge, the amount received by the insurer must be applied to the premium surcharge first and the remaining amount applied to the premium due.

(f) The amount actually collected as a premium surcharge in a given year must be compared to the 3% of paid losses paid in the preceding year. Any amount collected in excess of the 3% must be deducted from the amount to be collected as a premium surcharge in the following year. The amount collected

that is less than the 3% must be added to the amount to be collected as a premium surcharge in the following year.

(8) On or before ~~April 30, 2001, and on each succeeding~~ April 30 of each year, upon a determination by the department, an insurer under compensation plan No. 2 that pays benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment equal to 3% of paid losses paid in the preceding calendar year, subject to a minimum assessment of \$500, that is due on July 1.

(9) An employer that makes a first-time application for permission to enroll under compensation plan No. 1 shall pay an assessment of \$500 within 15 days of being granted permission by the department to enroll under compensation plan No. 1.

(10) The department shall deposit all funds received pursuant to this section in the state treasury, as provided in this section.

(11) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, incurred while on the business of the department either within or without the state.

(12) Disbursements from the administration ~~money~~ fund must be made after approved by the department upon claim for disbursement.

(13) The department may assess and collect the workers' compensation regulatory assessment surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage requirements of the Workers' Compensation Act and the Occupational Disease Act of Montana. Any amounts collected by the department pursuant to this subsection must be deposited in the workers' compensation administration fund."

Section 4. Section 39-71-204, MCA, is amended to read:

"39-71-204. Rescission Hearings — rules of evidence — appeal, rescission, alteration, or amendment by department of its orders, decisions, or awards — effect — appeal. (1) *The statutory and common-law rules of evidence do not apply to a hearing before the department under this chapter. A petition for a hearing before the department must be filed within 2 years after benefits are denied.*

(2) *A hearing under this chapter may be conducted by telephone or by videoconference.*

~~(1)~~(3) The department has continuing jurisdiction over all its orders, decisions, and awards and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause ~~appearing therefor~~.

~~(2)~~(4) Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award has the same effect as original orders or awards.

~~(3)~~(5) If a party is aggrieved by a department order, the party may appeal the dispute to the workers' compensation judge."

Section 5. Section 39-71-307, MCA, is amended to read:

"39-71-307. Employers and insurers to file reports of accidents — penalty. (1) Every employer ~~and every insurer~~ insured by a plan No. 2 or a plan

~~No. 3 insurer is required to file with the department employer's insurer, under rules adopted by the department rules, a full and complete report of every accident, injury, or occupational disease to an employee arising out of or in the course of employment and resulting in loss of life or injury to the employee. The reports must be furnished to the department in the form and detail as the department prescribes and must provide specific answers to all questions required by the department under its rules. However, if an employer is unable to answer a question, the employer shall state the reason for the employer's inability to answer.~~

(2) Every insurer transacting business under this chapter shall, ~~at the time and in the manner prescribed under rules adopted by the department,~~ make and file with the department the reports of ~~accidents as the department requires~~ every injury or occupational disease.

(3) An employer, or insurer, or adjuster who refuses or neglects to submit to the department reports necessary for the proper filing and review of a claim, as provided in subsection (1) or (2), shall be assessed a penalty of not less than \$200 or more than \$500 for each offense. The department shall assess and collect the penalty. An employer or insurer may contest a penalty assessment in a hearing conducted according to department rules.”

Section 6. Section 39-71-407, MCA, is amended to read:

“39-71-407. Liability of insurers — limitations. (1) Each insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

(2) (a) An insurer is liable for an injury, as defined in 39-71-119, if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

- (i) a claimed injury has occurred; or
- (ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) (a) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement and the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(ii) the travel is required by the employer as part of the employee's job duties.

(b) A payment made to an employee under a collective bargaining agreement, personnel policy manual, or employee handbook or any other document provided to the employee that is not wages but is designated as an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil, or lodging, and the employee is not covered under this chapter while traveling.

(4) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident. However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection does not apply.

(5) *If there is no dispute that an insurer is liable for an injury but there is a liability dispute between two or more insurers, the insurer for the most recently filed claim shall pay benefits until that insurer proves that another insurer is responsible for paying benefits or until another insurer agrees to pay benefits. If it is later proven that the insurer for the most recently filed claim is not responsible for paying benefits, that insurer must receive reimbursement for benefits paid to the claimant from the insurer proven to be responsible.*

~~(5)~~(6) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

~~(6)~~(7) An employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established by objective medical findings that contain sufficient factual and historical information concerning the relationship of the worker's condition to the original injury.

~~(7)~~(8) As used in this section, "major contributing cause" means a cause that is the leading cause contributing to the result when compared to all other contributing causes."

Section 7. Section 39-71-608, MCA, is amended to read:

"39-71-608. Payments within thirty days by insurer without admission of liability or waiver of defense authorized — notice — limitations on payments over ninety days. (1) An insurer may, after written notice to the claimant and the department, make payment of compensation benefits within 30 days of receipt of a claim for compensation without ~~such~~ the payments being construed as an admission of liability or a waiver of any right of defense.

(2) *An insurer may not make payments pursuant to this section for more than 90 days without:*

- (a) *written consent of the claimant; or*
- (b) *approval of the department."*

Section 8. Section 39-71-703, MCA, is amended to read:

"39-71-703. Compensation for permanent partial disability. (1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award if that worker:

- (a) has an actual wage loss as a result of the injury; and
- (b) has a permanent impairment rating that:
 - (i) is not based exclusively on complaints of pain;
 - (ii) is established by objective medical findings; and
 - (iii) is more than zero as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment.

(2) When a worker receives an impairment rating as the result of a compensable injury and has no actual wage loss as a result of the injury, the worker is eligible for an impairment award only.

(3) ~~Beginning July 1, 2003, the~~ The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection (5) by 375 weeks.

(4) A permanent partial disability award granted an injured worker may not exceed a permanent partial disability rating of 100%.

(5) The percentage to be used in subsection (4) must be determined by adding all of the following applicable percentages to the impairment rating:

(a) if the claimant is 40 years of age or younger at the time of injury, 0%; if the claimant is over 40 years of age at the time of injury, 1%;

(b) for a worker who has completed less than 12 years of education, 1%; for a worker who has completed 12 years or more of education or who has received a graduate equivalency diploma, 0%;

(c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of \$2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of more than \$2 an hour as a result of the industrial injury, 20%. Wage loss benefits must be based on the difference between the actual wages received at the time of injury and the wages that the worker earns or is qualified to earn after the worker reaches maximum healing.

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 3%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, 2%.

(6) The weekly benefit rate for permanent partial disability is $66\frac{2}{3}\%$ of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

(7) *An undisputed impairment award may be paid biweekly or in a lump sum at the discretion of the worker. Lump sums paid for impairments are not subject to the requirements of 39-71-741, except that lump-sum conversions for benefits not accrued may be reduced to present value at the rate established by the department pursuant to 39-71-741(3).*

~~(7)~~(8) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

~~(8)~~(9) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under this section must be calculated based on the wages that the worker earns or would be qualified to earn following the completion of the rehabilitation plan.

~~(9)~~(10) As used in this section:

(a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) “medium labor activity” means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) “light labor activity” means the ability to lift up to 20 pounds occasionally or up to 10 pounds frequently; and

(d) “sedentary labor activity” means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently.”

Section 9. Section 39-71-741, MCA, is amended to read:

“39-71-741. Compromise settlements and lump-sum payments.

(1) By written agreement filed with the department, benefits under this chapter may be converted in whole or in part into a lump sum. An agreement *that settles a claim for any type of benefit* is subject to department approval. *Lump-sum advances and payment of accrued benefits in a lump sum, except permanent total disability benefits under subsection (1)(c), are not subject to department approval.* If the department fails to approve or disapprove the agreement in writing within 14 days of the filing with the department, the agreement is approved. The department shall directly notify a claimant of a department order approving or disapproving a claimant’s compromise or lump-sum payment. Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department. The department may approve an agreement to convert the following benefits to a lump sum only under the following conditions:

(a) all benefits if a claimant and an insurer dispute the initial compensability of an injury and there is a reasonable dispute over compensability;

(b) permanent partial disability benefits if an insurer has accepted initial liability for an injury. The total of any permanent partial lump-sum conversion in part that is awarded to a claimant prior to the claimant’s final award may not exceed the anticipated award under 39-71-703. The department may disapprove an agreement under this subsection (1)(b) only if the department determines that the lump-sum conversion amount is inadequate.

(c) permanent total disability benefits if the total of all lump-sum conversions in part that are awarded to a claimant do not exceed \$20,000. The approval or award of a lump-sum permanent total disability payment in whole or in part by the department or court must be the exception. It may be given only if the worker has demonstrated financial need that:

(i) relates to:

(A) the necessities of life;

(B) an accumulation of debt incurred prior to the injury; or

(C) a self-employment venture that is considered feasible under criteria set forth by the department; or

(ii) arises subsequent to the date of injury or arises because of reduced income as a result of the injury; ~~or~~

(d) except as otherwise provided in this chapter, all other compromise settlements and lump-sum payments agreed to by a claimant and insurer; or

(e) *medical benefits on an accepted claim if an insurer disputes the insurer’s continued liability for medical benefits and there is a reasonable dispute over the medical treatment or medical compensability.*

(2) Any lump-sum conversion of benefits under this section must be converted to present value using the rate prescribed under subsection (3)(b).

(3) (a) An insurer may recoup any lump-sum payment amortized at the rate established by the department, prorated biweekly over the projected duration of the compensation period.

(b) The rate adopted by the department must be based on the average rate for United States 10-year treasury bills in the previous calendar year.

(c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.

(4) A dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump sum is considered a dispute for which a mediator and the workers' compensation court have jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release settlement or a lump-sum payment but the department disapproves the agreement, the parties may request the workers' compensation court to review the department's decision."

Section 10. 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; or

(c) as provided in 53-2-612 or 53-2-613 for medical benefits paid pursuant to chapter 71 or 72 of this title.

(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 ~~approved for payment on the basis of~~ *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 or Occupational Disease Act of Montana, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. Except as provided in 39-71-704(7), a fee or charge is not payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer."

Section 11. Section 39-71-1006, MCA, is amended to read:

"39-71-1006. Rehabilitation benefits. (1) A worker is eligible for rehabilitation benefits if:

(a) (i) the worker meets the definition of a disabled worker as provided in 39-71-1011; or

(ii) the worker has, as a result of the work-related injury, a whole person impairment rating of 15% or greater, as established by objective medical findings, and has no actual wage loss;

(b) a rehabilitation provider, as designated by the insurer, certifies that the worker has reasonable vocational goals and reasonable reemployment opportunity. If eligible because of an impairment rating of 15% or more, with rehabilitation the worker will have a reasonable increase in the worker's wage compared to the wage that the worker received at the time of injury. If eligible because of a wage loss, the worker will have a reasonable reduction in the worker's actual wage loss with rehabilitation.

(c) a rehabilitation plan is agreed upon by the worker and the insurer and a written copy of the plan is provided to the worker. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests. The plan must specify a beginning date and a completion date. The plan must specify the cost of tuition, fees, books, and other reasonable and necessary retraining expenses required to complete the plan.

(2) A disabled worker is entitled to receive biweekly ~~compensation~~ *rehabilitation* benefits at the worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. The rehabilitation plan must be completed within 26 weeks of the completion date specified in the plan. Rehabilitation benefits must be paid biweekly while the worker is satisfactorily progressing in the agreed-upon rehabilitation plan. ~~Benefits~~ *Rehabilitation benefits payable pursuant to a retraining rehabilitation plan* under this section are not ~~subject to the lump-sum provisions of 39-71-741~~ *payable in a lump sum. Rehabilitation benefits may be paid in a lump sum for job placement services.*

(3) In addition to rehabilitation benefits payable under subsection (2), a disabled worker who was injured on or after July 1, 1997, is entitled to receive payment for tuition, fees, books, and other reasonable and necessary retraining expenses, excluding travel and living expenses paid pursuant to the provisions of 39-71-1025, as set forth in department rules and as specified in the rehabilitation plan. Expenses must be paid directly by the insurer.

(4) A worker may not receive temporary total benefits and the benefits under subsection (2) during the same period of time.

(5) A rehabilitation provider authorized by the insurer shall continue to assist the injured worker until the rehabilitation plan is completed.

(6) To be eligible for benefits under this section, a worker is required to begin the rehabilitation plan within 78 weeks of reaching maximum medical healing.

(7) A worker may not receive both wages and rehabilitation benefits without the written consent of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

Section 12. Repealer. Sections 39-71-302, 39-71-303, 39-71-308, and 39-71-318, MCA, are repealed.

Section 13. Effective date — applicability. [This act] is effective July 1, 2005, and applies to injuries occurring or occupational diseases contracted on or after July 1, 2005.

Approved March 24, 2005

CHAPTER NO. 104

[SB 9]

AN ACT EXTENDING THE TERM OF DRIVER'S LICENSES RENEWED BY MAIL; ALLOWING A SPOUSE OR DEPENDENT OF PERSONS STATIONED OUTSIDE MONTANA ON ACTIVE MILITARY DUTY TO RENEW A DRIVER'S LICENSE BY MAIL FOR A SECOND CONSECUTIVE TERM; AND AMENDING SECTION 61-5-111, MCA.

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

Section 1. Section 61-5-111, MCA, is amended to read:

“61-5-111. Contents of a driver's license, renewal, renewal by mail, license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration. (1) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts. 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.

(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 skills test if:

(i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

(b) In the case of a commercial driver's license, the department shall, if the information was not provided in a prior licensing cycle, require the renewal applicant to provide the name of each jurisdiction in which the applicant was

previously licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the renewal application and may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license. Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.

(d) (i) A person may renew a driver's license by mail if the person certifies that the person is temporarily out of state and will not be returning to the state prior to the expiration of the license. *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 in addition to the fees required for renewal.

(iii) If the department does not have a digitized photograph or signature record of the renewal applicant from the expiring license, then the department may require the renewal applicant to submit a personal photograph and signature that meets the requirements prescribed by the department.

(iv) ~~The~~ *Except as provided in subsections (4)(b) and (4)(c), the term of a license renewed by mail is 4 8 years, and a person may not renew by mail for consecutive license terms.*

(v) The department may not renew a license by mail if the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant.

(e) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a driver's license. The department shall mail the notice to the Montana mailing address shown on the driver's license unless the licensee has submitted a change of address as required by 61-5-115.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(5) Whenever the department issues an original license to a person under the age of 18 years, the license must be designated and clearly marked as a "provisional license". Any license designated and marked as provisional may be suspended by the department for a period of not more than 12 months when its records disclose that the licensee, subsequent to the issuance of the license, has been guilty of careless or negligent driving.

(6) Fees for driver's licenses are:

- (a) driver's license, except a commercial driver's license — \$5 a year or fraction of a year;
- (b) motorcycle endorsement — 50 cents a year or fraction of a year;
- (c) commercial driver's license:
 - (i) interstate — \$5 a year or fraction of a year;
 - (ii) intrastate — \$3.50 a year or fraction of a year;
- (d) renewal notice — 50 cents.

(7) Upon receipt of notice from another jurisdiction that a person licensed under this chapter has surrendered a Montana driver's license to that jurisdiction, the department shall change the license status on the person's official driver record to "inactive". If the person returns to Montana prior to the expiration of the previously surrendered license, the department may reactivate the license for the remainder of the license term."

Approved March 24, 2005

CHAPTER NO. 105

[SB 17]

AN ACT REVISING THE MEETING TIMES OF THE BOARD OF EXAMINERS; AMENDING SECTION 2-15-1007, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-15-1007, MCA, is amended to read:

"2-15-1007. Board of examiners — allocation. (1) The governor, secretary of state, and attorney general constitute a board of examiners.

(2) The meetings of the board are held at the seat of government ~~on the third Monday in each month and such other~~ at times as set by the president ~~may call it together.~~

(3) The governor is the president, and the secretary of state is the secretary of ~~said~~ the board, and in the absence of either, an officer pro tempore may be elected from their number.

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

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

Approved March 24, 2005

CHAPTER NO. 106

[SB 23]

AN ACT EXPANDING THE TYPE OF PROPOSED MAJOR INFORMATION TECHNOLOGY PROJECTS TO BE INCLUDED IN A STATEWIDE INFORMATION TECHNOLOGY PROJECT BUDGET SUMMARY; REVISING THE REQUIRED CONTENT OF THE SUMMARY; AND AMENDING SECTIONS 2-17-526 AND 17-7-111, MCA.

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

Section 1. Section 2-17-526, MCA, is amended to read:

“2-17-526. Information technology project budget summary. (1) (a)

The office of budget and program planning, in cooperation with the department, shall prepare a statewide summary of:

(i) ~~proposed major new new~~ information technology projects ~~contained in the state budget~~ contained in the state budget; and

(ii) *proposed major information technology projects impacting another state agency or branch of government to be funded within the current operating budgets-, including replacement of or upgrade to existing systems.*

(b) The office of budget and program planning and the department shall jointly determine the criteria for classifying a project as a major ~~new~~ information technology project.

(2) The information technology project summary must include:

(a) a listing by institution, agency, or branch of all *proposed major new* information technology ~~budget requests included in the state budget projects described in subsection (1).~~ Each ~~information technology budget request~~ *proposed project* included on the list must include:

(i) a description of what would be accomplished by ~~funding~~ *completing the request project*;

(ii) *a list of the existing information technology applications for all branches of government that may be impacted by the project;*

(iii) *an estimate, prepared in consultation with the impacted agencies, of the costs and resource impacts on existing information technology applications;*

~~(iv)~~ (iv) the ~~proposed amount~~ *estimated cost of the request project*;

~~(iii)~~ (v) the ~~funding~~ *source for the request funding the project, including funds within an existing operating budget or a new budget request; and*

~~(iv)~~ (vi) the ~~proposed~~ *estimated cost of operating new information technology systems.*

(b) a listing of internal service rates proposed for providing information technology services. Each internal service rate included on the list must include:

(i) a description of the services provided; and

(ii) a breakdown, aggregated by fund type, of requests included in the state budget to support the rate.

(c) any other information as determined by the budget director or the department or as requested by the governor or the legislature.

(2) The information technology project summary must be presented to the legislative fiscal analyst in accordance with 17-7-111(4).”

Section 2. Section 17-7-111, MCA, is amended to read:

“17-7-111. Preparation of state budget — agency program budgets — form distribution and contents. (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and

recommended disbursements and estimated receipts by fund type and fund category.

(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:

(i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and

(ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.

(2) In the preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure the information required by subsection (3). The forms must be submitted to the budget director by the date provided in 17-7-112(2)(a) or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or the instructions given for completing the forms.

(3) The agency budget request must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary of funds subject to appropriation or enterprise funds that transfer profits to the general fund or to an account subject to appropriation for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress;

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each fund for the current biennium and estimated for the subsequent biennium;

(c) a statement of the agency mission and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives.

(d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

(e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

(f) for only agencies with more than 20 FTE, a plan to reduce the proposed base budget for the general appropriations act and the proposed state pay plan to 95% of the current base budget or lower if directed by the budget director. Each agency plan must include base budget reductions that reflect the required percentage reduction by fund type for the general fund and state special revenue fund types. Exempt from the calculations of the 5% target amounts are legislative audit costs, administratively attached entities that hire their own staff under 2-15-121, and state special revenue accounts that do not transfer their investment earnings or fund balances to the general fund. The plan must include:

(i) a prioritized list of services that would be eliminated or reduced;

(ii) for each service included in the prioritized list, the savings that would result from the elimination or reduction; and

(iii) the consequences or impacts of the proposed elimination or reduction of each service.

(g) a reference for each new information technology proposal stating whether the new proposal is included in the approved agency information technology plan as required in 2-17-523; and

(h) other information the budget director feels is necessary for the preparation of a budget.

(4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

~~(b) a statewide *project budget* summary of recommendations for information technology projects and new initiatives. Each recommendation must be presented by institution, agency, or branch and by funding source, and recommendations for major new information technology projects must contain the information identified as provided in 2-17-526.~~

(c) the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last-completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

(6) The budget director may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns.”

Approved March 24, 2005

CHAPTER NO. 107

[SB 26]

AN ACT ELIMINATING THE REQUIREMENT THAT THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE ANALYZE THE AMOUNT OF STATE AND LOCAL TAX REVENUE FROM PREVIOUSLY REGULATED NATURAL GAS SUPPLIERS; REPEALING SECTION 69-3-1409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Repealer. Section 69-3-1409, MCA, is repealed.

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

Approved March 24, 2005

CHAPTER NO. 108

[SB 36]

AN ACT DIRECTING THE CODE COMMISSIONER TO RECODIFY THE MONTANA CODE ANNOTATED ON A TITLE-BY-TITLE BASIS; AND AMENDING SECTION 1-11-204, MCA.

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

Section 1. Section 1-11-204, MCA, is amended to read:

“1-11-204. Duties of code commissioner. (1) Prior to November 1 immediately preceding each regular legislative session, the code commissioner shall prepare and submit to the legislative council a report, in tabular or other form, indicating the commissioner’s recommendations for legislation that will:

- (a) eliminate archaic or outdated laws;
- (b) eliminate obsolete or redundant wording of laws;

(c) eliminate duplications in law and any laws repealed directly or by implication;

(d) clarify existing laws;

(e) correct errors and inconsistencies within the laws.

(2) The commissioner shall cause to be prepared for publication with the Montana Code Annotated the following material:

(a) the statutory history of each code section;

(b) annotations of state and federal court decisions relating to the subject matter of the code;

(c) editorial notes, cross-references, and other matter the commissioner considers desirable or advantageous;

(d) the Declaration of Independence;

(e) the Constitution of the United States of America and amendments to the constitution;

(f) acts of congress relating to the authentication of laws and records;

(g) the Organic Act of the Territory of Montana;

(h) The Enabling Act;

(i) The 1972 Constitution of the State of Montana and any amendments to the constitution;

(j) ordinances relating to federal relations and elections;

(k) rules of civil, criminal, and appellate procedure and other rules of procedure the Montana supreme court may adopt; and

(l) a complete subject index, a popular name index, and comparative disposition tables or cross-reference indexes relating sections of the Montana Code Annotated to prior compilations and session laws.

(3) (a) After publication of the Montana Code Annotated, the code commissioner shall:

(a)(i) annotate, arrange, and prepare for publication all laws of a general and permanent nature enacted at each legislative session and assign catchlines and code section numbers to each new section;

(a)(ii) continue to codify, index, arrange, rearrange, and generally update the Montana Code Annotated to maintain an orderly and logical arrangement of the laws in order to avoid future need for bulk revision;

(a)(iii) prepare and publish a report entitled "Official Report of the Montana Code Commissioner—(year)" that indicates, in tabular or other form, all changes made during the continuous recodification, other than punctuation, spelling, and capitalization, to clearly indicate the character of each change made since the last report.

(b) *In carrying out the duty imposed by subsection (3)(a)(ii), the commissioner shall recodify the Montana Code Annotated on a title-by-title basis. The recodification is intended to be secondary to the completion of other interim duties.*

(4) From time to time, the commissioner shall confer with members of the judiciary and the state bar relative to recodification procedures."

Approved March 24, 2005

CHAPTER NO. 109

[SB 37]

AN ACT REQUIRING A BANK, TRUST COMPANY, OR BROKERAGE FIRM ACTING AS CUSTODIAN OF AN INSURER'S SECURITIES TO AGREE TO INDEMNIFY THE INSURER FOR THE LOSS OF ANY OF THE INSURER'S SECURITIES RESULTING FROM THE INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF THE CUSTODIAN WHILE THE INSURER'S SECURITIES ARE IN ITS CUSTODY.

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

Section 1. Indemnification agreement. An insurer may contract with any national or state bank, trust company, or securities brokerage firm to act as custodian for the insurer's securities. The contract must contain an indemnification agreement stating that the custodian is obligated to indemnify the insurer for any loss of the insurer's securities in its custody resulting from the intentional or negligent act or omission of the custodian or the employee, officer, or agent of the custodian.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 12, part 1, and the provisions of Title 33, chapter 12, part 1, apply to [section 1].

Approved March 24, 2005

CHAPTER NO. 110

[SB 50]

AN ACT REVISING ALTERNATIVE ENERGY SYSTEMS LOAN LAWS; INCREASING THE LOAN ELIGIBILITY AMOUNT FOR ALTERNATIVE ENERGY SYSTEMS FOR SMALL BUSINESSES, INDIVIDUALS, UNITS OF LOCAL GOVERNMENT, UNITS OF THE UNIVERSITY SYSTEM, AND NONPROFIT ENTITIES; ALLOWING NONPROFIT ENTITIES, UNITS OF LOCAL GOVERNMENT, AND UNITS OF THE UNIVERSITY SYSTEM TO BE ELIGIBLE FOR ALTERNATIVE ENERGY SYSTEM LOANS; ALLOWING ENERGY CONSERVATION PROJECTS TO BE ELIGIBLE FOR ALTERNATIVE ENERGY SYSTEM LOANS; PROVIDING THE DEPARTMENT OF ENVIRONMENTAL QUALITY WITH ADDITIONAL RULEMAKING AUTHORITY REGARDING ELIGIBILITY CRITERIA; CLARIFYING ADMINISTRATIVE COSTS FOR LOANS; AMENDING SECTIONS 75-25-101 AND 75-25-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 75-25-101, MCA, is amended to read:

“75-25-101. Alternative energy revolving loan account. (1) There is a special revenue account called the alternative energy revolving loan account to the credit of the department of environmental quality.

(2) The alternative energy revolving loan account consists of money deposited into the account from air quality penalties from 75-2-401 and 75-2-413 and money from any other source. Any interest earned by the account and any

interest that is generated from a loan repayment must be deposited into the account and used to sustain the program.

(3) Funds from the alternative energy revolving loan account may be used to provide loans to individuals, ~~and~~ small businesses, *units of local government, units of the university system, and nonprofit organizations* for the purpose of building alternative energy systems, as defined in 15-32-102, ~~for residences and small businesses:~~

(a) to generate energy for their own use; ~~and~~

(b) for net metering as defined in 69-8-103; *and*

(c) *for capital investments by those entities for energy conservation purposes, as defined in 15-32-102, when done in conjunction with an alternative energy system.*

(4) The amount of a loan may not exceed ~~\$10,000~~ \$40,000, and the loan must be repaid within ~~5~~ 10 years.”

Section 2. Section 75-25-102, MCA, is amended to read:

“75-25-102. Administration of revolving loan account — rulemaking authority. (1) The department of environmental quality shall adopt rules establishing:

(a) eligibility criteria, including criteria for defining residences, ~~and~~ small businesses, *and nonprofit organizations, criteria for defining capital investments for energy conservation purposes*, ownership of the alternative energy facility, financial capacity to repay the loans, estimated return on investment in the alternative energy *and energy conservation*, and other matters that the department considers necessary to ensure repayment of loans and to encourage maximum use of the fund for alternative energy and net metering uses;

(b) processes and procedures for disbursing loans, including the agencies or organizations that are allowed to process the loan application for the department; and

(c) terms and conditions for the loans, including repayment schedules and interest.

(2) The department shall solicit assistance in the development and operation of the program from individuals familiar with financial services and persons knowledgeable in alternative energy systems.

(3) Administrative costs *charged to the account* may not exceed 10% of the total loans *or \$23,000 a year, whichever is greater*. Legal fees and costs associated with collection of debt on principal are not considered administrative ~~fees costs~~.

(4) The loan repayment period may not exceed ~~5~~ 10 years. The loans must be made at a low interest rate. The department may set the interest rate at an amount that will cover its administrative costs, but the rate may not be less than 1% ~~per~~ a year. The department may seek recovery of the amount of principal loaned in the event of default.”

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

Approved March 24, 2005

CHAPTER NO. 111

[SB 53]

AN ACT REMOVING THE REQUIREMENT THAT STATE AGENCIES MUST PAY THE RELOCATION EXPENSES OF EMPLOYEES WHOSE POSITIONS ARE ELIMINATED AS A RESULT OF PRIVATIZATION, REORGANIZATION, A CLOSURE, OR A REDUCTION IN FORCE; AMENDING SECTION 2-18-1204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-18-1204, MCA, is amended to read:

“2-18-1204. Salary and benefits protection — employee transfer. (4)

An employee whose position is eliminated as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature and who is subsequently transferred to a different position in a state agency is entitled to:

(a)(1) the same hourly salary as previously received if the new position is at the same grade level or higher as the one previously held;

(b)(2) retain all accrued sick leave credits;

(c)(3) retain, cash out, or use accrued vacation leave credits to extend the employee's effective layoff date; and

(d)(4) relocation expenses as provided in state agency policy.

~~(2) Relocation expenses must be paid by the hiring agency, and the funds expended by the hiring agency must be reimbursed from the funds appropriated for this purpose, including those funds subject to transfer under the provisions of section 6, Chapter 524, Laws of 1995.”~~

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

Approved March 24, 2005

CHAPTER NO. 112

[SB 54]

AN ACT CLARIFYING THE REIMBURSEMENT RATE FOR PRIVATE MOTOR VEHICLE USE BY STATE OFFICERS AND EMPLOYEES; AMENDING SECTION 2-18-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-18-503, MCA, is amended to read:

“2-18-503. Mileage — allowance. (1) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage for the distance actually traveled by motor vehicle and no more unless otherwise specifically provided by law.

(2) (a) When a state officer or employee, including a legislator on legislative business, is authorized to travel by motor vehicle, and chooses to use a privately

owned motor vehicle even though a government-owned or ~~leased~~ *government-leased* motor vehicle is available, the officer or employee may be reimbursed only at the rate of ~~52% of~~ *48.15% of* the ~~low~~ mileage rate allowed by the United States internal revenue service for the current year.

(b) When a privately owned motor vehicle is used because a government-owned or ~~leased~~ *government-leased* motor vehicle is not available or because the use is in the best interest of the governmental entity and a notice of unavailability of a government-owned or ~~leased~~ *government-leased* motor vehicle or a specific exemption is attached to the travel claim, then a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year must be paid for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(3) Members of the legislature, while traveling between their residences and Helena, jurors, witnesses, county agents, and all other persons, except a state officer or employee, who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage at a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(4) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own airplanes in the performance of official duties are entitled to collect mileage for the nautical air miles actually traveled at a rate of twice the mileage allotment for motor vehicle travel and no more unless specifically provided by law.

(5) This section does not alter 5-2-301.

(6) The department of administration shall prescribe policies necessary for the effective administration of this section for state government. The Montana Administrative Procedure Act, Title 2, chapter 4, does not apply to policies prescribed to administer this part.”

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

Approved March 24, 2005

CHAPTER NO. 113

[SB 56]

AN ACT REDUCING BY TWO THE NUMBER OF MEMBERS OF THE DESIGN-BUILD CONTRACTING BOARD; CLARIFYING BOARD MEMBERSHIP; AND AMENDING SECTION 60-2-136, MCA.

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

Section 1. Section 60-2-136, MCA, is amended to read:

“60-2-136. Design-build contracting board — duties. (1) The director shall appoint a design-build contracting board. The duties of the board include but are not limited to:

(a) establishing the criteria by which eligible projects are selected for a design-build contract;

(b) assisting the department in making recommendations to the commission regarding the terms, conditions, and processes by which a design-build contract is advertised, proposals are evaluated and selected, and contracts are entered into and executed; and

(c) providing a review of the costs and benefits of design-build contracting that will be included in a report to the 2009 legislature.

(2) The design-build contracting board consists of the following members:

(a) ~~two representatives~~ a representative of an association of the highway construction industry in Montana;

(b) ~~two representatives~~ a representative of an association of the highway design and engineering industry doing business in Montana;

(c) a representative of the Montana office of the federal highway administration;

(d) two representatives of the department;

(e) a representative of the bonding and surety industry authorized to operate in Montana; and

(f) the director, who serves as presiding officer of the board.”

Approved March 24, 2005

CHAPTER NO. 114

[SB 67]

AN ACT INCREASING THE FEES FOR ISSUANCE OF A MARRIAGE LICENSE AND FILING OF A DECLARATION OF MARRIAGE WITHOUT SOLEMNIZATION; PROVIDING THAT THE INCREASE IN FEES IS FOR THE COUNTY DISTRICT COURT FUND OR COUNTY GENERAL FUND FOR DISTRICT COURT OPERATIONS; AMENDING SECTIONS 3-2-714, 15-1-121, 25-1-201, 40-1-202, 40-1-311, AND 50-15-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 3-2-714, MCA, is amended to read:

“3-2-714. Civil legal assistance for indigent victims of domestic violence account. (1) There is a civil legal assistance for indigent victims of domestic violence account in the state special revenue fund. There must be paid into this account the filing fees paid under 25-1-201(3)(a) and ~~(6)~~ (5). The money in the account must be used solely for the purpose of providing legal representation for indigent victims in civil matters in domestic violence cases and for alternative dispute resolution initiatives in family law cases. Money in the account may not be used for class action lawsuits.

(2) The supreme court administrator shall establish procedures for the distribution and accountability of money in the account. The supreme court administrator may designate nonprofit organizations that ordinarily render or finance legal services to indigent persons in civil matters in domestic violence cases to receive or administer the distribution of the funds.”

Section 2. Section 15-1-121, MCA, is amended to read:

“15-1-121. Entitlement share payment — appropriation. (1) The amount calculated pursuant to this subsection is each local government’s base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

- (a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;
- (b) vehicle and boat taxes and fees pursuant to:
 - (i) Title 23, chapter 2, part 5;
 - (ii) Title 23, chapter 2, part 6;
 - (iii) Title 23, chapter 2, part 8;
 - (iv) 61-3-317;
 - (v) 61-3-321;
 - (vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;
 - (vii) Title 61, chapter 3, part 7;
 - (viii) 5% of the fees collected under 61-10-122;
 - (ix) 61-10-130;
 - (x) 61-10-148; and
 - (xi) 67-3-205;
- (c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);
 - (d) district court fees pursuant to:
 - (i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);
 - (ii) 25-1-202;
 - (iii) 25-1-1103;
 - (iv) 25-9-506;
 - (v) 25-9-804; and
 - (vi) 27-9-103;
 - (e) certificate of title fees for manufactured homes pursuant to 15-1-116;
 - (f) financial institution taxes pursuant to Title 15, chapter 31, part 7;
 - (g) coal severance taxes allocated for county land planning pursuant to 15-35-108;
 - (h) all beer, liquor, and wine taxes pursuant to:
 - (i) 16-1-404;
 - (ii) 16-1-406; and
 - (iii) 16-1-411;
 - (i) late filing fees pursuant to 61-3-220;
 - (j) title and registration fees pursuant to 61-3-203;
 - (k) veterans’ cemetery license plate fees pursuant to 61-3-459;
 - (l) county personalized license plate fees pursuant to 61-3-406;

- (m) special mobile equipment fees pursuant to 61-3-431;
- (n) single movement permit fees pursuant to 61-4-310;
- (o) state aeronautics fees pursuant to 67-3-101; and
- (p) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.

(3) (a) ~~Beginning with fiscal year 2002 and in each succeeding fiscal year, the~~ *The* base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. ~~For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments. Beginning with calendar year 2002, by~~ *By* October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

~~(i) Before applying the growth rate for fiscal year 2004 to determine the fiscal year 2004 entitlement share pool, the department shall add to the fiscal year 2003 entitlement share pool the fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b).~~

~~(ii)~~ *(i)* The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection ~~(3)(a)(ii)(A)~~ *(3)(a)(i)(A)*.

~~(iii)~~ *(ii)* The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection ~~(3)(a)(iii)(A)~~ *(3)(a)(ii)(A)*.

(b) (i) ~~For fiscal year 2004 and subsequent fiscal years, the~~ *The* entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections ~~(3)(a)(ii)(B)~~ *(3)(a)(i)(B)* and ~~(3)(a)(iii)(B)~~ *(3)(a)(ii)(B)*:

- (A) for counties, 54%;
- (B) for consolidated local governments, 62%; and
- (C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections ~~(3)(a)(ii)(A)~~ (3)(a)(i)(A) and ~~(3)(a)(iii)(A)~~ (3)(a)(ii)(A):

- (A) for counties, 54%;
- (B) for consolidated local governments, 62%; and
- (C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis beginning September 15, 2001.

(b) (i) ~~For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component. For fiscal year 2003 and each succeeding fiscal year, the~~ The growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero. The growth factor in the entitlement share must be calculated separately for:

- (A) counties;
- (B) consolidated local governments; and
- (C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the base year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the base year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the base year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

~~(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.~~

~~(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool.~~

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

| | | |
|------------|------------------------|-----------|
| Cascade | Great Falls - downtown | \$468,966 |
| Deer Lodge | TIF District 1 | 3,148 |
| Deer Lodge | TIF District 2 | 3,126 |
| Flathead | Kalispell - District 1 | 758,359 |
| Flathead | Kalispell - District 2 | 5,153 |
| Flathead | Kalispell - District 3 | 41,368 |
| Flathead | Whitefish District | 164,660 |
| Gallatin | Bozeman - downtown | 34,620 |

| | | |
|-----------------|------------------------|-----------|
| Lewis and Clark | Helena - #2 | 731,614 |
| Missoula | Missoula - 1-1B & 1-1C | 1,100,507 |
| Missoula | Missoula - 4-1C | 33,343 |
| Silver Bow | Butte - uptown | 283,801 |
| Yellowstone | Billings | 436,815 |

~~(c) The entitlement share for industrial tax increment financing districts is as follows:~~

~~(i) for fiscal years 2002 and 2003:~~

| | | |
|-----------------|--------------------|----------|
| Missoula County | Airport Industrial | \$4,812 |
| Silver Bow | Ramsay Industrial | 597,594; |

~~(ii) for fiscal years 2004 and 2005:~~

| | | |
|-----------------|--------------------|--------------|
| Missoula County | Airport Industrial | \$2,406 |
| Silver Bow | Ramsay Industrial | 298,797; and |

~~(iii) \$0 for all succeeding fiscal years.~~

~~(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.~~

~~(e) One half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year.~~

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants or from countywide retirement block grants.

~~(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001.~~

~~(9)(8) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(p) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.~~

(b) For the purposes of subsection ~~(9)(a)~~ (8)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

~~(10)(9) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).~~

~~(11)(10) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.~~

~~(12)~~(11) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

~~(13)~~(12) A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1."

Section 3. Section 25-1-201, MCA, is amended to read:

"25-1-201. Fees of clerk of district court. (1) The clerk of district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, \$90; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for dissolution of marriage, \$160; for filing a petition for legal separation, \$150; and for filing a petition for a contested amendment of a final parenting plan, \$120;

(b) from each defendant or respondent, on appearance, \$60;

(c) on the entry of judgment, from the prevailing party, \$45;

(d) (i) except as provided in subsection (1)(d)(ii), for preparing copies of papers on file in the clerk's office, \$1 a page for the first 10 pages of each file, for each request, and 50 cents for each additional page;

(ii) for a copy of a marriage license, \$5, and for a copy of a dissolution decree, \$10;

(e) for each certificate, with seal, \$2;

(f) for oath and jurat, with seal, \$1;

(g) for a search of court records, \$2 for each name for each year searched, for a period of up to 7 years, and an additional \$1 for each name for any additional year searched;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

(j) for transmission of records or files or transfer of a case to another court, \$5;

(k) for filing and entering papers received by transfer from other courts, \$10;

(l) for issuing a marriage license, ~~\$30~~ \$40;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$55;

(o) for filing a declaration of marriage without solemnization, ~~\$30~~ \$40;

(p) for filing a motion for substitution of a judge, \$100;

(q) for filing a petition for adoption, \$75.

(2) Except as provided in subsections (3) and (5) through (7), fees collected by the clerk of district court must:

~~(a) prior to July 1, 2003, be forwarded to the department of revenue for deposit in the state general fund; and~~

~~(b) after June 30, 2003, be deposited in the state general fund as specified by the supreme court administrator as specified by the supreme court administrator.~~

(3) (a) Of the fee for filing a petition for dissolution of marriage, \$5 must be deposited in the children's trust fund account established in 52-7-102, \$9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714, and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(b) Of the fee for filing a petition for legal separation, \$5 must be deposited in the children's trust fund account established in 52-7-102 and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).

~~(5) Through June 30, 2003, the clerk of district court shall remit to the credit of the special revenue account established in 42-2-105 \$70 of the filing fee required in subsection (1)(e).~~

~~(6)~~(5) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, \$9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714.

~~(7)~~(6) The fees collected under subsections (1)(d), (1)(g), and (1)(j) must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund *to be used* for district court operations.

(7) *Of the fee for issuance of a marriage license and the fee for filing a declaration of marriage without solemnization, \$10 must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund to be used for district court operations.*

(8) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not otherwise specifically allocated must be deposited in the state general fund."

Section 4. 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 ~~\$30~~ \$40, 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.”

Section 5. Section 40-1-311, MCA, is amended to read:

“40-1-311. Declaration of marriage without solemnization. (1) Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in 40-1-301 must, prior to executing the declaration, secure the medical certificate required by this chapter, which ~~shall~~ *must* be firmly attached to the declaration and ~~shall~~ *must* be filed by the clerk of the district court in the county where the contract was executed.

(2) A declaration of marriage must contain substantially the following:

(a) the names, ages, and residences of the parties;

(b) the fact of marriage;

(c) the name of father and maiden name of mother of both parties and address of each;

(d) a statement that both parties are legally competent to enter into the marriage contract.

(3) The declaration must be subscribed by the parties and attested by at least two witnesses and formally acknowledged before the clerk of the district court of the county.

(4) The fee for filing a declaration is ~~30~~ *40* and ~~shall~~ *must* be paid to the clerk at time of filing.”

Section 6. Section 50-15-301, MCA, is amended to read:

“50-15-301. Marriage certificates. Before the 10th day of each month, each clerk of a district court shall report marriage certificates filed during the preceding calendar month to the department. Reports must be on forms and contain information prescribed by the department. ~~The applicant for a marriage license shall pay a recording fee of 25 cents to the officer authorized to issue the marriage license. Beginning July 1, 2003, the recording fee must be forwarded to the state for deposit in the state general fund.”~~

Section 7. Effective date. [This act] is effective July 1, 2005.

Approved March 24, 2005

CHAPTER NO. 115

[SB 69]

AN ACT ESTABLISHING THE HONORARY POSITION OF STATE POET LAUREATE; PROVIDING FOR THE NOMINATION, APPOINTMENT, AND TERM OF THE STATE POET LAUREATE; PROVIDING FOR IMPLEMENTATION; AMENDING SECTION 22-2-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. State poet laureate. (1) There is a state poet laureate.

(2) Within 30 days prior to the expiration of the state poet laureate’s term of appointment or within 30 days after a vacancy in the position occurs, the

Montana arts council established in 22-2-101 shall nominate three individuals to be the state poet laureate. The Montana arts council shall provide the list of nominees to the governor who shall:

(a) within 30 days after receiving the list of nominees, appoint the state poet laureate from among the individuals named on the list; and

(b) notify the secretary of state and the Montana arts council of the appointment.

(3) The individual named by the governor as the state poet laureate shall serve for a term of 2 years beginning on the date of appointment by the governor.

(4) The state poet laureate is an honorary position, and the person serving as the state poet laureate may not receive any compensation from the state for serving as the state poet laureate.

Section 2. Section 22-2-106, MCA, is amended to read:

“22-2-106. Council duties. The duties of the council shall be to:

(1) encourage throughout the state the study and presentation of the arts and stimulate public interest and participation ~~therein~~ *in the arts*;

(2) cooperate with public and private institutions engaged within the state in artistic and cultural activities, including but not limited to music, theater, dance, painting, sculpture, architecture, and allied arts and crafts, and make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state;

(3) foster public interest in the cultural heritage of our state and expand the state’s cultural resources;

(4) encourage and assist freedom of artistic expression essential for the well-being of the arts;

(5) *as required under [section 1], nominate three individuals to serve as the state poet laureate and provide the list of nominees to the governor.”*

Section 3. Implementation. The Montana arts council shall provide to the governor before July 1, 2005, a list of three nominees for the position of state poet laureate provided for in [section 1]. The governor shall appoint a state poet laureate within 30 days following receipt of the list of appointees. Subsequent nominations and appointments as state poet laureate must be made as provided in [section 1].

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to [section 1].

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

Approved March 24, 2005

CHAPTER NO. 116

[SB 79]

AN ACT EXEMPTING ELIGIBLE VETERANS FROM CEMETERY AND VEHICLE REGISTRATION FEES FOR TWO SETS OF SPECIAL VETERAN

LICENSE PLATES USED ON TWO VEHICLES; AMENDING SECTION 61-3-460, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 61-3-460, MCA, is amended to read:

“61-3-460. Vehicle registration fee and veterans’ cemetery fee waivers. (1) Except as otherwise provided in this section, a person eligible under subsection (2) is exempt from the veterans’ cemetery fee provided in 61-3-459 for ~~one set~~ *two sets* of special veteran license plates and all vehicle registration fees imposed by this chapter for ~~one vehicle~~ *two vehicles* that ~~is~~ are not used for commercial purposes.

(2) The following persons are eligible for the waiver provided in subsection (1):

(a) a veteran who was a prisoner of war who presents official documentation from the U.S. department of defense verifying the veteran’s status, or the veteran’s surviving spouse, if the spouse has not remarried;

(b) a veteran who is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability, as verified by official documentation from the U.S. department of veterans affairs, or the veteran’s surviving spouse, if the spouse has not remarried;

(c) a veteran determined by the U.S. department of veterans affairs to be 50% or more disabled because of a service-connected injury and who has been awarded the purple heart, as verified by official documentation from the U.S. department of veterans affairs and the veteran’s military service record issued by the U.S. department of defense, or the veteran’s surviving spouse, if the spouse has not remarried, except that the veteran or the surviving spouse shall pay the veterans’ cemetery fee as provided for in 61-3-459;

(d) the surviving spouse, if the spouse has not remarried, of a military service member killed while on active duty as verified in official documentation issued by the U.S. department of defense; and

(e) the surviving spouse, if the spouse has not remarried, of a military service member or veteran who died of a service-connected injury or disability as determined by and verified in official documentation from the U.S. department of veterans affairs.”

Section 2. Effective date. [This act] is effective January 1, 2006.

Approved March 24, 2005

CHAPTER NO. 117

[SB 83]

AN ACT CLARIFYING THAT ALTERNATIVE RENEWABLE ENERGY PROJECTS ARE ELIGIBLE FOR RENEWABLE RESOURCE GRANTS AND LOANS; AMENDING SECTION 85-1-602, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 85-1-602, MCA, is amended to read:

“85-1-602. Objectives. (1) The department shall administer a renewable resource grant and loan program to enhance Montana’s renewable resources through projects that measurably conserve, develop, manage, or preserve resources. Either grants or loans may be provided to fund the following:

- (a) feasibility, design, research, and resource assessment studies;
- (b) preparation of construction, rehabilitation, or production plans; and
- (c) construction, rehabilitation, production, education, or other implementation efforts.

(2) Projects that may enhance renewable resources in Montana include but are not limited to:

- (a) development of natural resource-based recreation;
- (b) development of offstream and tributary storage;
- (c) improvement of water use efficiency, including development of new, efficient water systems, rehabilitation of older, less efficient water systems, and acquisition and installation of measuring devices required under 85-2-113, and development of state, tribal, and federal water projects;
- (d) water-related projects that improve water quality, including livestock containment facility projects; ~~and~~
- (e) advancement of farming practices that reduce agricultural chemical use; *and*

(f) *projects that facilitate the use of alternative renewable energy sources, as defined in 15-6-225.*

(3) The renewable resource grant and loan program is the key implementation portion of the state water plan and must be administered to encourage grant and loan applications for projects designed to accomplish the objectives of the plan.”

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

Approved March 24, 2005

CHAPTER NO. 118

[SB 94]

AN ACT REVISING PROCEDURES FOR SERVICE OF PROCESS IN CHILD ABUSE AND NEGLECT ACTIONS; AND AMENDING SECTIONS 41-3-422, 41-3-428, AND 41-3-429, MCA.

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

Section 1. Section 41-3-422, MCA, is amended to read:

“41-3-422. Abuse and neglect petitions — burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

- (i) immediate protection and emergency protective services, as provided in 41-3-427;
- (ii) temporary investigative authority, as provided in 41-3-433;
- (iii) temporary legal custody, as provided in 41-3-442;

- (iv) long-term custody, as provided in 41-3-445;
 - (v) termination of the parent-child legal relationship, as provided in 41-3-607;
 - (vi) appointment of a guardian pursuant to 41-3-444;
 - (vii) a determination that preservation or reunification services need not be provided; or
 - (viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.
- (b) The petition may be modified for different relief at any time within the discretion of the court.
- (c) A petition for temporary legal custody may be the initial petition filed in a case.
- (d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.
- (2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:
- (a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition; and
 - (b) a separate notice to the court stating any statutory time deadline for a hearing.
- (3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.
- (4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.
- (5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:
- (i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;
 - (ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;
 - (iii) a preponderance of the evidence for an order of long-term custody; or
 - (iv) clear and convincing evidence for an order terminating the parent-child legal relationship.
- (b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.
- (6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having

legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions ~~must~~ *must be served upon the person or the person's attorney of record by certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429.* If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when, in the opinion of the court, the interests of justice require.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must:

(a) state the nature of the alleged abuse or neglect and of the relief requested;

(b) state the full name, age, and address of the child and the name and address of the child's parents or guardian or person having legal custody of the child;

(c) state the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party. If an indigent parent is not already represented by counsel, counsel must be appointed for an indigent parent at the time that a request is made for a determination that preservation or reunification services need not be provided.

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right to request the appointment of counsel if the person is indigent or if appointment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 2. Section 41-3-428, MCA, is amended to read:

"41-3-428. Service of process — service by publication — effect. (1) Except as *otherwise* provided in ~~subsection (2) this chapter~~, service of process ~~under this chapter~~ must be made as provided in the Montana Rules of Civil Procedure.

(2) If a person cannot be served personally *or by certified mail*, the person may be served by publication as provided in 41-3-429. Publication constitutes conclusive evidence of service, and a hearing must then proceed at the time and date set, with or without the appearance of the person served by publication. At or after the hearing, the court may issue an order that will adjudicate the interests of the person served by publication.

(3) If a parent cannot be identified or found prior to the initial hearings allowed by part 4, the court may grant the following relief, pending service by

publication on the parent who cannot be identified or found and based upon service of process on only the parent, guardian, or other person having legal custody of the child:

- (a) immediate protection;
- (b) temporary investigative authority; and
- (c) temporary legal custody.”

Section 3. Section 41-3-429, MCA, is amended to read:

“41-3-429. Service by publication — summons — form. (1) Before service by publication is authorized in a proceeding under this chapter, the department shall file with the court an affidavit stating that, after due diligence, the person cannot be identified or found and stating the diligent efforts made to identify, locate, and serve the person. The affidavit is sufficient evidence of the diligence of any inquiry made by the department. The affidavit may be combined with any other affidavit filed by the department. Upon complying with this subsection, the department may obtain an order for the service to be made upon the party by publication. The order may be issued by either the judge or the clerk of the court.

(2) Service by publication must be made by publishing notice three times, once each week for 3 successive weeks:

(a) in a newspaper in a community in which the publication can reasonably be calculated to be seen by the person, based upon the last-known address or whereabouts, if known, of the person; ~~whether inside or outside this state if in the state of Montana;~~ or

(b) *if no last-known address exists, if the last-known address is outside Montana, or if the identity or location of the person is unknown, in a newspaper in the county in which the action is pending, if a newspaper is published in the county, and, if a newspaper is not published in the county, in a newspaper published in an adjoining county and having a general circulation in the county.*

(3) Service by publication is complete on the date of the last publication required by subsection (2).

(4) A summons required under this chapter must:

(a) be directed to the parent, legal guardian, other person having legal custody of the child, or any other person who is required to be served; and

(b) be signed by the clerk of court, be under the seal of the court, and contain:

- (i) the name of the court and the cause number;
- (ii) the initials of the child who is the subject of the proceedings;
- (iii) the name of the child’s parents, if known;
- (iv) the time within which an interested person shall appear;
- (v) the department’s address;

(vi) a statement in general terms of the nature of the proceedings, including the date and place of birth of the child, the date and place of the hearing, and the phone number of the clerk of the court in which the hearing is scheduled; and

(vii) notification apprising the person served by publication that failure to appear at the hearing will constitute a denial of interest in the child, which denial may result, without further notice of this proceeding or any subsequent

proceeding, in judgment by default being entered for the relief requested in the petition.”

Approved March 24, 2005

CHAPTER NO. 119

[SB 99]

AN ACT GENERALLY REVISING THE MONTANA DEFERRED DEPOSIT LOAN ACT; PROVIDING THAT THE DEPARTMENT OF ADMINISTRATION MAY NOT ISSUE OR RENEW THE LICENSE OF AN APPLICANT FOR LICENSURE 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; REDUCING THE PERIOD FOR THE RETENTION OF CERTAIN RECORDS BY A LICENSEE FROM 4 YEARS TO 2 YEARS; AND AMENDING SECTIONS 31-1-705 AND 31-1-714, MCA.

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

Section 1. 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.

(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.

(3) (a) The department may not issue or renew a license unless findings are made that:

~~(a)~~(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;

~~(b)~~(ii) the applicant has unencumbered assets of at least \$25,000 for each location;

~~(c)~~(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

~~(d)~~(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.

(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 2. 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 ~~4~~ 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 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;

(d) the total number of deferred deposit loans outstanding as of December 31 of the previous year;

(e) the minimum and maximum amount of checks for which deposits were deferred in the year ending as of December 31 of the previous year;

(f) 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) 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) 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.”

Approved March 24, 2005

CHAPTER NO. 120

[SB 100]

AN ACT REVISING THE MONTANA TITLE LOAN ACT TO PROHIBIT THE DEPARTMENT OF ADMINISTRATION FROM ISSUING OR RENEWING THE LICENSE OF AN APPLICANT IF THE CRIMINAL HISTORY OF THE EMPLOYEES OF AN APPLICANT FOR LICENSURE DEMONSTRATE ANY CONVICTIONS INVOLVING FRAUD OR FINANCIAL DISHONESTY OR IF THE DEPARTMENT'S FINDINGS SHOW ADVERSE CIVIL JUDGMENTS INVOLVING FRAUDULENT OR DISHONEST FINANCIAL DEALINGS; AND AMENDING SECTION 31-1-805, MCA.

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

Section 1. Section 31-1-805, MCA, is amended to read:

“31-1-805. Qualifications for licensure. (1) To be eligible for licensure as a title lender, an applicant must be a natural person residing in this state, a business entity formed under the laws of this state, or a foreign business entity qualified to conduct business in this state.

(2) (a) The application for licensure must be in writing, under oath, and in the form prescribed by the department.

(b) The application must contain:

(i) the name of the applicant;

(ii) the date of formation if a business entity;

(iii) the physical address of each title loan office to be operated;

(iv) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and

(v) any other pertinent information that the department may require.

(3) *The department may not issue or renew a license if findings are made that the criminal history of any employees of the applicant at the time of application demonstrates any convictions involving fraud or financial dishonesty or if the findings show civil judgments involving fraudulent or dishonest financial dealings.*

~~(3)~~(4) An applicant for licensure shall pay an application fee of \$500, unless less than 6 months remain in the calendar year, in which case the fee is \$250, and an annual license renewal fee of \$500 for each title loan office that the applicant intends to operate or operates in this state.

~~(4)~~(5) (a) Each license must specify the location of the specific title loan office to which it applies and must be conspicuously displayed in the title loan office.

(b) Before any title loan office location may be changed or moved by the title lender, the department shall approve the change of location by endorsing the license for that title loan office or mailing the licensee a new license for that title loan office without charge.

~~(5)~~(6) (a) Upon the filing of the application and the payment of the fee by a person eligible to apply for a title lender's license, the department shall issue a license to the applicant to engage in the title loan business in accordance with the provisions of this part for a period that expires on the last day of December following the date of its issuance.

(b) Each license must be uniquely numbered and may not be transferred or assigned. Renewal licenses are effective for a period of 1 year.

~~(6)~~(7) 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 this state. The bond must be available to pay damages and penalties to consumers harmed by a violation of this part.

~~(7)~~(8) 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 if the licensee is otherwise qualified."

Approved March 24, 2005

CHAPTER NO. 121

[SB 106]

AN ACT GENERALLY REVISING AND SIMPLIFYING THE STATEWIDE COST ALLOCATION PLAN FOR STATE CENTRALIZED SERVICES REQUIRED TO MANAGE NONGENERAL FUNDS; AMENDING SECTIONS 17-3-110 AND 17-3-111, MCA; REPEALING SECTION 17-1-510, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Definitions. As used in this chapter, the following definitions apply:

(1) "Agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other administrative units of state government.

(2) "Indirect costs" means costs for services that benefit more than one agency or program and that are not readily assignable to the agency or program specifically benefiting.

Section 2. Section 17-3-110, MCA, is amended to read:

"17-3-110. Statewide cost allocation plan. (1) The director of the department of administration shall annually prepare a statewide cost allocation plan distributing service agency indirect costs among the grantee agencies, in

accordance with principles and procedures established by ~~federal~~ applicable regulations and guidelines.

(2) *An agency required to pay costs under the statewide cost allocation plan shall make payments in four equal installments, due no later than October 1, January 1, March 1, and June 1 of each fiscal year, by depositing the payments into the general fund.*"

Section 3. Section 17-3-111, MCA, is amended to read:

"17-3-111. Indirect cost rates — allocation Agency recovery of indirect costs. (1) ~~Grantee agencies~~ *An agency receiving nongeneral funds* shall, in accordance with ~~federal all applicable~~ regulations, and guidelines, and ~~with private or grant rules governing those funds, as appropriate,~~ negotiate indirect cost reimbursement amounts and methodologies ~~and so that the agency may recover indirect costs of federal assistance programs and private assistance programs.~~

(2) An agency, except for a unit of the university system, that applies for or otherwise receives funds through federal or private grants or contracts that do not allow the agency to fully recover indirect costs shall notify and must receive written approval from its approving authority prior to accepting the funds.

(3) An agency, except for a unit of the university system, may not, as part of the grant or contract proposal or negotiation process, waive or otherwise forfeit the agency's ability to recover indirect costs that are otherwise allowable costs under the program, except for intraagency or interagency grants or contracts. For grants or contracts for which the entity providing the funds limits administrative cost reimbursements or indirect cost recoveries by regulation, policy, or guideline, statewide and agency indirect costs paid originally from the general fund must be claimed first, other indirect costs must be claimed second, agency direct costs of administration must be claimed third, and program direct costs must be claimed last. For grants or contracts for which there is no limit on indirect costs or administrative costs, indirect and administrative costs must be claimed first and direct program costs must be claimed last.

(4) *Each agency receiving federal funds and not directly charging a grant or program for the recovery of indirect costs shall submit an indirect cost proposal to the appropriate federal agency.* The department shall provide technical assistance to an agency on how to build ~~an indirect costs into a grant cost proposal.~~

(5) ~~Indirect~~ *Except as provided for a unit of the university system under 20-25-427, indirect costs recovered from federal sources pursuant to the statewide cost allocation plan provided in 17-3-110, except those costs recovered by a unit of the university system, by an agency to pay the agency's indirect costs under 17-3-110 must be deposited in the general fund as provided in 17-3-110.* All other indirect costs, ~~except those costs recovered by a unit of the university system,~~ must be deposited in the fund from which the indirect costs were originally paid."

Section 4. Repealer. Section 17-1-510, MCA, is repealed.

Section 5. Directions to code commissioner. Sections 17-3-110 and 17-3-111 are intended to be renumbered and codified as an integral part of Title 17, chapter 1, part 1, and the provisions of Title 17, chapter 1, part 1, apply to 17-3-110 and 17-3-111.

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 17, chapter 1, part 1, and the provisions of Title 17, chapter 1, part 1, apply to [section 1].

Section 7. Effective date. [This act] is effective July 1, 2005.

Approved March 24, 2005

CHAPTER NO. 122

[SB 132]

AN ACT REPEALING A REQUIREMENT FOR THE DEPARTMENT OF LABOR AND INDUSTRY TO REPORT TO THE STATE COMPENSATION INSURANCE FUND ON INDEPENDENT CONTRACTOR OR OTHER EMPLOYMENT EXEMPTIONS; REPEALING SECTION 39-51-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Repealer. Section 39-51-604, MCA, is repealed.

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

Approved March 24, 2005

CHAPTER NO. 123

[SB 141]

AN ACT ALLOWING A NOTARIAL SEAL TO USE THE WORDS "NOTARY PUBLIC" INSTEAD OF THE WORDS "NOTARIAL SEAL"; AND AMENDING SECTION 1-5-416, MCA.

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

Section 1. Section 1-5-416, MCA, is amended to read:

"1-5-416. Powers and duties. (1) A notary public shall:

(a) subject to subsection (2), take the acknowledgment or proof of any power of attorney, mortgage, deed, grant, transfer, or other instrument executed by any person and give a certificate of the proof or acknowledgment, endorsed on or attached to the instrument;

(b) take depositions and affidavits, if the notary is knowledgeable of the applicable legal requirements, and administer oaths and affirmations in all matters incident to the duties of the notary public's office or to be used before any court, judge, officer, or board in this state;

(c) whenever requested and upon payment of the required fees, make and give a certified copy of any record kept or that originated in the notary public's place of employment;

(d) provide and keep an official crimper-type or ink stamp seal, upon which must be engraved the name of the state of Montana and the words "Notarial Seal" or "Notary Public", with the name of the notary public exactly as that name appears on the notary's certificate of commission issued by the secretary of state;

(e) authenticate with the notary public's official seal, and the notary's original signature as it appears on the notary's certificate of commission, all official acts. Whenever the notary public signs officially as a notary public, the notary public shall add to the signature the words "Notary Public for the State of Montana, residing at.... (stating the name of the town or city of the notary public's post office)" and shall endorse upon the instrument the date, showing the month, day, and four-digit year, of the expiration of the notary public's commission.

(f) on every document on which the notary's seal of office is used, type, stamp, or legibly print the notary's name, as shown on the notary's certificate of commission, after or below the original signature of the notary.

(2) A notary public may not:

(a) notarize the notary's own signature;

(b) notarize a document in which the notary is individually named or has an interest from which the notary will directly benefit by a transaction involving the document; or

(c) certify a document issued by a public entity, such as a birth, death, or marriage certificate, unless the notary is employed by the entity issuing or holding the original version of that document."

Approved March 24, 2005

CHAPTER NO. 124

[SB 169]

AN ACT INCREASING PENALTIES FOR VIOLATION OF NATURAL GAS PIPELINE SAFETY PROVISIONS AND REGULATIONS; AND AMENDING SECTION 69-3-207, MCA.

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

Section 1. Section 69-3-207, MCA, is amended to read:

"69-3-207. Penalty for violation of natural gas pipeline safety provisions and regulations. (1) A person violating any safety regulation or provision adopted under the Natural Gas Pipeline Safety Act of 1968, as amended, that applies to areas the commission has authority to enforce is subject to a fine of not less than \$100 or more than ~~\$25,000~~ \$100,000. Each day in which a violation of a safety regulation or provision continues is considered a separate offense and is subject to the penalty prescribed in this subsection, except that the maximum fine may not exceed ~~\$500,000~~ \$1 million for any related series of violations.

(2) In determining the amount of the penalty, the following must be considered: the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability; any history of prior violations; the effect on ability to continue to do business; any good faith in attempting to achieve compliance; ability to pay the penalty; and other matters as justice may require.

(3) The fine must be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction.

(4) The commission may prescribe rules necessary to effectively administer this section.”

Approved March 24, 2005

CHAPTER NO. 125

[SB 454]

AN ACT REVISING THE DEFINITION OF “INTEREST” WITH RESPECT TO CREDIT TRANSACTIONS; REVISING RESTRICTIONS ON CONSUMER LOANS; CLARIFYING WHAT CONSTITUTES AN ADD-ON BASIS LOAN; AMENDING SECTIONS 31-1-104, 32-5-103, AND 32-5-301, 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 31-1-104, MCA, is amended to read:

“31-1-104. Interest defined. Interest is 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.*”

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, whether for interest, compensation, 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, 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 act by a licensee in the making of a contract or in the collection of a loan made under the contract that violates the provisions of this chapter loan made or collected in violation of subsection (1) by a person other than a licensee or a lender exempt under subsection (5) is void.~~ ~~The licensee and the person does not have the~~ ~~has no~~ right to collect, receive, or retain any principal, interest, or 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 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 32-5-301, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(iii) fees for notarizing deeds and other documents;

(iv) appraisal fees;

(v) fees for credit reports; and

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

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

(7) Subsections (2), ~~and (3), and (6) of this section~~ apply only to loans on which charges are made on an add-on basis and do not apply to loans on which charges are made on an interest-bearing basis. *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 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 loans subject to [this act] made on or after October 1, 1985, the effective date of Chapter 406, Laws of 1985.

Approved March 24, 2005

CHAPTER NO. 126

[HB 203]

AN ACT GENERALLY REVISING LAWS RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSING; REQUIRING ONE MEMBER OF THE BOARD OF NURSING TO BE AN ADVANCED PRACTICE REGISTERED NURSE AND REQUIRING ONE MEMBER TO BE FROM A RURAL HEALTH CARE FACILITY; EXPANDING MEMBERSHIP FOR THE BOARD OF SANITARIANS, THE BOARD OF PUBLIC ACCOUNTANTS, AND THE BOARD OF ATHLETICS; REVISING LICENSURE REFERENCES TO FEDERALLY EMPLOYED PHYSICIANS; REVISING REFERENCES TO SUPERVISION FOR REGISTERED NURSE-MIDWIVES; REMOVING THE EXEMPTION FROM LICENSURE FOR PHYSICAL THERAPISTS; MAKING LICENSURE REFERENCES UNIFORM; MAKING THE LICENSED PRACTICAL NURSING APPLICATION FEE NONREFUNDABLE; DEPOSITING FINES FOR CERTAIN VIOLATIONS IN THE GENERAL FUND RATHER THAN THE STATE SPECIAL REVENUE FUND; REVISING REFERENCES TO TOPICAL MEDICATION PACKAGING AND LABELING REQUIREMENTS; EXEMPTING THE OPERATOR OF CERTAIN INDUSTRIAL X-RAY EQUIPMENT FROM LICENSING; REVISING REFERENCES TO LICENSE EXEMPTIONS UNDER TITLE 37, CHAPTER 17, INCLUDING DELETION OF THE DEFINITION OF "SOCIAL PSYCHOLOGIST"; REVISING THE LICENSING EXEMPTION FOR OUT-OF-STATE VETERINARIANS PRACTICING IN MONTANA; DELETING THE REFERENCE TO BURIAL-TRANSIT PERMITS; CLARIFYING LICENSURE REQUIREMENTS FOR LICENSED ADDICTION COUNSELORS; REVISING INSURANCE AND QUALIFICATION REQUIREMENTS UNDER TITLE 37, CHAPTER 60; SPECIFYING THE COMPANY OR ORGANIZATION REQUIRED TO APPOINT A QUALIFYING AGENT AND RESIDENT MANAGER; REMOVING THE REQUIREMENT TO NOTIFY LAW ENFORCEMENT AND THE COUNTY ATTORNEY OF APPLICATIONS FOR A PRIVATE INVESTIGATOR LICENSE; AMENDING SECTIONS 2-15-1731, 2-15-1734, 2-15-1751, 2-15-1756, 2-15-1772, 37-3-103, 37-3-201, 37-3-205, 37-3-301, 37-3-303, 37-3-304, 37-3-306, 37-3-307, 37-3-309, 37-3-315, 37-3-323, 37-3-343, 37-3-344, 37-3-345, 37-3-346, 37-3-347, 37-3-348, 37-3-349, 37-4-103, 37-4-327, 37-4-408, 37-7-401, 37-8-101, 37-8-418, 37-10-202, 37-10-301, 37-10-302, 37-10-304, 37-10-306, 37-10-313, 37-11-106, 37-14-301, 37-17-104, 37-18-104, 37-19-101, 37-35-202, 37-60-202, 37-60-302, 37-60-303, AND 37-60-304, MCA; REPEALING SECTION 37-3-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 2-15-1731, MCA, is amended to read:

"2-15-1731. Board of medical examiners. (1) There is a Montana state board of medical examiners.

(2) The board consists of 11 members appointed by the governor with the consent of the senate. Appointments made when the legislature is not in session may be confirmed at the next session.

(3) The members are:

- (a) five members having the degree of doctor of medicine;
- (b) one member having the degree of doctor of osteopathy;
- (c) one member who is a licensed podiatrist;
- (d) one member who is a licensed nutritionist;
- (e) one member who is a licensed physician assistant-certified; and
- (f) two members of the general public who are not medical practitioners.

(4) The members having the degree of doctor of medicine may not be from the same county. ~~Each member must be a citizen of the United States. Each member must be a citizen of the United States.~~ Each member, except for public members, must have been licensed and must have practiced medicine or dietetics-nutrition in this state for at least 5 years and must have been a resident of this state for at least 5 years.

(5) Members shall serve staggered 4-year terms. A term commences on September 1 of each year of appointment. A member may, ~~upon notice and hearing,~~ be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

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

Section 2. Section 2-15-1734, MCA, is amended to read:

“2-15-1734. Board of nursing. (1) There is a board of nursing.

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

(a) four registered professional nurses; *of whom* at least one ~~such member shall must~~ have had at least 5 years in administrative, teaching, or supervisory experience in one or more schools of nursing, *at least one must be an advanced practice registered nurse, at least one must be engaged in nursing practice in a rural health care facility,* and at least one ~~such member~~ must be currently engaged in the administration, supervision, or provision of direct client care. Each member ~~shall~~ *who is a registered professional nurse must:*

- (i) be a graduate of an approved school of nursing;
- (ii) be a licensed registered professional nurse in this state;
- (iii) have had at least 5 years’ experience in nursing following graduation; and

(iv) be currently engaged in the practice of professional nursing and have practiced for at least 5 years.

(b) three practical nurses. Each ~~shall must~~:

- (i) be a graduate of a school of practical nursing;
- (ii) be a licensed practical nurse in this state;
- (iii) have had at least 5 years’ experience as a practical nurse; and
- (iv) be currently engaged in the practice of practical nursing and have practiced for at least 5 years.

(c) two public members who are not medical practitioners, involved in the practice of nursing or employment of nursing, or administrators of Montana health care facilities.

(3) All members ~~shall~~ *must* have been residents of this state for at least 1 year before appointment ~~and be citizens of the United States and must be citizens of the United States.~~

(4) All members shall serve staggered 4-year terms, and a member may not be appointed for more than two consecutive terms. The governor may remove a member from the board for neglect of a duty required by law or for incompetency or unprofessional or dishonorable conduct.

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

Section 3. Section 2-15-1751, MCA, is amended to read:

“2-15-1751. Board of sanitarians. (1) There is a board of sanitarians.

(2) The board ~~shall consist~~ *consists* of ~~three~~ *five* members appointed by the governor with the consent of the senate. Each member must be a resident of this state, and ~~two~~ *three* of the members must be registered sanitarians. ~~One member~~ *Two members* must be from the public ~~and but not a sanitarian who sanitarians and~~ shall represent the interests of the public at large. Each sanitarian member ~~shall~~ *must* have a minimum of 3 years of experience practicing as a sanitarian in the state of Montana.

(3) Members shall serve ~~for staggered~~ 3-year terms. ~~One term shall that~~ expire on July 1 of ~~each~~ *a given* year.

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

Section 4. Section 2-15-1756, MCA, is amended to read:

“2-15-1756. Board of public accountants. (1) There is a board of public accountants.

(2) The board consists of ~~five~~ *seven* members appointed by the governor. The members are:

(a) ~~three~~ *four* certified public accountants certified under Title 37, chapter 50, who are certified and actively engaged in the practice of public accounting and who have held a valid certificate for at least 5 years before ~~their appointment~~ *being appointed*. The Montana society of certified public accountants shall submit to the governor annually a list of names of two candidates from which the appointments of these members may be made. However, the governor is not restricted to the names on this list. These members may not be residents of the same county.

(b) one licensed public accountant licensed under Title 37, chapter 50, who is actively engaged in the practice of public accounting and who has held a valid license for at least 5 years before ~~his appointment~~ *being appointed*. When an appointment in this category is necessary, the Montana society of public accountants shall submit to the governor a list of names of two candidates from which the appointment may be made. However, the governor is not restricted to the names on this list. If there is no licensed public accountant known by the governor to be qualified and willing to serve in this position, the governor may appoint a certified public accountant meeting the qualifications provided in *subsection (2)(a)*.

(c) ~~one member~~ *two members* of the general public who ~~is~~ *are* not engaged in the practice of public accounting.

(3) Each appointment is subject to confirmation by the senate and ~~shall~~ *must* be submitted for consideration at the next regular session following appointment.

(4) The members shall serve staggered 5-year terms. A member may not serve consecutive 5-year terms on the board. A member is eligible for reappointment to the board after 1 year or more has elapsed. The governor may, ~~after a hearing,~~ remove a member for neglect of duty or other just cause.

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

Section 5. Section 2-15-1772, MCA, is amended to read:

“2-15-1772. Board of athletics. (1) There is a board of athletics.

(2) The board consists of ~~three~~ *five* members appointed by the governor with the consent of the senate.

(3) Members shall serve staggered 3-year terms, and a member may not serve more than four consecutive terms.

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

Section 6. Section 37-3-103, MCA, is amended to read:

“37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if the physician has any established or regularly used hospital connections in this state or maintains or is provided with, for the physician’s regular use, an office or other place for rendering the services, the physician must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(g) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(h) ~~the performance by commissioned medical officers of the United States public health service or of the United States department of veterans affairs of their lawful duties in this state as officers~~ *practice of medicine by a physician licensed in another state and employed by the federal government;*

(i) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered

nurse-midwives ~~under the supervision of a licensed physician~~ *under the conditions and limitations defined by law;*

(j) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if the physician otherwise engages in the practice of medicine in the state of Montana.

(k) the rendering of services by a ~~physical therapist,~~ *physical therapist,* technician, medical assistant, as provided in 37-3-104, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(l) the rendering of services by a physician assistant-certified in accordance with Title 37, chapter 20;

(m) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law;

(n) the execution of a death sentence pursuant to 46-19-103;

(o) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period. Except as authorized in 37-27-302, a direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.

(p) the use of an automated external defibrillator pursuant to Title 50, chapter 6, part 5.

(2) Licensees referred to in subsection (1) who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D.," "D.O.," or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 7. Section 37-3-201, MCA, is amended to read:

"37-3-201. Organization. The board shall, at the first meeting each year, elect from among its members a president, vice-president, and secretary. The board shall adopt a seal in which appear the words "The Board of Medical Examiners of Montana" and the ~~further~~ words "Official Seal", ~~and acts.~~ *The board shall authenticate acts,* rules, orders, ~~certificates,~~ and licenses ~~shall be authenticated by applying the seal.~~

Section 8. Section 37-3-205, MCA, is amended to read:

"37-3-205. Records. The department shall keep a record of the board's proceedings and also records of applicants for ~~certificates~~ *licenses* and a register of licenses. The register is prima facie evidence of the matters contained in it."

Section 9. Section 37-3-301, MCA, is amended to read:

"37-3-301. License required — kinds of ~~certificates~~ licenses. (1) Before being issued a license, an applicant may not engage in the practice of medicine in this state.

(2) The department may issue four ~~forms of certificates of licensure~~ *kinds of licenses* under the board's seal: ~~the a physician's certificate license, the restricted certificate a specialized license, the a temporary certificate license, and the a telemedicine certificate license~~ issued in accordance with 37-3-341 through 37-3-349. The physician's ~~certificate license~~ and the ~~restricted certificate specialized license~~ must be signed by the president, but the temporary ~~certificate license~~ may be signed by any board member. The board shall decide which ~~certificate kind of license~~ to issue. ~~These certificates must be designated as:~~

~~(a) physician's certificate, which is subject to renewable registration in accordance with department rules;~~

~~(b) restricted certificate;~~

~~(c) temporary certificate, which is subject to specifications and limitations imposed by the board; and~~

~~(d) telemedicine certificate."~~

Section 10. Section 37-3-303, MCA, is amended to read:

"37-3-303. Practice authorized by physician's ~~certificate~~ license. A physician's ~~certificate~~ license authorizes the holder to perform one or more of the acts embraced in 37-3-102(8) in a manner reasonably consistent with the holder's training, skill, and experience."

Section 11. Section 37-3-304, MCA, is amended to read:

"37-3-304. Practice authorized by temporary ~~certificate~~ license. (1) A temporary ~~certificate, which may be issued to any citizen or to an alien otherwise qualified for a physician's certificate;~~ license authorizes the holder to perform one or more of the acts listed in 37-3-102(8) in a manner reasonably consistent with the holder's training, skill, and experience, subject to all specifications, conditions, and limitations imposed by the board.

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

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

Section 12. Section 37-3-306, MCA, is amended to read:

"37-3-306. Physician's ~~certificate~~ license — examination — reciprocity and endorsement. (1) The board may authorize the department to issue to an applicant a physician's ~~certificate, certificate~~ license, license by reciprocity, or ~~certificate~~ license by endorsement only on the basis of:

(a) passing an examination given and graded by the department, subject to 37-1-101;

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, by the national board of examiners for osteopathic physicians and surgeons, incorporated, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school ~~which~~ *that* has been approved by the medical council of

Canada or successors, certifying that the applicant has passed an examination given by this board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were, in the judgment of the board, essentially equivalent to those of this state for granting a license to practice medicine, if under the scope of the license or certificate the applicant was authorized to practice medicine in the other state, territory, or country.

(2) ~~No~~ An applicant who applies for a license on the basis of an examination and fails the examination may *not* be granted a license based on credentials from another state, territory, or foreign country or on a certificate issued by the national board of medical examiners or successors, by the federation licensing examination committee or successors, or by the medical council of Canada or successors.

(3) The board may adopt reciprocity or endorsement requirements current with changes in standards in the practice of medicine.

(4) The board may, in the case of an applicant for admission by reciprocity or endorsement, require a written or oral examination of the applicant.

(5) The board may require that graduates of foreign medical schools pass an examination given by the education council for foreign medical graduates or successors.

(6) ~~Holder~~ A holder of the degree of doctor of osteopathy granted in 1955 or before ~~will be certified only on the basis of~~ *may not be licensed without* taking and passing the examination given by the department, subject to 37-1-101. ~~Holder~~ A holder of the degree of doctor of osteopathy granted after 1955 ~~will be certified~~ *licensed* in the same manner as provided above for physicians.”

Section 13. Section 37-3-307, MCA, is amended to read:

“37-3-307. Qualifications for licensure — temporary certificate license. (1) The board may authorize the department to issue to an applicant a temporary ~~certificate~~ *license* to practice medicine on the basis of:

(a) passing an examination given and graded by the department, subject to 37-1-101;

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, by the national board of osteopathic medical examiners or successors, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school ~~which~~ *that* has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by the board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were essentially equivalent, in the judgment of the board, to those of this state at the time for granting a license to practice medicine; and

(d) being a graduate of an approved medical school who has completed 1 year of internship or ~~its~~ *the* equivalent and being of good moral character and good conduct.

(2) The board may require that graduates of foreign medical schools pass the examination given by the education council for foreign medical graduates or successors.

(3) A temporary ~~certificate~~ *license* may be issued to a physician employed by a public institution who is practicing under the direction of a licensed physician. The board may authorize the department to issue a temporary ~~certificate~~ *license* subject to terms of probation or other conditions or limitations set by the board or may refuse a temporary ~~certificate~~ *license* to a person who has committed unprofessional conduct. The issuance of a temporary ~~certificate~~ *license* does not impose any future obligation or duty on the part of the board to grant full licensure or to renew or extend the temporary ~~certificate~~ *license*. The board may, in the case of an applicant for a temporary ~~certificate~~ *license*, require a written, oral, or practical examination of the applicant.”

Section 14. Section 37-3-309, MCA, is amended to read:

“37-3-309. Application for license. (1) A person desiring a license to practice medicine shall make application to the department, verified by oath and in a form prescribed by the board. The application must be accompanied by the license fee and documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by this chapter apart from an examination required by the board. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the qualifications and whether the applicant has committed unprofessional conduct. The applicant shall provide necessary authorizations for the release of records and information pertinent to the department’s inquiry.

(2) An applicant for a license on the basis of an examination shall file the application at least 60 days prior to the announced date of the examination. If the applicant is not at the time of filing the application a graduate of but is then in attendance at an approved medical school, the applicant shall submit to the department, instead of a diploma or other required evidence of graduation, a written statement from the dean or other authorized representative of the approved medical school that the applicant will receive a diploma at the end of the then-current school term. The applicant may not be granted a ~~certificate~~ *license* until the applicant has filed with the department a diploma or other acceptable evidence of graduation from the approved medical school and has complied with the requirements of subsection (1). A license may not be issued until the applicant has satisfied the board that the applicant has completed at least 1 year of an approved internship or ~~its~~ *the* equivalent and has otherwise met the requirements for the issuance of a license under this chapter.”

Section 15. Section 37-3-315, MCA, is amended to read:

“37-3-315. Qualifications for licensure — ~~restricted certificate~~ *specialized license* — suspension — practice authorized. (1) A person may not be granted a ~~restricted~~ *specialized* license to practice medicine in this state unless the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school or college of osteopathic medicine;

(c) is licensed and engaged in the active practice of medicine or osteopathic medicine in another state or foreign country, whose licensing standards are acceptable to the board;

(d) has never been subject to license discipline in any form;

(e) demonstrates evidence of research and publication:

(i) in a peer-reviewed medical journal in the English language;

(ii) in the 2 years preceding receipt of the application; and

(iii) that demonstrate the applicant's competency in the field of medicine in which the ~~restricted~~ *specialized* license is requested;

(f) has been accepted for privileges in a hospital pending licensure by the board;

(g) has demonstrated to the satisfaction of the board the applicant's knowledge, skills, and abilities by providing evidence of at least one of the following criteria:

(i) at least 3 years' postgraduate clinical training in a formal education program;

(ii) board certification in a specialty recognized or certified by the American board of medical specialties;

(iii) board certification in a specialty recognized or certified by the American osteopathic association; or

(iv) passing, in the 75th percentile or higher, a board-approved state or national examination in medicine, such as the United States medical licensing examination, the comprehensive osteopathic medical licensing examination, the special purpose examination, the comprehensive osteopathic medical variable-purpose examination, an examination given by the educational commission for foreign medical graduates, or the licensing examination of another state or territory of the United States or Canada;

(h) has submitted a completed application file, which has been reviewed by the board, and has made a personal appearance before the board; and

(i) is able to communicate, in the opinion of the board, in the English language. Passing an examination given by the educational commission for foreign medical graduates or the test of English as a foreign language constitutes prima facie evidence of ability to communicate in the English language.

(2) The ~~restricted~~ *specialized* license is suspended and subject to revocation after a hearing pursuant to the Montana Administrative Procedure Act upon one of the following:

(a) restriction, termination, or other cessation of the licensee's hospital privileges; or

(b) proof of one of the conditions or offenses identified in 37-3-323.

(3) The holder of a ~~restricted~~ *specialized* license is limited to the practice of medicine specifically approved by the board after consideration of the applicant's training, skill, and experience. All restrictions, specifications, conditions, and limitations imposed by the board must be stated on the ~~restricted certificate~~ *specialized license*."

Section 16. Section 37-3-323, MCA, is amended to read:

“37-3-323. Revocation or suspension of license. (1) The department may ~~make an investigation~~ *investigate* whenever it is brought to its attention ~~that there is~~ *the department learns of* a reason to suspect that a person having a license or ~~certificate~~ to practice medicine in this state:

(a) is mentally or physically unable to safely engage in the practice of medicine, has procured a license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and has not later been lawfully declared competent, or has a condition that impairs the person’s intellect or judgment to the extent that ~~it~~ *the condition* incapacitates the person for the safe performance of professional duties;

(b) has been guilty of unprofessional conduct;

(c) has practiced medicine with a suspended or revoked license;

(d) has had a license to practice medicine suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) while under probation has violated ~~its~~ *the terms of probation*.

(2) The investigation must be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may, upon order of the board, include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine and scrutinize the hospital records and reports of a licensee as part of the examination, and copies must be released to the board on written request.

(3) If a person holding a license to practice medicine under this chapter is by a final order or adjudication of a court of competent jurisdiction adjudged to be mentally incompetent, to be addicted to the use of addictive substances, or to have been committed pursuant to 53-21-127, the person’s license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until the person is discharged as restored to reason or cured and the person’s professional competence has been proved to the satisfaction of the board.”

Section 17. Section 37-3-343, MCA, is amended to read:

“37-3-343. Practice of telemedicine prohibited without ~~certificate~~ license — scope of practice limitations — violations and penalty. (1) A physician may not practice telemedicine in this state without a telemedicine ~~certificate~~ *license* issued pursuant to 37-3-301 and 37-3-341 through 37-3-349.

(2) A telemedicine ~~certificate~~ *license* authorizes an out-of-state physician to practice telemedicine only with respect to the specialty in which the physician is board-certified or meets the current requirements to take the examination to become board-certified and on which the physician bases the physician’s application for a telemedicine ~~certificate~~ *license* pursuant to 37-3-345(2).

(3) A telemedicine ~~certificate~~ *license* authorizes an out-of-state physician to practice only telemedicine. A telemedicine ~~certificate~~ *license* does not authorize the physician to engage in the practice of medicine while physically present within the state.

(4) A physician who practices telemedicine in this state without a telemedicine ~~certificate~~ *license* issued pursuant to 37-3-301 and 37-3-341 through 37-3-349, in violation of the terms or conditions of that ~~certificate~~

license, in violation of the scope of practice allowed by the ~~certificate~~ *license*, or without a physician's ~~certificate of licensure~~ *license* issued pursuant to 37-3-301(2)(a), is guilty of a misdemeanor and on conviction shall be sentenced as provided in 37-3-325."

Section 18. Section 37-3-344, MCA, is amended to read:

"37-3-344. Application for telemedicine ~~certificate~~ *license*. (1) A person desiring a telemedicine ~~certificate~~ *license* shall apply to the department and verify the application by oath, in a form prescribed by the board.

(2) The application must be accompanied by:

(a) a ~~certificate~~ *license* fee prescribed by board rule; and

(b) documents required by the board that establish that the applicant possesses the qualifications prescribed by 37-3-341 through 37-3-349 and the rules of the board. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the requisite qualifications.

(3) The application must include a clear statement that the applicant consents to the jurisdiction of the state as specified in 37-3-349.

(4) The applicant shall provide to the board authorizations necessary for the release of records and other information required by the board."

Section 19. Section 37-3-345, MCA, is amended to read:

"37-3-345. Qualifications for telemedicine ~~certificate~~ *license* — basis for denial. The board may not grant a telemedicine ~~certificate~~ *license* to a physician unless the physician has established under oath that the physician:

(1) has a full, active, unrestricted certificate or license to practice medicine or osteopathic medicine in another state or territory of the United States or the District of Columbia;

(2) is board-certified or meets the current requirements to take the examination to become board-certified in a medical specialty pursuant to the standards of, and approved by, the American board of medical specialties or the American osteopathic association bureau of osteopathic specialists;

(3) has no history of disciplinary action or limitation of any kind imposed by a state or federal agency in a jurisdiction where the physician is or has ever been licensed to practice medicine;

(4) is not the subject of a pending investigation by a state medical board or another state or federal agency;

(5) has no history of conviction of a crime related to the physician's practice of medicine;

(6) has submitted proof of current malpractice or professional negligence insurance coverage in the amount to be set by the rules of the board;

(7) has not paid, or had paid on the physician's behalf, on more than three claims of professional malpractice or negligence within the 5 years preceding the physician's application for a telemedicine ~~certificate~~ *license*;

(8) has identified an agent for service of process in Montana who is registered with the secretary of state and the board and who may be a physician ~~certified~~ *licensed* to practice medicine in this state;

(9) has paid an application fee in an amount set by the rules of the board; and

(10) has submitted as a part of the application form a sworn statement attesting that the physician has read, understands, and agrees to abide by Title 37, chapters 1 and 3, and the administrative rules governing the practice of medicine in Montana.”

Section 20. Section 37-3-346, MCA, is amended to read:

“37-3-346. ~~Certificate~~ License renewal — fee. (1) A physician ~~certified~~ *licensed* to practice telemedicine shall renew the telemedicine ~~certificate~~ *license* every 2 years.

(2) The physician shall complete and return an application for renewal provided by the board by a date established by board rule.

(3) The physician shall pay an application renewal fee in an amount established by board rule.

(4) This section may not be interpreted to conflict with 37-1-138.”

Section 21. Section 37-3-347, MCA, is amended to read:

“37-3-347. Reasons for denial of ~~certificate~~ license — alternative route to licensed practice. (1) The board may deny an application for a telemedicine ~~certificate~~ *license* if the applicant:

(a) fails to demonstrate that the applicant possesses the qualifications for a ~~certificate~~ *license* required by 37-3-341 through 37-3-349 and the rules of the board;

(b) fails to pay a required fee;

(c) does not possess the qualifications or character required by this chapter;
or

(d) has committed unprofessional conduct.

(2) A physician who does not meet the qualifications for a telemedicine ~~certificate~~ *license* provided in 37-3-345 may apply for a physician’s license in order to practice medicine in Montana.”

Section 22. Section 37-3-348, MCA, is amended to read:

“37-3-348. Discipline of physician with telemedicine ~~certificate~~ license. A physician granted a telemedicine ~~certificate~~ *license* may be subject to investigation and discipline on the grounds that the physician has:

(1) committed unprofessional conduct, as described in 37-1-316 or in a board rule; or

(2) failed to:

(a) maintain the qualifications provided in 37-3-345 or in a board rule;

(b) maintain complete, legible patient records in written or readily retrievable electronic form;

(c) make complete, legible patient records available to the board during an investigation or disciplinary proceeding concerning the physician’s practice of telemedicine; or

(d) appear and testify at a deposition within the state in the course of an investigation or disciplinary proceeding conducted under Montana law that concerns the physician’s practice of telemedicine.”

Section 23. Section 37-3-349, MCA, is amended to read:

“37-3-349. Consent to jurisdiction. A physician granted a telemedicine ~~certificate~~ *license* shall, pursuant to 37-3-344, consent to the jurisdiction of:

(1) the courts of Montana for the purpose of civil actions, including but not limited to tort, contract, and equitable actions, related to the physician’s practice of telemedicine;

(2) the courts of Montana for the purpose of criminal actions related to the physician’s practice of telemedicine;

(3) the board for the purposes of licensing and disciplinary action by the board; and

(4) the Montana medical legal panel for matters within the panel’s jurisdiction, as provided in Title 27, chapter 6.”

Section 24. Section 37-4-103, MCA, is amended to read:

“37-4-103. Exemptions. (1) A dental laboratory or dental technician is not practicing dentistry under this chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns, dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models, or impressions on which the work is constructed have been made by a regularly licensed and practicing dentist and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic appliances are returned to the dentist on whose order the work was constructed.

(2) Section 37-4-101(2) and part 5 of this chapter do not apply to a legally qualified physician ~~or surgeon or to a dental surgeon of the United States army, navy, public health service, or veterans’ bureau employed by the United States government~~ or to a ~~legal~~ *legally licensed health care* practitioner of another state making a clinical demonstration before a dental society, convention, or association of dentists or to a licensed dental hygienist performing an act authorized under 37-4-401 or 37-4-405.

(3) This chapter does not prevent a bona fide faculty member of a school, college, or department of a university recognized and approved by the board from performing dental procedures necessary to the faculty member’s teaching functions. This chapter does not prevent students from performing dental procedures under the supervision of a bona fide instructor of a school, college, or department of a university recognized and approved by the board if the dental procedures are a part of the assigned teaching curriculum.

(4) This chapter does not prohibit or require a license with respect to the practice of dentistry under the conditions and limitations defined by Title 37, chapter 29. ~~None of the regulations contained in~~ *The provisions of this chapter do not* apply to a person engaged in the lawful practice of dentistry.

(5) This chapter does not require the licensure of or prohibit the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist from contracting with a dentist to manage the dental practice at an establishment where dental operations, oral surgery, or dental services are provided if the personal representative in either case complies with the provisions of 37-4-104.

(6) Section 37-4-101(2)(b) does not prevent a licensee from entering into a contract with or being employed by the following clinics:

(a) university clinics for the purpose of providing dental care to registered students;

(b) correctional facilities for the purpose of providing dental care to inmates; and

(c) federally funded community health centers, migrant health care centers, or programs for health services for the homeless established pursuant to the Public Health Service Act, 42 U.S.C. 254b.

(7) A clinic that employs or otherwise contracts with a dentist under subsection (6) may not:

(a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product, process, or activity as it relates to the delivery of dental care; or

(b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care.

(8) This chapter does not require licensure of the following individuals while engaged in the practice of dentistry, as provided in 37-4-101:

(a) students of an accredited commission on dental accreditation (CODA) dental hygiene program or school who are candidates for a dental hygiene degree and who practice dental hygiene without pay in strict conformity with the laws and rules of this state, under the direct personal supervision of a demonstrator or teacher who is a faculty member of an accredited CODA dental hygiene program or school;

(b) students of an accredited CODA program or school who are candidates for a D.D.S. or D.M.D. degree and who practice dentistry without pay in strict conformity with the laws and rules of this state, under the direct personal supervision of a *dentist licensed in Montana* or a demonstrator or teacher who is a faculty member of a CODA dental program or school; or

(c) dental residents who have received a D.D.S. or D.M.D. degree from a CODA-accredited school and who are engaged in advanced education in dentistry at a dental school, hospital, or public health facility that offers the type of advanced program designed to meet accreditation requirements established by CODA. A dental resident may perform all clinical services within the advanced education program in which the dental resident is enrolled if the services are provided by the sponsoring institution and are authorized by the program supervisor. A dental resident who is not licensed in Montana may not engage in private practice or assess fees for clinical services rendered."

Section 25. Section 37-4-327, MCA, is amended to read:

"37-4-327. Practicing dentistry without ~~certificate~~ license — penalty. (1) Except as provided in 37-4-101 through 37-4-104 and this section, a person who, as principal, agent, employer, employee, or assistant, practices dentistry or who does an act of dentistry without having first secured a ~~certificate~~ license to practice dentistry from the department entitling the person to practice in this state is guilty of a misdemeanor and on conviction in a district court may be fined an amount not less than \$500 or more than \$1,000 or be confined for a period not exceeding 6 months in the county jail.

(2) Fines imposed and collected under this chapter, except those paid to a justice's court, must be paid into the treasury of the county in which the suits, actions, or proceedings are commenced. Money paid into the treasury in excess of the amount necessary to reimburse the county for expense incurred by the county in a suit, action, or proceeding brought under this chapter must be

deposited before January 1 of each year in the state special revenue fund for the use of the board, subject to 37-1-101(6).”

Section 26. Section 37-4-408, MCA, is amended to read:

“37-4-408. Auxiliary personnel — employment, duties, and limitations. A dental auxiliary is a person other than a licensed dental hygienist employed by a licensed dentist. The board may, within the limitations of this chapter, adopt rules that define the qualifications and outline the tasks of any unlicensed auxiliary personnel to be employed by a licensed dentist ~~in the dentist’s office, except that nothing in this section may not be construed to allow the board by rule to provide for delegation by permit a licensed dentist to delegate to any auxiliary personnel prophylaxis or any of the duties prohibited to dental hygienists under 37-4-401 or a prophylaxis.~~ The performance of intraoral tasks by all dental auxiliaries, as permitted by board rules, must be under the direct supervision of a licensed dentist.”

Section 27. Section 37-7-401, MCA, is amended to read:

“37-7-401. Restrictions on prescriptions. (1) ~~It is unlawful for any An~~ authorized prescriber ~~to~~ may not sell, give to, or prescribe for any person any opium, morphine, alkaloid-cocaine, alpha or beta eucaine, codeine, heroin, or any derivative, mixture, or preparation of any of them, except to a patient believed in good faith to require opium, morphine, alkaloid-cocaine, alpha or beta eucaine, codeine, heroin, or any derivative, mixture, or preparation of the enumerated substances for medical use and in quantities proportioned to the needs of the patient.

(2) A prescription must be written so that ~~it~~ the prescription can be compounded by any registered pharmacist. The coding of any prescription is a violation of this section.

(3) A prescription marked “non repetatur”, “non rep”, or “N.R.” cannot be refilled. A prescription marked to be refilled by a specified amount may be filled by any registered pharmacist the number of times marked on the prescription. A prescription not bearing any refill instructions may not be refilled without first obtaining permission from the prescriber. A prescription may not be refilled for more than 1 year from the date ~~it~~ the prescription was originally filled written. A Schedule II prescription may not be refilled.”

Section 28. Section 37-8-101, MCA, is amended to read:

“37-8-101. Purpose. ~~In order to~~ To safeguard life and health, a person practicing or offering to practice:

(1) professional nursing in this state ~~for compensation or personal gain is required to~~ shall submit evidence that the person is qualified to practice and is licensed as provided in this chapter;

(2) practical nursing in this state ~~for compensation or personal gain is required to~~ shall submit evidence that the person is qualified to practice and is licensed as provided in this chapter;

(3) as a medication aide in this state ~~is required to~~ shall submit evidence that the person is qualified to practice and is licensed as provided in this chapter.”

Section 29. Section 37-8-418, MCA, is amended to read:

“37-8-418. Licensed practical nursing — application fee. An applicant for a license to practice as a licensed practical nurse shall pay a nonrefundable fee prescribed by the board to the department at the time the application is

submitted, which fee shall be returned to the applicant if the application is withdrawn not later than 5 days prior to the date of examination or the final submission to the board of application for endorsement without examination, subject to a deduction of an amount prescribed by the board to be retained by the department.”

Section 30. Section 37-10-202, MCA, is amended to read:

“37-10-202. Rulemaking power — seal. (1) The board may adopt rules for the regulation, conduct, supervision, and procedure governing all applicants for ~~certificates of registration~~ *licensure* as optometrists and the practice of optometry not inconsistent with the provisions of this chapter.

(2) The board shall have a common seal.”

Section 31. Section 37-10-301, MCA, is amended to read:

“37-10-301. Certificate License required for practice — unlawful acts — injunction. (1) It is unlawful for a ~~A~~ person to ~~may not~~:

(a) practice optometry in this state unless that person has first obtained a ~~certificate of registration~~ *license*;

(b) sell, barter, or offer to sell or barter a ~~certificate of registration~~ *license* issued by the department;

(c) purchase or procure by barter a ~~certificate of registration~~ *license* with intent to use it ~~the~~ *license* as evidence of the holder’s qualification to practice optometry;

(d) materially alter with fraudulent intent a ~~certificate of registration~~ *license*;

(e) use or attempt to use a ~~certificate of registration~~ *license* that has been purchased, fraudulently issued, counterfeited, or materially altered as a valid ~~certificate of registration~~ *license*;

(f) practice optometry under a false or assumed name;

(g) willfully make a materially false statement in an application for a ~~certificate of registration~~ *license*;

(h) advertise by displaying a sign or by otherwise claiming to be an optometrist without having at the time a valid ~~certificate of registration~~ *license*;

(i) replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions without having at the time a valid ~~certificate of registration~~ *license* as an optometrist; ~~however~~ *However*, this subsection (1)(i) does not prevent an optical mechanic from:

(i) doing the merely mechanical work on an ophthalmic lens that is ordered on a prescription signed by a registered optometrist and is dispensed only by the optometrist or a person employed by the optometrist and who does so in the office of and under the direct personal supervision of an optometrist; or

(ii) replacing or duplicating an existing lens for glasses;

(j) take or make measurements for the purpose of fitting or adapting ophthalmic lenses to the human eye without having at the time a valid ~~certificate of registration~~ *license*. A person who takes or makes measurements or uses mechanical devices for this purpose or who, in the sale of spectacles, eyeglasses, or lenses, uses in the testing of the eyes lenses other than the lenses actually sold is practicing optometry. However, this section does not apply to the

prescriptions of qualified optometrists when sent to a recognized optical laboratory.

(k) measure, fit, or adapt a lens to direct, contiguous contact to the human eyeball without having at the time a valid ~~certificate of registration~~ *license* as an optometrist.

(2) When the board has reasonable cause to believe that a person is violating this section or a rule issued under this chapter, ~~the board~~ may, in addition to other remedies provided in this chapter, bring an action for injunctive relief in district court in the county where the violation occurs to enjoin the person from engaging in or continuing the violation. The department may employ legal counsel to prosecute these actions. In these actions and on notice and hearing, an order or judgment may be entered awarding a temporary restraining order or final injunction as considered proper by the judge of the district court in the county where the violation occurred.”

Section 32. Section 37-10-302, MCA, is amended to read:

“37-10-302. Examination — qualifications — application — issuance of ~~certificate~~ license. (1) The board shall adopt rules relative to and governing the qualifications of applicants for ~~certificates of registration~~ *licensure* as optometrists. If the applicant does not meet the requirements of the rules, the applicant is not eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of the rules, the applicant must pass an examination given by the national board of examiners in optometry on behalf of the department, subject to 37-1-101. Examinations must be practical in character and designed to ascertain the applicant’s fitness to practice the profession of optometry and must be conducted in the English language. The department shall publish and distribute the examination requirements for a ~~certificate~~ *license* to practice optometry in this state. The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry.

(2) A person is not eligible to receive a ~~certificate of registration~~ *license* unless that person is 18 years of age or older and of good moral character.

(3) A person is not eligible to receive a ~~certificate of registration~~ *license* unless that person has ~~certificates of graduation~~ *graduated* from an accredited high school and from a school of optometry in which the practice and science of optometry is taught in a course of study ~~covering 8 semesters or 4 years of actual attendance and~~ that is accredited by the international association of boards of examiners in optometry.

(4) A person desiring a ~~certificate of registration~~ *license* shall file an application, in the manner prescribed by the board, and pay a fee prescribed by the board.

(5) A person who successfully passes the examination administered by the national board of examiners in optometry and who has met the requirements for qualification as an optometrist must be registered in a register kept by the department and, on the payment of a fee prescribed by the board, must receive a ~~certificate of registration~~ *license* signed by the members of the board.”

Section 33. Section 37-10-304, MCA, is amended to read:

“37-10-304. Course in use of diagnostic and therapeutic drugs required. (1) (a) In addition to the requirements of 37-10-302, each person desiring to ~~commence the practice of~~ optometry shall satisfactorily complete a course ~~prescribed by the board of medical examiners with consultation and~~

~~approval by the board of optometrists~~ with particular emphasis on the topical application of diagnostic agents to the eye for the purpose of examination of the human eye and the analysis of ocular functions.

(b) A person presently licensed to practice optometry who wishes to employ diagnostic agents must satisfactorily complete a course referred to in subsection (1)(a) and must pass an examination as provided in subsection (1)(d).

(c) The course referred to in subsection (1)(a) must be conducted by an institution accredited by a regional or professional accreditation organization ~~which that~~ is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course must also be approved by the board.

(d) The board shall provide for an examination in competency in the use of diagnostic drugs and shall issue a certificate to those applicants who pass the examination.

(2) (a) Each person desiring to ~~commence the practice of~~ optometry shall:

(i) pass an examination, of the international association of boards of examiners in optometry, on the diagnosis, treatment, and management of ocular disease; or

(ii) take a course and pass an examination in the diagnosis, treatment, and management of ocular diseases. The course and examination must be conducted by an institution accredited by a regional or professional accreditation organization ~~which that~~ is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course and examination must also be approved by the board.

(b) A person presently licensed to practice optometry who wishes to employ therapeutic pharmaceutical agents must meet the requirements of subsection (2)(a).

(c) The board shall:

(i) provide for an examination in competency in the diagnosis, treatment, and management of therapeutic pharmaceutical agents; and

(ii) issue a certificate to an applicant who passes the examination.”

Section 34. Section 37-10-306, MCA, is amended to read:

“37-10-306. Certificate License to be displayed in office. Every person to whom a ~~certificate of examination or registration~~ license is granted shall display the ~~same~~ license in a conspicuous part of ~~his~~ the person’s office ~~wherein~~ in which the practice of optometry is conducted.”

Section 35. Section 37-10-313, MCA, is amended to read:

“37-10-313. Penalty for violations — deposit of fines. A person who violates this chapter, except 37-10-104, or the rules of the board is guilty of a misdemeanor and on conviction shall be fined not less than \$200 and not more than \$500 or imprisoned in the county jail not exceeding 6 months or both fined and imprisoned. Fines collected, except those collected by a justice’s court, ~~shall~~ must be deposited in the state ~~special revenue~~ general fund for the use of the board, subject to 37-1-101(6).”

Section 36. Section 37-11-106, MCA, is amended to read:

“37-11-106. Application and administration of topical medications — prescription, purchasing, and recordkeeping requirements. (1) A licensed physical therapist may apply or administer topical medications by:

- (a) direct application;
- (b) iontophoresis, a process whereby topical medications are applied through the use of electricity; or
- (c) phonophoresis, a process whereby topical medications are applied through the use of ultrasound.

(2) A licensed physical therapist 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 physical therapist 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 *United States food and drug administration* packaging and labeling guidelines ~~developed by the board of pharmacists under Title 37, chapter 7.~~

(4) Appropriate recordkeeping is required of a physical therapist who applies or administers topical medications as authorized in this section.”

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

“37-14-301. Limitation of license authority — exemptions. (1) A person may not perform x-ray procedures on a person unless licensed or granted a limited permit under this chapter, with the following provisos:

- (a) Licensure is not required for:
 - (i) a student enrolled in and attending a school or college of medicine, osteopathy, podiatry, dentistry, dental hygiene, chiropractic, or radiologic technology who applies x-ray radiation to persons under the specific direction of a person licensed to prescribe examinations or treatment;
 - (ii) a person administering x-ray examinations related to the practice of dentistry or denturtry if the person is certified by the board of dentistry as having passed an examination testing the person’s proficiency to administer x-ray examinations; ~~or~~
 - (iii) a person who performs only darkroom procedures and is under the supervision of a licensed radiologic technologist or radiologist or is able to show evidence of completion of formal training in darkroom procedures as established by rule; *or*
 - (iv) *a person who only operates industrial x-ray equipment that does not involve procedures administered on people.*
- (b) This chapter may not be construed to limit or affect in any respect the practice of their respective professions by licensed practitioners.

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

(3) A radiologic technologist licensed under this chapter may inject contrast media and radioactive isotopes (radionuclide material) intravenously upon request of a licensed practitioner. In the case of contrast media, the licensed practitioner requesting the procedure or the radiologist must be immediately available within the x-ray department. Injections must be for diagnostic studies only and not for therapeutic purposes. Except as provided in 37-14-313, permitted injections include peripheral intravenous injections but specifically exclude intra-arterial or intracatheter injections. An uncertified radiologic technologist, a limited permit technician under 37-14-306, or an individual who is not licensed or authorized under another licensing act may not perform any of the activities listed in this subsection.”

Section 38. Section 37-17-104, MCA, is amended to read:

“37-17-104. Exemptions. This chapter does not prevent:

(1) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, or educators, from doing work of a psychological nature consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words “psychology” or, “psychologist”, “psychological”, or “psychologic”;

(2) the activities, services, and use of an official title clearly delineating the nature and level of training on the part of a person in the employ of a federal, state, county, or municipal agency or of other political subdivisions or an educational ~~or charitable~~ institution, *business corporation, or research laboratory* insofar as these activities and services are a part of the duties of ~~his~~ *the* office or position ~~with~~ *within the confines of* the agency or institution;

(3) the activities and services of a student, intern, or resident in psychology pursuing a course of study at an accredited university or college or working in a generally recognized training center if these activities and services constitute a part of ~~his~~ *the* supervised course of study *of the student, intern, or resident in psychology*;

(4) the activities and services of a person who is not a resident of this state in rendering consulting psychological services in this state when these services are rendered for a period which does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the laws of the state or country of ~~his~~ *that person's* residence to perform these activities and services; however, these persons shall report to the department the nature and extent of the services in this state *prior to providing those services* if ~~they~~ *the services are* to exceed 10 days in a calendar year;

(5) a person authorized by the laws of the state or country of ~~his~~ *the person's* former residence to perform activities and services, who has recently become a resident of this state and who has ~~applied~~ *submitted a completed application* for a license in this state, from performing ~~such~~ *the* activities and services pending disposition of ~~his~~ *the person's* application; *and*

(6) the use of the term “social psychologist” by a person who:

(a) ~~has been graduated with a doctoral degree in sociology or social psychology from an institution and whose credits in sociology or social psychology are acceptable by a recognized educational institution;~~

~~(b) has passed comprehensive examinations in the field of social psychology as part of the requirement for the doctoral degree or who has had equivalent specialized training in social psychology; and~~

~~(c) has filed with the department a statement of facts demonstrating his compliance with this subsection;~~

~~(7)(6) the offering of lecture services for a fee by a person exempted from licensing requirements by virtue of his employment;~~

~~(8) activities of a psychological nature on the part of a person who is a salaried employee of an accredited academic institution, governmental agency, research laboratory, or business corporation if he is performing the duties for which he is employed by the organization within the confines of the organization.”~~

Section 39. Section 37-18-104, MCA, is amended to read:

“37-18-104. Exemptions — rules. (1) This chapter does not apply to:

(a) ~~veterinarians~~ *a veterinarian* in the performance of ~~their~~ *the veterinarian's* official duties, either civil or military, in the service of the United States unless ~~they engage~~ *the veterinarian is engaged* in the practice of veterinary medicine in a private capacity;

(b) laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of this state or the United States and engaged in labors in laboratories under the direct supervision of the board of livestock, Montana state university-Bozeman, or the United States;

~~(c) lawfully qualified veterinarians from other states or a foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation;~~

~~(d)(c) a veterinarian residing on a border of a neighboring practicing in another state or country and authorized under the laws of that state or country to practice veterinary medicine, who is actually called to attend cases in this state but who does not open an office or appoint a place to meet patients or receive calls in this state, if veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state whose practice in this state is limited to an occasional case as that term is defined in board rule;~~

~~(e)(d) the employment of a veterinary medical students student who have has successfully completed 3 years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association, if the students are student is employed by and work works under the immediate supervision of a veterinarian licensed and registered under this chapter; or~~

~~(f)(e) a person advising with respect to or performing acts that the board defines by rule as accepted livestock management practices.~~

(2) The operations known and designated as castrating or dehorning of cattle, sheep, horses, and swine are not the practice of veterinary medicine within the meaning of this chapter.

(3) Nonsurgical embryo transfers in bovines may be performed under the supervision of a veterinarian licensed and residing in Montana. At a minimum, board rules regarding nonsurgical embryo transfers in bovines must address:

(a) minimum education requirements;

- (b) minimum requirements of practical experience;
- (c) continuing education requirements;
- (d) limitations on practices and procedures that may be performed by certified individuals;
- (e) the use of specific drugs necessary for safe and proper practice of certified procedures;
- (f) content and administration of the certification test, including written and practical testing;
- (g) application and reexamination procedures; and
- (h) conduct of certified individuals, including rules for suspension, revocation, and denial of certification.

(4) This chapter does not prohibit a person from caring for and treating the person's own farm animals or being assisted in this treatment by the person's full-time employees, as defined in 2-18-601, employed in the conduct of the person's business or by other persons whose services are rendered gratuitously in case of emergency.

(5) This chapter does not prohibit the selling of veterinary remedies and instruments by a registered pharmacist at the pharmacist's regular place of business.

(6) This chapter does not prohibit an employee of a licensed veterinarian from performing activities determined by board rule to be acceptable, when performed under the supervision of the employing veterinarian.

(7) This chapter does not prohibit an employee of a licensed veterinarian from rendering care for that veterinarian's animal patients in cases of emergency. Permissible emergency employee activities under this subsection include activities determined by board rule to be acceptable but do not include the performance of surgery or the rendering of diagnoses.

(8) This chapter does not prohibit a certified agency from possessing, or a certified euthanasia technician from administering, any controlled substance authorized by the board for the purpose of euthanasia pursuant to part 6 of this chapter. (Subsection (8) terminates January 1, 2008—sec. 11, Ch. 60, L. 2003.)”

Section 40. Section 37-19-101, MCA, is amended to read:

“37-19-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) “Arrangements” includes:
 - (a) planning the details of funeral service, including time of service, type of service, and, if requested, acquiring the services of clergy;
 - (b) obtaining the necessary information for filing death certificates ~~and obtaining burial transit permits;~~
 - (c) comparing or discussing prices, including merchandise prices and financial arrangements; and
 - (d) providing for onsite direction and coordination of participants and onsite direction, coordination, and facilitation at funeral, graveside, or memorial services or rites.
- (2) “At-need” arrangements means arrangements made by an authorized person on behalf of a deceased.

(3) "Authorizing agent" means a person legally entitled to order the final disposition, including burial, cremation, entombment, donation to medical science, or other means, of human remains. An authorizing agent is, in order of preference:

- (a) a spouse;
- (b) a majority of adult children;
- (c) a parent;
- (d) a close relative of the deceased; or

(e) in the absence of a person or persons listed in subsections (1)(a) through (1)(d), a personal representative, a public administrator, the deceased through a preneed authorization, or others as designated by board rule.

(4) "Board" means the board of funeral service provided for in 2-15-1743.

(5) "Branch establishment" means a separate facility that may or may not have a suitable visitation room or preparation room and that is owned by, a subsidiary of, or otherwise financially connected to or controlled by a licensed mortuary.

(6) "Cemetery" means any land or structure in this state dedicated to and used or intended to be used for interment of cremated remains or human remains. It may be any one or a combination of a burial park for earth interments, a mausoleum for crypt or niche interments, or a columbarium.

(7) "Cemetery company" means an individual, partnership, corporation, or association that:

- (a) owns or controls cemetery lands or property and conducts the business of a cemetery; or
- (b) applies to the board to own or control cemetery lands or property and conduct the business of a cemetery.

(8) "Closed container" means a container in which cremated remains can be placed and enclosed in a manner that prevents leakage or spillage of cremated remains or entrance of foreign material.

(9) "Columbarium" means a room or space in a building or structure used or intended to be used for the interment of cremated remains.

(10) "Cremated remains" means all human remains recovered after the completion of the cremation, including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.

(11) "Cremation" means the technical process, using heat, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation.

(12) "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers of crematoriums licensed by this chapter must be used exclusively for the cremation of human remains.

(13) "Cremation container" means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet substantially all of the following standards:

- (a) be composed of readily combustible materials suitable for cremation;
- (b) be able to be closed in order to provide a complete covering for the human remains;

(c) be resistant to leakage and spillage;

(d) be rigid enough for handling with ease; and

(e) be able to provide protection for the health, safety, and integrity of crematory personnel.

(14) "Crematory" means the building or portion of a building that houses the cremation chamber and the holding facility.

(15) "Crematory operator" means the person in charge of the licensed crematory facility.

(16) "Crematory technician" means an employee of a crematory facility who is trained to perform cremations and is licensed by the board.

(17) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person.

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

(19) "Embalming" means:

(a) obtaining burial or removal permits or assuming other duties incidental to the practice of embalming;

(b) disinfecting and preserving or attempting to preserve dead human bodies in their entirety or in parts by the use of chemical substances, fluids, or gases ordinarily intended for that use by introducing the chemical substances, fluids, or gases into the body by vascular or hypodermic injection or by direct introduction into the organs or cavities; and

(c) restorative art.

(20) "Funeral directing" includes:

(a) supervising funerals;

(b) the making of preneed or at-need contractual arrangements for funerals;

(c) preparing dead bodies for burial, other than by embalming;

(d) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and

(e) representing to the public that one is a funeral director.

(21) "Holding facility" means an area within or adjacent to the crematory facility designated for the retention of human remains prior to cremation that must:

(a) comply with any applicable public health law;

(b) preserve the dignity of the human remains;

(c) recognize the health, safety, and integrity of the crematory operator and crematory personnel; and

(d) be secure from access by anyone other than authorized personnel.

(22) "Human remains" means the body of a deceased person or part of a body or limb that has been removed from a living person, including the body, part of a body, or limb in any stage of decomposition.

(23) "Interment" means any lawful disposition of cremated remains or human remains.

(24) (a) "Intern" means a person who has met the educational and testing requirements for a license to practice mortuary science in Montana, has been licensed by the board as an intern, and is engaged in the practice of mortuary science under the supervision of a licensed mortician.

(b) For the purposes of this subsection (24), "supervision" means the extent of oversight that a mortician believes an intern requires based upon the training, experience, judgment, and professional development of the intern.

(25) "Lot" or "grave space" means a space in a cemetery used or intended to be used for interment.

(26) "Mausoleum" means a community-type room or space in a building or structure used or intended to be used for the interment of human remains in crypts or niches.

(27) "Mortician" means a person licensed under this chapter to practice mortuary science.

(28) (a) "Mortuary" means a place of business licensed by the board, located in a building or portion of a building having a specific street address or location, containing but not limited to a suitable room for viewing or visitation and a preparation room, and devoted exclusively to activities that are related to the preparation and arrangements for funerals, transportation, burial, or other disposition of dead human bodies.

(b) The term includes conducting activities from the place of business referred to in subsection (28)(a) that are incidental, convenient, or related to the preparation of funeral or memorial services or rites or the transportation, burial, cremation, or other disposition of dead human bodies in any area where those activities may be conducted.

(29) "Mortuary science" means the profession or practice of funeral directing and embalming.

(30) "Niche" means a space in a columbarium or mausoleum used or intended to be used for the interment of the cremated remains or human remains of one or more deceased persons.

(31) "Perpetual care and maintenance" means continual and proper maintenance of cemetery buildings, grounds, and lots or grave spaces.

(32) "Preneed arrangements" means arrangements made with a licensed funeral director or licensed mortician by a person on the person's own behalf or by an authorized individual on the person's behalf prior to the death of the person.

(33) "Temporary container" means a receptacle for cremated remains that is usually made of cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.

(34) "Urn" means a receptacle designed to permanently encase the cremated remains."

Section 41. Section 37-35-202, MCA, is amended to read:

"37-35-202. Licensure requirements — examination — fees. (1) To be eligible for licensure as a licensed addiction counselor, the applicant shall submit an application fee in an amount established by the department by rule and a written application on a form provided by the department that demonstrates that the applicant has completed the eligibility requirements and competency standards as defined by department rule.

(2) A person may apply for licensure as a licensed addiction counselor if the person has:

(a) received a baccalaureate *or advanced* degree in alcohol and drug studies, psychology, sociology, social work, *or* counseling, *or a related field comparable degree* from an accredited college or university; *or*

(b) received an associate of arts degree in alcohol and drug studies, addiction, or substance abuse from an accredited institution.

(3) Prior to becoming eligible to begin the examination process, each person shall complete supervised work experience in an addiction treatment program as defined by the department, in an internship approved by the department, or in a similar program recognized under the laws of another state.

(4) Each applicant shall successfully complete a competency examination, *in writing only*, ~~process~~ as defined by rules adopted by the department.

(5) A person holding a license to practice as a licensed addiction counselor in this state may use the title "licensed addiction counselor".

(6) For the purposes of this section, "comparable degree" means a degree with accredited college course work, of which 6 credit hours must be in human behavior, sociology, psychology, or a similar emphasis, 3 credit hours must be in psychopathology or course work exploring patterns and courses of abnormal or deviant behavior, and 9 credit hours must be in counseling. For the 9 credit hours in counseling, 6 credit hours must be in group counseling and 3 credit hours must be in the theory of counseling. The credit hours specified in this subsection may be obtained in an associate or master's degree program if the applicant does not have a qualifying baccalaureate degree.

Section 42. Section 37-60-202, MCA, is amended to read:

"37-60-202. Rulemaking power. The board shall adopt and enforce rules:

~~(1) specifying the form of and procedure to be used in granting, denying, suspending, or revoking any license or identification card;~~

~~(2)(1)~~ fixing the qualifications of resident managers, qualifying agents, licensees, and holders of identification cards, in addition to those prescribed in this chapter, necessary to promote and protect the public welfare;

~~(3)(2)~~ establishing, in accordance with 37-1-134, application ~~and examination~~ fees for original or renewal licenses and identification cards, and providing for refunding of any fees;

~~(4)(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 ~~those branch offices identified in subsection (3)(a);~~

~~(5)(4)~~ for the certification of private investigator and private security guard training programs, including the certification of firearms training programs ~~and firearms instructors;~~

(5) *for the licensure of firearms instructors;*

(6) for the approval of weapons;

(7) requiring the maintenance of records;

(8) requiring licensees to file an insurance policy ~~or proof of financial responsibility as the board considers necessary~~ 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 43. Section 37-60-302, MCA, is amended to read:

“37-60-302. Qualifying agent and resident manager required — substitution. (1) Any ~~person not a resident of this state who~~ *out-of-state contract security company or proprietary security organization that* applies for a license under this chapter shall, before application to the board, appoint for the duration of the license a qualifying agent and a resident manager. Every qualifying agent and resident manager shall satisfy the appropriate licensing requirements of this chapter.

(2) A resident manager must be appointed for each branch office located in this state, and the business of the applicant or licensee must be conducted under ~~his~~ *the resident manager’s* direct supervision and control.

(3) If a qualifying agent or resident manager for any reason ceases to perform the duties of a qualifying agent or resident manager on a regular basis, the licensee shall promptly notify the board ~~by certified mail~~ of that fact and of the name of a substitute individual, who shall ~~make application~~ *apply* to the board for continuation of the license. Pending application by and board action upon the application of the substitute, the board may suspend the license or extend it for a reasonable time.”

Section 44. Section 37-60-303, MCA, is amended to read:

“37-60-303. License qualifications. (1) Except as provided in subsection (8), an applicant for licensure under this chapter is subject to the provisions of this section and shall submit evidence under oath that the applicant:

(a) is at least 18 years of age;

~~(b) is a citizen of the United States;~~

(b) is a citizen of the United States;

~~(c)~~*(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)~~*(d)* has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

~~(e)~~*(e)* is not suffering from habitual drunkenness or from narcotics addiction or dependence;

~~(f)~~*(f)* is of good moral character; and

~~(g)~~*(g)* has complied with other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard shall:

(a) complete the training requirements of a private security guard training program certified by the board and provide, on a form prescribed by the board, written notice of satisfactory completion of the training; and

(b) fulfill other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that the applicant:

- (a) is at least 21 years of age;
- (b) has at least a high school education or *its* *the* equivalent;
- (c) has not been dishonorably discharged from any branch of the United States military service; *and*
- ~~(d) for a period of not less than 3 years:~~
 - ~~(i) has been lawfully engaged in the private investigative business;~~
 - ~~(ii) has been lawfully employed as a private investigator or been the holder of a certificate of authority to conduct a private investigative business; or~~
 - ~~(iii) has been an investigator, detective, special agent, or peace officer of a city, county, or state government or of the United States government; and~~
- ~~(e)~~(d) has fulfilled any other requirements as the board may by rule prescribe.

(4) ~~Up to one half of the experience required by subsection (3)(d) may be met by a combination of education and training as accepted by the board. All college credits must be from an accredited college or university and be verified by transcript. The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.~~

(5) ~~Applicants~~ An applicant who will wear or carry ~~firearms~~ a firearm in performance of ~~their~~ the applicant's duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as ~~it~~ the board may by rule prescribe.

~~(6) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.~~

~~(7)~~(6) Except for an applicant subject to the provisions of subsection (8), the board shall require a background investigation of each applicant for licensure under this chapter that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.

~~(8)~~(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.

~~(b) The board shall establish by rule the license application procedure and application fee for business entities described in subsection (8)(a).~~

~~(e)~~(b) Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (8)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant to the requirements of this part."

Section 45. Section 37-60-304, MCA, is amended to read:

"37-60-304. Licenses — application form and content. (1) Except as provided in ~~37-60-303(8)~~ 37-60-303(7), an application for a license must be ~~made on a form prescribed by the board 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;

(e) one recent photograph of the applicant, of a type prescribed by the ~~board~~ department, and ~~two~~ one classifiable ~~sets~~ 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.

(4) The submittal of fingerprints ~~must be~~ is a prerequisite to the issuance of a license by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

~~(5) The board shall send written notification to the chief of police, sheriff, and county attorney in whose jurisdiction the principal office of the applicant is to be located that an application has been submitted."~~

Section 46. Repealer. Section 37-3-302, MCA, is repealed.

Section 47. Effective date. [This act] is effective July 1, 2005.

Approved March 30, 2005

CHAPTER NO. 127

[HB 370]

AN ACT REVISING THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT; REVISING PROCEDURES FOR CONTESTED CASE HEARINGS; ELIMINATING CERTAIN PERMIT APPLICATION FEE REQUIREMENTS; REVISING THE BOND RELEASE PROCEDURES; CLARIFYING THE PROHIBITION ON MINING CERTAIN LANDS; CLARIFYING THE HEARING REQUIREMENTS ON THE DEPARTMENT'S PERMIT DECISIONS; PROVIDING CRITERIA FOR AN ADMINISTRATIVELY COMPLETE BOND RELEASE APPLICATION; REQUIRING PUBLIC NOTICE FOR A BOND RELEASE; REVISING THE OBJECTION PROCESS FOR A BOND RELEASE; CLARIFYING PROCEDURES FOR MODIFICATIONS OF BOND RELEASE APPLICATIONS; CLARIFYING THE VEGETATION RECLAMATION REQUIREMENTS; ALLOWING A PERMITTEE TO REQUEST A CONTESTED CASE HEARING ON A PERMIT SUSPENSION OR REVOCATION; AMENDING SECTIONS 82-4-206, 82-4-223, 82-4-225, 82-4-226, 82-4-227, 82-4-231, 82-4-232, 82-4-233, 82-4-235, AND 82-4-251, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 82-4-206, MCA, is amended to read:

"82-4-206. Procedure for contested case hearings. (1) ~~A person aggrieved by a final decision of the department under this part~~ *An applicant, permittee, or person with an interest that is or may be adversely affected* may

request a hearing before the board *on any of the following decisions of the department* by submitting a written request stating the reason for the request within 30 days after the department's decision:

- (a) *approval or denial of an application for a permit pursuant to 82-4-231;*
- (b) *approval or denial of an application for a prospecting permit pursuant to 82-4-226;*
- (c) *approval or denial of an application to increase or reduce a permit area pursuant to 82-4-225;*
- (d) *approval or denial of an application to renew or revise a permit pursuant to 82-4-221; or*
- (e) *approval or denial of an application to transfer a permit pursuant to 82-4-238 or 82-4-250.*

(2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under subsection (1)."

Section 2. Section 82-4-223, MCA, is amended to read:

"82-4-223. Permit fee and surety Surety bond. ~~(1) An application fee of \$100 shall be paid before the permit required in this part shall be issued.~~

~~(2)~~(1) Before a permit may be issued, the operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in ~~the penal sum~~ *an amount* to be determined by the department of not less than \$200 for each acre or fraction thereof ~~thereof of an acre~~ of the area of land affected, with a minimum bond of \$10,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the board. The operator may elect to deposit cash, negotiable bonds, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of ~~such~~ *these* securities ~~shall~~ *must* be equal to or greater than the amount of the bond required for the bonded area. The level of bonding ~~shall~~ *must* be relative to the degree of disturbance projected by the original permit and the annual report. A political subdivision or agency of the state need not file a bond unless required to do so by the department. The department shall adjust the amount of bond required if the cost of reclamation changes.

~~(3)~~(2) In determining the amount of the bond, the department shall take into consideration the character and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required, but ~~in no event shall~~ the bond *may not* be less than the total estimated cost to the state of completing the work described in the reclamation plan."

Section 3. Section 82-4-225, MCA, is amended to read:

"82-4-225. Application for increase or reduction in permit area. The department may increase or reduce the area of land affected by an operation under a permit on application by an operator, but an increase may not extend the period for which an original permit was issued. An operator may, at any time, apply to the department for an amendment of the permit so as to increase or reduce the acreage affected by it. The operator shall file an application and map in the same form and with the same content as required for an original application under this part and ~~shall pay an application fee of \$50 and~~ shall file with the department a supplemental bond in the amount to be determined

under 82-4-223 for each acre or fraction of an acre of the increase approved. All procedures of this part pertaining to original applications apply to applications for the increase of the area of land affected, except for incidental boundary revisions. If the department approves a reduction in the acreage covered by the original or supplemental permit, it shall release the bond for each acre reduced, but ~~in no case shall~~ the bond *may not* be reduced below \$10,000, except as provided in 82-4-223.”

Section 4. Section 82-4-226, MCA, is amended to read:

“82-4-226. Prospecting permit. (1) Except as provided in subsection (8), prospecting by any person on land not included in a valid strip-mining or underground-mining permit is unlawful without possessing a valid prospecting permit issued by the department as provided in this section. A prospecting permit may not be issued until the person submits an application, the application is examined, amended if necessary, and approved by the department, and an adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this part.

(2) An application for a prospecting permit must be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application must include among other things a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface-mining or underground-mining map and reclamation plan under this part. The department shall determine by rules the precise nature of the required prospecting map and reclamation plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and other information that may be required by the department. The applicant shall state what types of prospecting and excavating techniques will be employed on the affected land. The application must also include any other or further information that the department may require.

~~(3) The application must be accompanied by a fee of \$100. This fee must be used as a credit toward the strip-mining or underground-mining permit fee provided by this part if the area covered by the prospecting permit becomes covered by a valid surface-mining or underground-mining permit obtained before or at the time the prospecting permit expires.~~

~~(4)~~(3) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

~~(5)~~(4) In the event that the holder of a prospecting permit desires to strip mine or underground mine the area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or underground-mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan must be promptly reclaimed.

~~(6)~~(5) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation in the same manner as strip-mining or underground-mining permits under this part.

~~(7)~~(6) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under this part.

~~(8)~~(7) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to 82-4-227 or 82-4-228, that is not conducted for the purpose of determining the location, quality, or quantity of a mineral deposit, and that does not remove more than 250 tons of coal is not subject to subsections (1) through ~~(7)~~ (6). In addition, prospecting that is conducted to determine the location, quality, or quantity of a mineral deposit outside an area designated unsuitable, that does not remove more than 250 tons of coal, and that does not substantially disturb the natural land surface is not subject to subsections (1) through ~~(7)~~ (6). However, a person who conducts prospecting described in this subsection shall file with the department a notice of intent to prospect that contains the information required by the department before commencing prospecting operations. If this prospecting substantially disturbs the natural land surface, it must be conducted in accordance with the performance standards of the board's rules regulating the conduct and reclamation of prospecting operations that remove coal. The department may inspect these prospecting and reclamation operations at any reasonable time."

Section 5. Section 82-4-227, MCA, is amended to read:

"82-4-227. Refusal of permit. (1) An application for a prospecting, strip-mining, or underground-mining permit or major revision may not be approved by the department unless, on the basis of the information set forth in the application, in an onsite inspection, and in an evaluation of the operation by the department, the applicant has affirmatively demonstrated that the requirements of this part and rules will be observed and that the proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area can be carried out consistently with the purpose of this part. The applicant for a permit or major revision has the burden of establishing that the application is in compliance with this part and the rules adopted under it.

(2) The department may not approve the application for a prospecting, strip-mining, or underground-mining permit when the area of land described in the application includes land that has special, exceptional, critical, or unique characteristics or when mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land that has special, exceptional, critical, or unique characteristics. For the purposes of this part, land is defined as having these characteristics if it possesses special, exceptional, critical, or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock;

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonably foreseeable future;

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary

effects felt by it could precipitate a systemwide reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archaeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. In applying the provisions of this subsection (d), particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.

(3) The department may not approve an application for a strip- or underground-coal-mining permit or major revision unless the application affirmatively demonstrates that:

(a) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the department and the proposed operation of the mining operation has been designed to prevent material damage to the hydrologic balance outside the permit area; and

(b) the proposed strip- or underground-coal-mining operation would not:

(i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and excluding land about which the department finds that if any farming will be interrupted, discontinued, or precluded, it is of such small acreage as to be of negligible impact on the farm's agricultural production; or

(ii) materially damage the quantity or quality of water in surface water or underground water systems that supply the valley floors described in subsection (3)(b)(i).

(4) Subsection (3)(b) does not affect those strip- or underground-coal-mining operations that in the year preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the department to conduct strip- or underground-coal-mining operations within alluvial valley floors. If coal deposits are precluded from being mined under this subsection, the director of the department shall certify to the secretary of interior that the mineral owner or lessee may be eligible for participation in coal exchange programs pursuant to section 510(5) of Public Law 95-87.

(5) (a) If the area proposed to be mined contains prime farmland, the department may not grant a permit to mine coal on the prime farmland unless it finds in writing that the applicant:

(i) has the technological capability to restore the mined area, within a reasonable time, to levels of yield equivalent to or higher than nonmined prime farmland in the surrounding area under equivalent levels of management; and

(ii) can meet the soil reconstruction standards of 82-4-232(3).

(b) Nothing in this subsection (5) applies to a permit issued prior to August 3, 1977, or to any revisions or renewals of the permit or to any existing strip- or underground-mining operations for which a permit was issued prior to August 3, 1977.

(6) If the department finds that the overburden on any part of the area of land described in the application for a prospecting, strip-mining, or underground-mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land

described in the application upon which the overburden exists. The burden is on the applicant to demonstrate that any area should not be deleted under this subsection.

(7) If the department finds that the operation will constitute a hazard to a dwelling, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting, strip-mining, or underground-mining permit application before it can be approved. Strip- or underground-coal-mining may not be allowed:

(a) within 300 feet of an occupied dwelling, unless waived by the owner;

(b) within 300 feet of any public building, school, church, community, or institutional building, or public park;

(c) within 100 feet of a cemetery;

(d) within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join the right-of-way line. The department may permit the roads to be relocated or the area affected to lie within 100 feet of the road if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected will be protected.

(8) Strip- or underground-mining may not be conducted within 500 feet of active or abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners. However, the department shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if:

(a) the nature, timing, and sequencing of specific strip-mine activities and specific underground-mine activities are jointly approved by the department and the regulatory authority concerned with the health and safety of underground miners; and

(b) the operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(9) The department may not approve an application for a strip- or underground-coal-mining operation if the area proposed to be mined is included:

(a) within an area designated unsuitable for strip or underground coal mining; or

(b) within an area under review for this designation under an administrative proceeding, unless in an area as to which an administrative proceeding has commenced pursuant to this part, the operator making the permit application demonstrates that prior to January 1, 1977, the operator made substantial legal and financial commitments in relation to the operation for which the operator is applying for a permit.

(10) A permit or major permit revision for a strip- or underground-coal-mining operation may not be issued unless the applicant has affirmatively demonstrated by its coal conservation plan that failure to conserve coal will not occur. The department may require the applicant to submit any information it considers necessary for review of the coal conservation plan.

(11) Whenever information available to the department indicates that a strip- or underground-coal-mining operation that is owned or controlled by the

applicant or by any person who owns or controls the applicant is currently in violation of Public Law 95-87, as amended, any state law required by Public Law 95-87, as amended, or any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection, the department may not issue a strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision, until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the administering agency.

(12) The department may not issue a strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision, to any applicant that it finds, after an opportunity for hearing, owns or controls any strip- or underground-coal-mining operation that has demonstrated a pattern of willful violations of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, when the nature and duration of the violations and resulting irreparable damage to the environment indicate an intent not to comply with the provisions of this part.

(13) Subject to valid existing rights, no strip- or underground-coal-mining operations except those that existed as of August 3, 1977, may be conducted:

(a) on lands within the boundaries of units of the national park system, the national wildlife refuge ~~systems~~ *system*, the national wilderness preservation system, *the national system of trails*, the wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act or *study rivers or study river corridors established in any guidelines issued under that act*, or national recreation areas designated by *an act of congress*; or

(b) *on any federal lands within national forests, subject to the exceptions and limitations of 30 CFR 761.11(b) and the procedures of 30 CFR 761.13.*"

Section 6. Section 82-4-231, MCA, is amended to read:

"82-4-231. Submission of and action on reclamation plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by the operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of operation, a plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, and topsoiling and a reclamation plan for the area of land affected by the operation. In developing a method of operation and plans of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation, all measures must be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan must set forth in detail the manner in which the applicant intends to comply with 82-4-232 through 82-4-234 and this section and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for a permit or major revision of a permit, which must contain the reclamation plan, must be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 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. The application is presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the application is administratively complete, the applicant shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest that is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority may file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for its decision within 60 days of the informal conference. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(7) The filing of written objections or a request for an informal conference may not preclude the department from proceeding with its review of the application as specified in subsection (8).

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications to the application or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

(c) If an environmental impact statement is determined to be necessary prior to making a permit decision, the department shall complete and publish

the final environmental impact statement at least 15 days prior to the date of issuance of the written findings pursuant to subsection (8)(f).

(d) Except as provided in 75-1-208(4)(b), within 120 days after it determines that an application is administratively complete, the department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in the department's notification are presumed to be acceptable. Except as provided in 75-1-208(4)(b), 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 120 days of the date of receipt whether the revised application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness determination.

(e) When the application is determined to be acceptable, the department shall publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. Any person having an interest that is or may be adversely affected may file a written objection to the determination within 10 days of the department's last published notice. If a written objection is filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons for the decision within 10 days of the informal conference.

(f) Except as provided in 75-1-208(4)(b), the department shall prepare written findings granting or denying the permit or major revision application in whole or in part not later than 45 days from the date the application is determined acceptable. However, if lands subject to the federal lands program are included in the application for permit or major revision, the department shall prepare and submit written findings to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when the concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification to the applicant.

(g) If the department fails to act within the times specified in this subsection (8), it shall immediately notify the board in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by the department's permit decision may within 30 days of that decision submit a written notice requesting a hearing. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing must be held *started* within 30 days of the request. For purposes of a hearing, the ~~department board or its hearings officer~~ may order site inspections of the area pertinent to the application. The ~~department board~~ shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. A person who presided at the informal conference may not preside at the hearing or participate in the decision.

(10) In addition to the method of operation, grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1), shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid-producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the department approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant is required to show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health or to domestic livestock or a viable agricultural operation, or violate any other restrictions the department may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in a manner that will prevent or minimize land subsidence. The remaining waste material must be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of those resources when practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in adjacent areas and to the quality and quantity of water in surface water and ground water systems both during and after strip- or underground-coal-mining operations and during reclamation as necessary to support postmining land uses and to prevent material damage to the hydrologic balance in the adjacent area by:

(i) avoiding acid or other toxic mine drainage by measures including but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content that adversely affects downstream water upon being released to watercourses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but the contributions may not be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to commencement of strip- or underground-mining operations, with the structures to be certified by a qualified registered engineer and to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations that requires the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country;

(vii) designing and constructing reclaimed channels of intermittent streams and perennial streams to ensure long-term stability; and

(viii) any other actions that the department may prescribe to protect the hydrologic balance as necessary to support postmining land uses within the area affected and to prevent material damage to the hydrologic balance in adjacent areas;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except when the department determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in proximity to the channel so as to seriously alter the normal flow of water;

(q) meet other criteria that are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions that constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in a manner that prevents a gravity discharge of water from the mine.

(11) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling or otherwise placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land that is under permit and for which a bond has been posted under 82-4-223 or place the materials described in this section in a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in a manner that protects areas outside the permit area. (Certain 2003 amendments void on occurrence of contingency—sec. 15, Ch. 204, L. 2003.)”

Section 7. 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) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater

productive capacity; and 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) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of such 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 existed in the natural soil; and 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 that it can sustain vegetation of at least the quality and variety it sustained prior to removal, provided that 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 a request~~ *an application* with the department for the release of all or part of a performance bond ~~or deposit. Within 30 days after any application for bond or deposit release has been filed with the department, the permittee shall submit a copy of an advertisement notice placed at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the prospecting or mining operation. The notice is considered part of any bond release~~ *The application and must contain a notification 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.

~~(b)(h)~~ Upon receipt of the request and copies of the notification made under subsection (6)(a), 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. The department shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond within 60 days of the filing of the request if a public hearing is not held pursuant to subsection (6)(f) or, if a public hearing is held pursuant to that subsection, within 30 days after the hearing.

(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.

~~(e)(k)~~ The department may release the bond or deposit in whole or in part if it is satisfied the reclamation covered by the bond or deposit or portion of the bond or deposit 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)(e)(ii)~~ (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 ~~or deposit~~ may not be released under this subsection ~~(6)(e)(ii)~~ (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.

~~(d)(l)~~ If the department disapproves the application for release of the bond or a portion of the bond, it shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing opportunity for a public hearing.

(e)(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.

~~(f) Any person with a valid legal interest that might be adversely affected by release of the 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 operations has the right to file written objections to the proposed release from bond to the department within 30 days after the last publication of the notice provided for in subsection (6)(a). If written objections are filed and a hearing is requested, the department shall inform all the interested parties of the time and place of the hearing and, within 30 days of the request for the hearing, hold a public hearing in the locality of the operation proposed for bond release. 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, and the hearing must be held in the locality of the operation proposed for bond release or at the state capital, at the option of the objector, within 30 days of the request for the hearing.~~

~~(g) Without prejudice to the rights of the objectors or the permittee or the responsibilities of the department pursuant to this section, the department may establish an informal conference to resolve written objections.~~

~~(h) For the purpose of the hearing under subsection (G)(f), 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 site 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.~~

(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 ~~alternate~~ *alternative* land use.

(ii) The ~~alternate~~ *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 ~~alternate~~ *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. (Certain 2003 amendments void on occurrence of contingency—sec. 15, Ch. 204, L. 2003.)”

Section 8. Section 82-4-233, MCA, is amended to read:

“82-4-233. Planting of vegetation following grading of disturbed area. (1) The operator shall establish on regraded areas and on all other disturbed areas, except water areas, surface areas of roads, and other

constructed features approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is:

- (a) diverse, effective, and permanent;
 - (b) composed of species native to the area or of introduced species when desirable and necessary to achieve the postmining land use and when approved by the department;
 - (c) at least equal in extent of cover to the natural vegetation of the area; and
 - (d) capable of stabilizing the soil surface in order to control erosion to the extent appropriate for the approved postmining land use.
- (2) The reestablished plant species must:
- (a) be compatible with the approved postmining land use;
 - (b) have the same seasonal growth characteristics as the original vegetation;
 - (c) be capable of self-regeneration and plant succession;
 - (d) be compatible with the plant and animal species of the area; and
 - (e) meet the requirements of applicable seed, poisonous and noxious plant, and introduced species laws or regulations.
- (3) Reestablished vegetation must be appropriate to the postmining land use so that when the postmining land use is:
- (a) cropland, the requirements of subsections (1)(a), (1)(c), (2)(b), and (2)(c) are not applicable;
 - (b) pastureland or grazing land, reestablished vegetation must have use for grazing by domestic livestock at least comparable to premining conditions or enhanced when practicable;
 - (c) fish and wildlife habitat, forestry, or recreation, trees and shrubs must be planted to achieve appropriate stocking rates.
- (4) All underground shafts, tunnels, or other excavations are excluded from the provisions of subsection (1).
- ~~(5) For land that was mined, disturbed, or redisturbed after May 2, 1978, and that was seeded prior to January 1, 1984, using a seed mix that was approved by the department and on which the reclaimed vegetation otherwise meets the requirements of subsections (1) and (2) and applicable state and federal seed and vegetation laws and rules, introduced species are considered desirable and necessary to achieve the postmining land use and may compose a major or dominant component of the reclaimed vegetation. (Certain 2003 amendments void on occurrence of contingency—sec. 15, Ch. 204, L. 2003.)~~

Section 9. Section 82-4-235, MCA, is amended to read:

“82-4-235. Determination of successful revegetation — final bond release. (1) Success of revegetation must be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in the natural vegetation, and the requirements of 82-4-233. Standards for success are:

- (a) for areas reclaimed for use as cropland, crop production must be at least equal to that achieved prior to mining based on comparison with historical data, comparable reference areas, or United States department of agriculture

publications applicable to the area of the operation, as referenced in rules adopted by the board;

(b) for areas reclaimed for use as pastureland or grazing land, the ground cover and production of living plants on the revegetated area must be at least equal to that of a reference area or other standard approved by the department as appropriate for the postmining land use;

(c) for areas reclaimed for use as fish and wildlife habitat, forestry, or recreation, success of revegetation must be determined on the basis of approved tree density standards or shrub density standards, or both, and vegetative ground cover required to achieve the postmining land use;

(d) reestablished vegetation is diverse if multiple plant species meeting the requirements of 82-4-233(1)(b) are present. The department may approve a lesser diversity standard for postmining land uses other than grazing land.

(e) reestablished vegetation is considered effective if the postmining land use is achieved and erosion is controlled;

(f) reestablished vegetation is considered permanent if it is diverse and effective at the end of the 10-year responsibility period specified under subsection (2); and

(g) plant species composing the reestablished vegetation are considered to have the same seasonal characteristics of growth as the original vegetation, to be capable of regeneration and plant succession, and to be compatible with the plant and animal species of the area if those plant species are native to the area, are introduced species that have become naturalized, or are introduced species approved by the department as desirable and necessary to achieve the postmining land use.

(2) Inspection and evaluation of reclaimed vegetative cover must be made as soon as possible following an application for final bond release to determine if a satisfactory stand has been established. If the department determines that a satisfactory vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). The remaining bond may not be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.

(3) (a) Notwithstanding the provision in subsection (2), on land from which coal was removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in connection with this part after May 2, 1978, *pursuant to a permit issued by the department under this part*, the department may approve for release a bond on an area of reclaimed vegetation that meets the following criteria:

(i) it was seeded using a seed mixture that was approved by the department under the criteria established pursuant to 82-4-233 and that included introduced species; and

(ii) at least one of the following conditions exists:

(A) the standards of 82-4-233(1) are otherwise achieved;

(B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of livestock;

(C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat component for wildlife present in the area; or

(D) the topography and soils are suitable for conversion to cropland or hayland consistent with the standards of 82-4-232 and the department approves and the operator completes that conversion.

(b) On lands that meet the criteria described in subsection (3)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection (2). (Certain 2003 amendments void on occurrence of contingency—sec. 15, Ch. 204, L. 2003.)”

Section 10. Section 82-4-251, MCA, is amended to read:

“82-4-251. Noncompliance — suspension of permits. (1) If it is determined on the basis of an inspection that the permittee is or that any condition or practice exists in violation of any requirement of this part or any permit condition required by this part that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources, the director of the department or an authorized representative shall immediately order cessation of the operation or the portion of the operation relevant to the condition, practice, or violation. The cessation order remains in effect until the director or an authorized representative determines that the condition, practice, or violation has been abated or until modified, vacated, or terminated by the director or an authorized representative pursuant to subsection (5). If the director or an authorized representative finds that the ordered cessation of the operation or any portion of the operation will not completely abate the imminent danger to the health or safety of the public or the significant and imminent environmental harm to land, air, or water resources, the director or the authorized representative shall, in addition to the cessation order, impose affirmative obligations requiring any steps that the director or the authorized representative considers necessary to abate the imminent danger or the significant environmental harm.

(2) When, on the basis of an inspection, the department determines that any permittee is in violation of any requirement of this part or any permit condition required by this part that does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant and imminent environmental harm to land, air, or water resources, the director or an authorized representative shall issue a notice to the permittee or the permittee’s agent fixing a reasonable time, not exceeding 90 days, for the abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the director or an authorized representative, the director or an authorized representative finds that the violation has not been abated, the director or an authorized representative shall immediately order a cessation of the operation or the portion of the operation relevant to the violation. The cessation order remains in effect until the director or an authorized representative determines that the violation has been abated or until modified, vacated, or terminated by the director or an authorized representative pursuant to subsection (5). In the order of cessation issued under this subsection, the director shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.

(3) When, on the basis of an inspection, the director or an authorized representative determines that a pattern of violations of any requirements of this part or any permit conditions required by this part exists or has existed and if the director or an authorized representative also finds that the violations are caused by the unwarranted failure of the permittee to comply with any requirements of this part or any permit conditions or that the violations are willfully caused by the permittee, the director or an authorized representative shall issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested, the director shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the director or an authorized representative shall suspend or revoke the permit. *A permittee may request a contested case hearing on a permit suspension or revocation by filing a request for hearing, specifying the grounds for the request, within 30 days of receipt of the order of suspension or revocation. The order is effective upon expiration of the period for requesting a hearing or, if a hearing is requested, upon issuance of a final order by the board. The hearing must be conducted in accordance with the requirements of Title 2, chapter 4, part 6.* When a permit has been revoked, the department may order the performance bond forfeited.

(4) Any additional permits held by an operator whose mining permit has been revoked must be suspended, and the operator is not eligible to receive another permit or to have the suspended permits reinstated until the operator has complied with all the requirements of this part with respect to former permits issued to the operator. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the department finds adequate to reclaim the lands.

(5) Notices and orders issued pursuant to this section must set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the operation to which the notice or order applies. Each notice or order issued under this section must be given promptly to the permittee or the permittee's agent by the department, by the director, or by the authorized representative who issued the notice or order. All notices and orders must be in writing and be signed by the authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the director or an authorized representative. However, any notice or order issued pursuant to this section that requires cessation of mining by the operator expires within 30 days of actual notice to the operator unless ~~a~~ *an informal public hearing, if requested by the person to whom the notice or order was issued, is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public the hearing. If the department receives a request for an informal public hearing 21 days after service of the notice or order, the period for holding the informal public hearing is extended by the number of days after the 21st day that the request was received.*

(6) A person who has been issued a notice or an order of cessation pursuant to ~~this section~~ *subsection (1) or (2)* or a person who has an interest that is or may be adversely affected by an order *issued pursuant to subsection (1) or (2)* or by modification, vacation, or termination of ~~an~~ *that* order may ~~apply to the department for review of request a hearing before the board on that order within~~

30 days of its issuance or within 30 days of its modification, vacation, or termination. ~~Upon receipt of the application, the department shall make an investigation. The investigation must provide an opportunity for public hearing at the request of the applicant or the person who has an interest who is or may be adversely affected to enable the applicant or the person to present information relating to the issuance and continuance of the notice or order or the modification, vacation, or termination of it.~~ The filing of an application for review under this subsection may not operate as a stay of any order or notice. The ~~department~~ *board* shall make findings of fact and issue a written decision incorporating an order vacating, affirming, modifying, or terminating the order.

(7) Whenever an order is issued under this section or as the result of any administrative proceeding under this part, at the request of any person, a sum equal to the aggregate amount of all costs, expenses, and attorney fees as determined by the department to have been reasonably incurred by the person for or in connection with the person's participation in the proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the department, resulting from administrative proceedings, considers proper.

(8) In order to protect the stability of the land, the director or an authorized representative shall order cessation of underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if the director or the authorized agent finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities."

Section 11. 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 12. Effective date. [This act] is effective on passage and approval.

Approved March 30, 2005

CHAPTER NO. 128

[HB 452]

AN ACT IMPLEMENTING CERTAIN RECOMMENDATIONS TO REDESIGN THE MEDICAID PROGRAM SPECIFICALLY INVOLVING INDIAN TRIBES, TRIBAL HEALTH CARE FACILITIES, AND INDIAN HEALTH SERVICE HEALTH CARE FACILITIES; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO REQUEST A WAIVER OF FEDERAL MEDICAID LAW SO THAT ANY REDUCTIONS IN MEDICAID ELIGIBILITY DO NOT SHIFT COSTS TO TRIBAL OR INDIAN HEALTH SERVICE HEALTH CARE FACILITIES; REQUIRING THE DEPARTMENT TO WORK WITH TRIBAL GOVERNMENTS TO EXPLORE POSSIBILITIES FOR THE CHILDREN'S HEALTH INSURANCE PROGRAM TO LEVERAGE FEDERAL FINANCIAL PARTICIPATION; REQUIRING THE DEPARTMENT TO EXPLORE OPTIONS OR WAIVERS OF MEDICAID LAW FOR THE PURCHASE OF PRESCRIPTION DRUGS ON A RESERVATION AT TRIBAL OR INDIAN HEALTH SERVICE HEALTH CARE FACILITIES; REQUIRING THE DEVELOPMENT OF A POLICY AND PROCESS TO REVIEW INDIAN ELIGIBILITY ISSUES; REQUIRING THE DEPARTMENT TO WORK WITH

INDIAN TRIBES TO IMPROVE THE PROVISION OF MEDICAID SERVICES TO INDIANS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Protection of tribal and Indian health service facilities from cost-shifting — seeking to leverage federal financial participation for state children’s health insurance program and medicaid. (1) The department shall seek exemptions under federal medicaid law or regulations to protect Indian health services and tribal facilities from changes in eligibility categories, covered services, and reimbursement levels under the medicaid program that could potentially result in a direct shift of costs from the 100% federal medicaid matching available under medicaid to either Indian health services or tribally sponsored health care services.

(2) The department shall work with tribes or representatives from the federal Indian health service to seek mechanisms, including, if necessary, a waiver of federal law as permitted by section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n(b), to ensure that federal Indian health service-eligible medicaid participants who live on reservations may have any prescription filled at tribal or Indian health service health care facilities.

(3) The department shall work with tribes to explore the options for the state children’s health insurance program to leverage 100% federal financial participation for health care services to Indian children.

(4) The department shall engage the federal centers for medicare and medicaid services and the United States congress to support efforts to have all services provided by and referred from an Indian health service included in the state medicaid plan eligible for the 100% federal financial participation match under medicaid regardless of the location where services are provided.

(5) (a) The department shall develop a policy and process to periodically review Indian-eligibility issues as they relate to medicaid and to include tribal government, urban Indian, and Indian health service representation in the development of a policy and process. Reviews conducted by the department in areas on or near reservations or in urban areas with significant Indian populations must include consultation with representatives of tribal governments and urban Indian programs.

(b) The department shall explore the issues and feasibility of applying for a federal waiver of medicaid law for a demonstration project to delegate authority to eligible tribes for determination and certification of medicaid eligibility.

(6) The department shall work with tribes to foster a spirit of cooperation, to identify and remove current institutional barriers that limit the participation of tribal members in the medicaid program, and to develop strategies, including education, to improve the mechanics of providing medicaid services to Indians by:

(a) ensuring that tribes have an adequate opportunity to review and verify data used to monitor medicaid services and eligibility status and to modify or promote changes in medicaid policy;

(b) consulting with tribal and urban Indian representatives on the effective use and appropriate sources of information on health care needs of Indians;

(c) at the request of a tribal representative, conducting technical assistance workshops to address issues specific to tribal needs regarding matters of

centralized billing procedures, sound health care business practices, and development of needed health care infrastructure; and

(d) in compliance with the requirements of 2-15-141 through 2-15-143, consulting with tribes on any policy changes that may impact services or programs operated by tribes.

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. Codification instruction. [Section 1] is 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 [section 1].

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

Approved March 30, 2005

CHAPTER NO. 129

[HB 463]

AN ACT INCREASING THE CREDIT AGAINST CERTAIN PERMITTING FEES FOR CERTAIN USES OF POSTCONSUMER GLASS; INCREASING THE MAXIMUM ALLOWABLE CREDIT; EXTENDING THE DURATION OF THE CREDIT; AMENDING SECTIONS 75-2-225 AND 75-2-226, MCA, AND SECTION 8, CHAPTER 516, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Section 75-2-225, MCA, is amended to read:

“75-2-225. (Temporary) Amount and duration of credit — how claimed. (1) An applicant may receive a credit against the fees imposed in 75-2-220 for using postconsumer glass in recycled material if the applicant qualifies under 75-2-226.

(2) Subject to 75-2-226(2), an applicant qualifying for a credit under 75-2-226 is entitled to claim a credit, as provided in subsection (3) of this section, for using postconsumer glass in recycled material in the calendar year subsequent to the calendar year in which the postconsumer glass was used in recycled material. ~~If postconsumer glass was used in recycled material prior to January 1, 2002, but on or after January 1, 2001, an applicant is entitled to a credit for calendar year 2002.~~

(3) (a) The amount of the credit that may be claimed under this section is ~~\$7~~ \$8 for each ton of postconsumer glass that was used as a substitute for nonrecycled material in the calendar year prior to the calendar year for which the applicant is paying fees for permits under 75-2-220.

(b) The maximum credit allowable in any calendar year for fees payable under 75-2-220 is ~~\$1,500~~ \$2,000 or the total amount of fees due, whichever is less. (Terminates December 31, 2005 — see. 8, Ch. 516, L. 2001 2009.)”

Section 2. Section 75-2-226, MCA, is amended to read:

“75-2-226. (Temporary) Credit for use of postconsumer glass. (1) The following requirements must be met for an applicant to be entitled to a credit for the use of postconsumer glass:

(a) The postconsumer glass must have been used in recycled material in the calendar year prior to the calendar year in which the applicant is applying for and paying for permits under 75-2-220.

(b) (i) The applicant claiming a credit must be a person who, as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that uses postconsumer glass in recycled materials. The use of postconsumer glass as recycled material may be a minor or nonprofit part of a business otherwise engaged in a business activity.

(ii) The applicant may but need not operate or conduct a business that uses postconsumer glass as recycled material. If more than one person has an interest in a business with qualifying uses of postconsumer glass, they may allocate all or any part of the allowable credit among themselves and their successors or assigns.

(c) The business must have been owned or leased by the applicant claiming the credit during the calendar year prior to the calendar year for which the permit fees are due under 75-2-220, except as otherwise provided in subsection (1)(b), and must have used postconsumer glass in recycled material during the calendar year prior to the calendar year for which the credit is claimed.

(d) The postconsumer glass used in recycled material may not be an industrial waste generated by the person claiming the credit unless:

(i) the person generating the waste historically has disposed of the waste onsite or in a licensed landfill; and

(ii) standard industrial practice has not generally included the reuse of the waste in the manufacturing process.

(2) A credit under this section may be claimed by an applicant for a business only if the qualifying postconsumer glass was used in recycled material before January 1, ~~2006~~ 2010.

(3) The credit provided by this section is not in lieu of any other incentive to which the applicant otherwise may be entitled under Title 15 or this chapter.

(4) A credit otherwise allowable under this section that is not used by the applicant in the calendar year for which the permits are applied may not be:

(a) carried forward to offset an applicant's permit fees for any succeeding calendar year; or

(b) carried back to offset an applicant's permit fees for any preceding calendar year. (Terminates December 31, ~~2005~~ sec. 8, Ch. 516, L. 2001 2009.)"

Section 3. Section 8, Chapter 516, Laws of 2001, is amended to read:

"Section 8. Termination. [This act] terminates December 31, ~~2005~~ 2009."

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

Section 5. Termination. [This act] terminates December 31, 2009.

Approved March 30, 2005

CHAPTER NO. 130

[SB 24]

AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 59TH LEGISLATURE; AMENDING SECTIONS 1-1-516, 2-2-106, 2-15-1821, 2-15-1822, 2-18-1204, 3-10-301, 5-7-112, 7-1-2111, 7-2-2422, 7-2-2424, 7-3-173, 7-35-2121, 13-13-211, 15-1-121, 15-1-122, 15-24-3005, 15-30-111, 15-31-115, 15-61-102, 15-65-121, 15-70-301, 16-1-101, 17-2-131, 17-5-507, 17-6-407, 20-3-351, 20-9-141, 20-9-501, 20-10-144, 20-10-146, 20-15-221, 20-20-303, 20-25-308, 23-2-502, 23-2-511, 23-2-514, 23-2-515, 23-2-521, 23-2-614, 27-1-306, 30-14-222, 30-14-223, 30-14-901, 30-14-1407, 33-22-140, 37-10-304, 39-11-201, 39-11-204, 39-71-1011, 39-71-1014, 39-71-2316, 40-5-906, 40-6-405, 41-3-302, 41-3-437, 41-3-445, 44-1-1102, 46-14-221, 46-14-222, 46-19-202, 50-20-101, 50-60-203, 52-2-304, 53-6-703, 53-7-109, 61-3-403, 61-3-522, 61-3-722, 61-4-223, 61-4-515, 61-4-520, 61-8-906, 61-8-913, 61-10-227, 61-10-233, 71-3-534, 72-1-103, 82-15-103, AND 85-7-304, MCA; AND REPEALING SECTIONS 15-7-104, 15-32-108, 20-6-212, AND 85-7-2141, MCA.

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

Section 1. Section 1-1-516, MCA, is amended to read:

“1-1-516. State Korean war veterans’ memorial — Butte. (1) The Korean war veterans’ memorial located in Stodden Park, Butte, Montana, dedicated to the men and women who served the United States in the Republic of Korea, is an official state Korean war veterans’ memorial.

(2) The department of commerce and the department of transportation are directed to reference the location of a state Korean war veterans’ memorial on official state maps.”

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

“2-2-106. Disclosure. (1) (a) Prior to December 15 of each even-numbered year, each ~~elected official or department director~~ *state officer or holdover senator* shall file with the commissioner of political practices a business disclosure statement on a form provided by the commissioner. An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a) during the same period.

(b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of the time that the candidate files for office, file a business disclosure statement with the commissioner of political practices on a form provided by the commissioner.

(c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b) is required to file the business disclosure statement at the earlier of the time of submission of the person’s name for confirmation or the assumption of the office.

(2) The statement must provide the following information:

(a) the name, address, and type of business of the individual;

(b) each present or past employing entity from which benefits, including retirement benefits, are currently received by the individual;

(c) each business, firm, corporation, partnership, and other business or professional entity or trust in which the individual holds an interest;

(d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual is an officer or director, regardless of whether or not the entity is organized for profit; and

(e) all real property, other than a personal residence, in which the individual holds an interest. Real property may be described by general description.

(3) An individual may not assume or continue to exercise the powers and duties of the office to which that individual has been elected or appointed until the statement has been filed as provided in subsection (1).

(4) The commissioner of political practices shall make the business disclosure statements available to any individual upon request.”

Section 3. Section 2-15-1821, MCA, is amended to read:

“2-15-1821. Coal board — allocation — composition. (1) There is a coal board composed of seven members.

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

(3) The governor shall appoint a seven-member coal board, as provided under 2-15-124.

(4) (a) ~~The~~ *Subject to subsections (4)(b) and (4)(c), the* members of the coal board are selected as follows:

(i) two from the impact areas; *and*

(ii) two with expertise in education; ~~and~~.

~~(iii)(b) At least two but not more than four members must be appointed from each district provided for in 5-1-102.~~

~~(b)(c) The~~ *In making the appointments, the* governor shall ~~further, in making these appointments,~~ consider people from ~~these~~ *the following* fields:

(i) business;

(ii) engineering;

(iii) public administration; and

(iv) planning.”

Section 4. Section 2-15-1822, MCA, is amended to read:

“2-15-1822. Hard-rock mining impact board. (1) There is a hard-rock mining impact board.

(2) The hard-rock mining impact board is a five-member board.

(3) (a) ~~The~~ *Subject to subsections (3)(b) and (3)(c), the* hard-rock mining impact board ~~shall~~ *must* include among its members:

~~(a) three persons who, when appointed to the board, reside in an area impacted or expected to be impacted by large-scale mineral development;~~

~~(b) at least two persons from each district provided for in 5-1-102;~~

~~(c)(i)~~ a representative of the hard-rock mining industry;

~~(c)(ii)~~ a representative of a major financial institution in Montana;

~~(c)(iii)~~ a person who, when appointed to the board, is an elected school district trustee;

~~(iv)~~ a person who, when appointed to the board, is an elected county commissioner;

~~(v)~~ a member of the public-at-large.

(b) Three persons appointed to the board must reside in an area impacted or expected to be impacted by large-scale mineral development.

(c) At least two persons must be appointed from each district provided for in 5-1-102.

(4) The hard-rock mining impact board is a quasi-judicial board subject to the provisions of 2-15-124 except that one of the members need not be an attorney licensed to practice law in this state, ~~and the~~. *The board shall elect a presiding officer from among its members.*"

Section 5. Section 2-18-1204, MCA, is amended to read:

"2-18-1204. Salary and benefits protection — employee transfer. (1) An employee whose position is eliminated as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature and who is subsequently transferred to a different position in a state agency is entitled to:

(a) the same hourly salary as previously received if the new position is at the same grade level or higher as the one previously held;

(b) retain all accrued sick leave credits;

(c) retain, cash out, or use accrued vacation leave credits to extend the employee's effective layoff date; and

(d) relocation expenses as provided in state policy.

(2) Relocation expenses must be paid by the hiring agency, and the funds expended by the hiring agency must be reimbursed from the funds appropriated for this purpose, ~~including those funds subject to transfer under the provisions of section 6, Chapter 524, Laws of 1995.~~"

Section 6. Section 3-10-301, MCA, is amended to read:

"3-10-301. Civil jurisdiction. (1) Except as provided in 3-11-103 and in subsection (2) of this section, the justices' courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed \$7,000, exclusive of court costs;

(b) in actions for damages not exceeding \$7,000, exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding \$7,000, exclusive of court costs, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(d) in actions to recover the possession of personal property if the value of the property does not exceed \$7,000;

(e) in actions for a fine, penalty, or forfeiture not exceeding \$7,000 imposed by a statute or an ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(f) in actions for a fine, penalty, or forfeiture not exceeding \$7,000 imposed by a statute or assessed by an order of a *conservation* district for violation of Title 75, chapter 7, part 1;

(g) in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed \$7,000, though the penalty may exceed that sum;

(h) to take and enter judgment for the recovery of money on the confession of a defendant when the amount confessed does not exceed \$7,000, exclusive of court costs;

(i) to issue temporary restraining orders, as provided in 40-4-121, and orders of protection, as provided in Title 40, chapter 15;

(j) to issue orders to restore streams under Title 75, chapter 7, part 1, or to require payment of the actual cost for restoration of a stream if the restoration does not exceed \$7,000.

(2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money."

Section 7. Section 5-7-112, MCA, is amended to read:

"5-7-112. Payment threshold — inflation adjustment. For calendar ~~years 2002 through~~ year 2004, the payment threshold *referred to* in 5-7-102, 5-7-103, and 5-7-208 is \$2,150. The commissioner shall adjust the threshold amount following a general election by multiplying the threshold amount valid for the year in which the general election was held by an inflation factor, adopted by the commissioner by rule. The rule must be written to reflect the annual average change in the consumer price index from the prior year to the year in which the general election is held. The resulting figure must be rounded up or down to the nearest \$50 increment. The commissioner shall adopt the adjusted amount by rule."

Section 8. Section 7-1-2111, MCA, is amended to read:

"7-1-2111. Classification of counties. (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this state must be classified according to the taxable valuation of the property in the counties upon which the tax levy is made as follows:

(a) first class—all counties having a taxable valuation of \$50 million or more;

(b) second class—all counties having a taxable valuation of \$30 million or more and less than \$50 million;

(c) third class—all counties having a taxable valuation of \$20 million or more and less than \$30 million;

(d) fourth class—all counties having a taxable valuation of \$15 million or more and less than \$20 million;

(e) fifth class—all counties having a taxable valuation of \$10 million or more and less than \$15 million;

(f) sixth class—all counties having a taxable valuation of \$5 million or more and less than \$10 million;

(g) seventh class—all counties having a taxable valuation of less than \$5 million.

(2) As used in this section, "taxable valuation" means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a manufacturer's rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) that portion of the taxable value of the county on December 31, 1997, attributable to buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors;

(d) that portion of the taxable value of the county on December 31, 1997, attributable to trailers, pole trailers, and semitrailers with a declared weight of less than 26,000 pounds;

(e) the value provided by the department of revenue under 15-36-332(7);

(f) 50% of the taxable value of the county on December 31, 1999, attributable to telecommunications property under 15-6-141;

(g) 50% of the taxable value in the county on December 31, 1999, attributable to electrical generation property under 15-6-141;

(h) the value provided by the department of revenue under 15-24-3001; ~~and~~

(i) 6% of the taxable value of the county on January 1 of each tax year; ~~and~~

(j) 45% of the contract sales price of the gross proceeds of coal in the county as provided in 15-23-703 and as reported under 15-23-702."

Section 9. Section 7-2-2422, MCA, is amended to read:

"7-2-2422. Certification of list of names. (1) The clerk of *the district court* of the county from which ~~said a new county may be~~ is segregated or, ~~in the event of such if a new county being is~~ segregated from two or more counties, the clerks of *district court* of each of ~~such the~~ counties shall take the names of ~~such persons as that~~ appear upon the jury list for ~~such the~~ year, which may have been certified to ~~him or to them the clerk or clerks of district court~~ by the jury commission or commissions of ~~his or their the~~ respective county or counties to be residents of the territory embraced in ~~such the~~ new county, and shall certify the ~~same names~~ to the clerk of *the district court* of the new county.

(2) ~~Such The names shall then~~ constitute the jury list for ~~such the~~ new county for the ~~period as aforesaid~~ year.

(3) ~~Such The new list shall~~ *must* be made and certified by ~~such the~~ clerk or clerks of *district court* of the existing county or counties as soon after the creation of ~~such the~~ new county as may be practicable and in any event within 5 days after a request ~~therefor shall be~~ for the list is made by the clerk of the district court of the new county."

Section 10. Section 7-2-2424, MCA, is amended to read:

"7-2-2424. Role of clerk of district court in new county. The clerk of *the district court* of the new county shall ~~then~~ file and prepare ~~his the~~ jury list and boxes in accordance with the general law pertaining to the duties of clerks of *district court* with relation to jury lists and boxes."

Section 11. Section 7-3-173, MCA, is amended to read:

“7-3-173. Establishment of study commissions. (1) A study commission may be established by an affirmative vote of the people. An election on the question of conducting a local government review and establishing a study commission ~~shall~~ *must* be held:

(a) whenever the governing body of the local government unit calls for an election by resolution;

(b) whenever a petition signed by at least 15% of the electors of the local government calling for an election is submitted to the governing body; or

(c) ~~in 1984 and thereafter~~ whenever 10 years have elapsed since the electors have voted on the question of conducting a local government review and establishing a study commission.

(2) The governing body shall call for an election, to be held on the primary election date, on the question of conducting a local government review and establishing a study commission.:

~~(a) in 1984 to implement the provisions of as required by Article XI, section 9(2), of the Montana constitution, as provided in section 2, Chapter 70, Laws of 1977;~~

~~(b)~~ within 1 year after the 10-year period referred to in subsection (1)(c).”

Section 12. Section 7-35-2121, MCA, is amended to read:

“7-35-2121. District budget — report. (1) The board of cemetery trustees shall annually present a budget to the board of county commissioners at the regular budget meetings as prescribed by law.

(2) ~~Insofar as the same~~ *As far as the county budget system can be made applicable, the county budget system, part 23 of chapter 6, shall govern that system governs* the operation of cemetery districts created under this part.”

Section 13. Section 13-13-211, MCA, is amended to read:

“13-13-211. Time period for application. (1) Except as provided in 13-13-222, 13-21-210, and subsection (2) of this section, an application for an absentee ballot must be made during a period beginning 75 days before the day of election and ending at noon on the day before the election.

(2) A qualified elector who is prevented from voting at the polls as a result of illness or health emergency occurring between 5 p.m. of the Friday preceding the election and noon on election day may request to vote by absentee ballot as provided in ~~13-13-212(3)~~ *13-13-212(2)*.”

Section 14. Section 15-1-121, MCA, is amended to read:

“15-1-121. Entitlement share payment — appropriation. (1) The amount calculated pursuant to this subsection is each local government’s base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle, ~~and~~ boat, *and aircraft* taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

- (iv) 61-3-317;
- (v) 61-3-321;
- (vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;
- (vii) Title 61, chapter 3, part 7;
- (viii) 5% of the fees collected under 61-10-122;
- (ix) 61-10-130;
- (x) 61-10-148; and
- (xi) 67-3-205;
- (c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);
- (d) district court fees pursuant to:
 - (i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);
 - (ii) 25-1-202;
 - (iii) 25-1-1103;
 - (iv) 25-9-506;
 - (v) 25-9-804; and
 - (vi) 27-9-103;
- (e) certificate of title fees for manufactured homes pursuant to 15-1-116;
- (f) financial institution taxes *collected* pursuant to *the former provisions of* Title 15, chapter 31, part 7;
- ~~(g) coal severance taxes allocated for county land planning pursuant to 15-35-108;~~
- ~~(h)(g)~~ all beer, liquor, and wine taxes pursuant to:
 - (i) 16-1-404;
 - (ii) 16-1-406; and
 - (iii) 16-1-411;
- ~~(h)(h)~~ late filing fees pursuant to 61-3-220;
- ~~(h)(i)~~ title and registration fees pursuant to 61-3-203;
- ~~(h)(j)~~ veterans' cemetery license plate fees pursuant to 61-3-459;
- ~~(h)(k)~~ county personalized license plate fees pursuant to 61-3-406;
- ~~(h)(l)~~ special mobile equipment fees pursuant to 61-3-431;
- ~~(h)(m)~~ single movement permit fees pursuant to 61-4-310;
- ~~(h)(n)~~ state aeronautics fees pursuant to 67-3-101; and
- ~~(h)(o)~~ department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.

(3) (a) ~~Beginning with fiscal year 2002 and in each succeeding fiscal year, the~~ *The* base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. ~~For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments. Beginning with calendar year 2002, by~~ *By* October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

(i) Before applying the growth rate for fiscal year 2004 to determine the fiscal year 2004 entitlement share pool, the department shall add to the fiscal year 2003 entitlement share pool the fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the ~~probation and parole supervisory~~ fee in 46-23-1031(2)(b).

(ii) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A).

(iii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(iii)(A).

(b) (i) For fiscal year 2004 and subsequent fiscal years, the entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(B) and (3)(a)(iii)(B):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(A) and (3)(a)(iii)(A):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis ~~beginning September 15, 2001.~~

(b) (i) ~~For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component. For each fiscal year 2003 and each succeeding fiscal year, the growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero. The growth factor in the entitlement share must be calculated separately for:~~

- (A) counties;
- (B) consolidated local governments; and
- (C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the base year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the base year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the base year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

~~(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.~~

~~(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool.~~

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

| | | |
|-----------------|------------------------|-----------|
| Cascade | Great Falls - downtown | \$468,966 |
| Deer Lodge | TIF District 1 | 3,148 |
| Deer Lodge | TIF District 2 | 3,126 |
| Flathead | Kalispell - District 1 | 758,359 |
| Flathead | Kalispell - District 2 | 5,153 |
| Flathead | Kalispell - District 3 | 41,368 |
| Flathead | Whitefish District | 164,660 |
| Gallatin | Bozeman - downtown | 34,620 |
| Lewis and Clark | Helena - #2 | 731,614 |
| Missoula | Missoula - 1-1B & 1-1C | 1,100,507 |
| Missoula | Missoula - 4-1C | 33,343 |
| Silver Bow | Butte - uptown | 283,801 |
| Yellowstone | Billings | 436,815 |

(c) The entitlement share for industrial tax increment financing districts is as follows:

~~(i) for fiscal years 2002 and 2003:~~

| | | |
|---|-------------------------------|---------------------|
| Missoula County | Airport Industrial | \$4,812 |
| Silver Bow | Ramsay Industrial | 597,594; |
| (ii)(i) for fiscal years 2004 and year 2005: | | |
| Missoula County | Airport Industrial | \$2,406 |
| Silver Bow | Ramsay Industrial | 298,797; and |
| (ii)(i) \$0 for all succeeding fiscal years. | | |

(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.

(e) One-half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year.

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants or from countywide retirement block grants.

(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001.

(9) (a) If revenue that is included in the sources listed in subsections (1)(b) through ~~(1)(p)~~ (1)(o) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection (9)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

(10) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

(11) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

(12) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

(13) A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1."

Section 15. Section 15-1-122, MCA, is amended to read:

"15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, \$36,764 for fiscal

year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

~~(a) \$75,000 in fiscal year 2003;~~

~~(b)(a) \$0 in fiscal years 2004 and year 2005;~~

~~(c)(b) \$3,050,205 in fiscal year 2006; and~~

~~(d)(c) in each succeeding fiscal year, the amount in subsection (2)(e) (2)(b), 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:

(i) \$2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) \$1 for each passenger car or truck under 8,001 pounds GVW that is registered for licensing pursuant to Title 61, chapter 3, part 3, and \$5 for each permanently registered light vehicle. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532.

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) \$1 in fiscal year 2006 and, in each subsequent year, \$2.75 for each off-highway vehicle for which the fee in lieu of tax is paid, as provided for in 23-2-803; and

(ii) for vehicles registered or reregistered pursuant to 61-3-321:

(A) \$1.50 for each registered light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicle weighing more than 1 ton, and motor home; and

(B) \$1.50 in fiscal year 2006 and, in each subsequent year, \$3.65 for each motorcycle and quadricycle; and

(C) \$7.50 for each permanently registered light vehicle;

(c) to the department of fish, wildlife, and parks:

(i) \$2.50 in fiscal year 2006 and, in each subsequent year, \$14.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) \$5 in fiscal year 2006 and, in each subsequent year, \$19 for each snowmobile registered under 23-2-616, 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, 23-2-621, 23-2-622, 23-2-626, 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;

(iii) \$1 for each duplicate snowmobile registration decal issued under 23-2-617;

(iv) \$5 in fiscal year 2006 and, in each subsequent year, \$13.25 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, \$3.50 in fiscal year 2006 and, in each subsequent year, \$8 for each recreational vehicle, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321;

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533; and

(vii) to the state special revenue fund established in 23-1-105, \$4 for each passenger car or truck under 8,001 pounds GVW registered for licensing pursuant to 61-3-321(11)(a), with \$3.50 of the money used for state parks, 25 cents used for fishing access sites, and 25 cents used for the operation of state-owned facilities at Virginia City and Nevada City;

(d) to the state veterans' cemetery account, provided for in 10-2-603, \$10 for each veteran's license plate subject to the fee in 61-3-459;

(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than:

(i) trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) vehicles registered under 61-3-527, 61-3-530, and 61-3-562;

(f) 25 cents a year for each registered vehicle and \$1.25 for each permanently registered vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112;

(g) to the search and rescue account provided for in 10-3-801:

(i) \$2 a year for each vessel ~~{subject to the search and rescue surcharge}~~ subject to the fee in 23-2-517;

(ii) \$2 a year for each snowmobile ~~{subject to the search and rescue surcharge}~~ subject to the fee in 23-2-615(1)(b) and 23-2-616(3); and

(iii) \$2 a year for each off-highway vehicle ~~{subject to the search and rescue surcharge}~~ subject to the fee in 23-2-803; and

(h) 50 cents a year for each vehicle subject to the fee in 61-3-321(7) for deposit in the state special revenue fund to the credit of the veterans' services account provided for in 10-2-112(1).

(4) For each fiscal year, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). The department of justice shall provide a separate count of vehicles that are permanently registered pursuant to 61-3-562. A permanently registered vehicle may be included in vehicle counts only in the year in which the vehicle is registered or reregistered. Transfer amounts in each fiscal year must be based on vehicle counts in the most recent calendar year for which

vehicle information is available. Vehicles that are permanently registered may be included in vehicle counts only in the year in which the vehicles are registered by new owners.

(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 16. Section 15-24-3005, MCA, is amended to read:

“15-24-3005. Electrical generation facility impact fee for local governmental units and school districts. (1) (a) If an owner or operator of an electrical generation facility, as defined in 15-24-3001, is exempt from property taxation pursuant to 15-24-3001, the owner or operator of the facility is subject to an initial local government and local school impact fee. In the first 2 years of construction, the impact fee may not exceed 0.75% of the total cost of constructing the electrical generation facility.

(b) In the case of a generation facility powered by oil or gas turbines, the impact fee may not exceed 0.1% of the total construction cost in the remaining 3 years of the tax exemption period as provided in 15-24-3001.

(c) In the case of any other generation facility, the impact fee may not exceed 0.1% of the total construction cost in the subsequent 4 years and may not exceed 0.08% of the total construction cost in the remaining 4 years of the tax exemption period as provided in 15-24-3001.

(2) Except as provided in subsection (4), the jurisdictional area of a local governmental unit in which an electrical generation facility is located is the local governmental unit that is authorized to assess the impact fee pursuant to subsection (1).

(3) The impact fee must be distributed to the local governmental unit for local impacts and to the impacted school districts.

(4) Subject to the conditions of 15-24-3006 and subsection (5) of this section, if the facility is located within the jurisdictional areas of multiple local governmental units of the county or contiguous counties, the local governmental units may enter into an interlocal agreement under Title 7, chapter 11, part 1, to determine how the fee should be distributed among the various local governmental units and impacted school districts pursuant to ~~the percentage allocation required in~~ subsection (3). The county in which the electrical generation facility is located is authorized to assess the fee under the interlocal agreement.

(5) For purposes of this section, a “local governmental unit” means a county, city, or town. If an exempt electrical generation facility is located within a tax increment financing district, the tax increment financing district is considered a local governmental unit and is entitled to the distribution of impact fees under this section. A tax increment financing district may not receive a distribution of impact fees if an exempt electrical generation facility is not located within the district.

(6) Impact fees imposed under subsection (4) must be deposited in the county electrical energy generation impact fee reserve account established in 15-24-3006 for the county in which the electrical generation facility is located. Money in the account may not be expended until the multiple local governmental units have entered into an interlocal agreement.”

Section 17. Section 15-30-111, MCA, is amended to read:

“15-30-111. Adjusted gross income. (1) Adjusted gross income is the taxpayer’s federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder’s income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105~~(15)~~;

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer’s Montana income tax in the year deducted;

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period; and

(g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after December 31, 2002, the amount of any dividend; to the extent that the dividend is not included in federal adjusted gross income.

(2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, or a county, municipality, or district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer’s return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.

(8) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The

provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income.

(9) (a) A taxpayer may exclude ~~up to~~ *up to the amount of the loan payment received pursuant to subsection (9)(a)(iv), not to exceed \$5,000*, from the taxpayer's adjusted gross income if the taxpayer:

- (i) is a health care professional licensed in Montana as provided in Title 37;
- (ii) is serving a significant portion of a designated geographic area, special population, or facility population in a federally designated health professional shortage area, a medically underserved area or population, or a federal nursing shortage county as determined by the secretary of health and human services or by the governor;
- (iii) has had a student loan incurred as a result of health-related education; and
- (iv) has received a loan payment *during the tax year* made on the taxpayer's behalf by a loan repayment program described in subsection (9)(b) as an incentive to practice in Montana.

(b) For the purposes of subsection (9)(a), a loan repayment program includes a federal, state, or qualified private program. A qualified private loan repayment program includes a licensed health care facility, as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility as a licensed health care professional. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency—sec. 9, Ch. 262, L. 2001.)”

Section 18. Section 15-31-115, MCA, is amended to read:

“15-31-115. Reaffirmation of bond income inclusion in definition of net income for corporation license tax purposes. Notwithstanding the provisions of any other law, the income from bonds or other obligations issued by any state or political subdivision of a state are included in gross and net income for purposes of the corporation license tax. ~~Further, such income has been included in gross and net income since the effective date of Chapter 634, Laws of 1979, which law repealed the exclusion of such income from the tax base of the corporation license tax.~~”

Section 19. Section 15-61-102, MCA, is amended to read:

“15-61-102. Definitions. As used in this chapter, unless it clearly appears otherwise, the following definitions apply:

- (1) “Account administrator” means:
 - (a) a state or federally chartered bank, savings and loan association, credit union, or trust company;
 - (b) a health care insurer as defined in 33-22-125;
 - (c) a certified public accountant licensed to practice in this state pursuant to Title 37, chapter 50;
 - (d) an employer if the employer has a self-insured health plan under ERISA;
 - (e) the account holder or an employee for whose benefit the account in question is established;
 - (f) a broker, insurance producer, or investment adviser regulated by the commissioner of insurance;
 - (g) an attorney licensed to practice law in this state;

(h) a licensed public accountant or a person who is an enrolled agent allowed to practice before the United States internal revenue service.

(2) "Account holder" means an individual who is a resident of this state and who establishes a medical care savings account or for whose benefit the account is established.

(3) "Dependent" means the spouse of the employee or account holder or a child of the employee or account holder if the child is:

(a) under 23 years of age and enrolled as a full-time student at an accredited college or university or is under 19 years of age;

(b) legally entitled to the provision of proper or necessary subsistence, education, medical care, or other care necessary for the health, guidance, or well-being of the child and is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

(c) mentally or physically incapacitated to the extent that the child is not self-sufficient.

(4) "Eligible medical expense" means an expense paid by the employee or account holder for medical care defined by 26 U.S.C. 213(d) for the employee or account holder or a dependent of the employee or account holder.

(5) "Employee" means an employed individual for whose benefit or for the benefit of whose dependents a medical care savings account is established. The term includes a self-employed individual.

(6) "ERISA" means the Employee Retirement Income Security Act of 1974, ~~Public Law 93-406~~ 29 U.S.C. 1001, *et seq.*

(7) "Medical care savings account" or "account" means an account established with an account administrator in this state pursuant to 15-61-201."

Section 20. Section 15-65-121, MCA, is amended to read:

"15-65-121. (Temporary) Distribution of tax proceeds. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The amount of \$400,000 each year must be deposited in the Montana heritage preservation and development account provided for in 22-3-1004. ~~For the fiscal year ending June 30, 2003, the amount of \$1.7 million must be deposited in the state general fund.~~ The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation, deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies, or deposited in the heritage preservation and development account is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and

television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce, ~~except as provided in section 1, Chapter 11, Special Laws of August 2002;~~ and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds \$35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

(2) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials. (Terminates July 1, 2007—sec. 3, Ch. 469, L. 2001.)

15-65-121. (Effective July 1, 2007) Distribution of tax proceeds. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the

department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds \$35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

(2) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.”

Section 21. Section 15-70-301, MCA, is amended to read:

“15-70-301. (Temporary) Definitions. As used in this part, the following definitions apply:

(1) “Agricultural use” means use of special fuel by a person who earns income while engaging in the business of farming or ranching and who files farm or income reports for tax purposes as required by the United States internal revenue service.

(2) “Bond” means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(3) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

(4) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

(5) "Department" means the department of transportation.

(6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

(7) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter.

(8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

(9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(10) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

(12) "Improperly imported fuel" means special fuel that is:

(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or

(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

(14) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

(15) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

(16) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes all other types of additives when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

(17) "Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardrol, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

(18) (a) "Special fuel user" means a person who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(b) The term does not include the U.S. government, a state, a county, an incorporated city or town, or a school district of this state.

(19) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state.

15-70-301. (Effective on occurrence of contingency) Definitions. As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person who earns income while engaging in the business of farming or ranching and who files farm or income reports for tax purposes as required by the United States internal revenue service.

(2) "Biodiesel" means:

(a) (i) a fuel sold for use in motor vehicles operating upon the public roads and highways within the state that contains at least 20% esterified vegetable oil, at least 10% alcohol, or an equivalent mixture of both oil and alcohol, with the balance being diesel fuel or any other petroleum-based volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test and other additives; or

(ii) a monoalkyl ester that:

(A) is derived from domestically produced vegetable oils, renewable lipids, rendered animal fats, or any combination of those ingredients; and

(B) meets the requirements of ASTM PS 121, also known as the Provisional Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society of *for* testing and materials.

(b) Biodiesel is also known as "B-20".

(3) "Bond" means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(4) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

(5) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

(6) "Department" means the department of transportation.

(7) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

(8) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter.

(9) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

(10) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(11) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

(12) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

(13) "Improperly imported fuel" means special fuel that is:

(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or

(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(14) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

(15) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

(16) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

(17) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes biodiesel and additives of all types when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

(18) "Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtroll, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

(19) (a) "Special fuel user" means a person who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(b) The term does not include the U.S. government, a state, a county, an incorporated city or town, or a school district of this state.

(20) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state. (Terminates June 30 of fourth year following date of occurrence of contingency—sec. 13, Ch. 568, L. 2001.)

15-70-301. (Effective July 1 of fourth year following date of occurrence of contingency) Definitions. As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Bond" means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or

irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(3) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

(4) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

(5) "Department" means the department of transportation.

(6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

(7) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter.

(8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

(9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(10) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

(12) "Improperly imported fuel" means special fuel that is:

(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or

(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

(14) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

(15) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

(16) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes all other types of additives when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

(17) "Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtroll, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

(18) (a) "Special fuel user" means a person who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(b) The term does not include the U.S. government, a state, a county, an incorporated city or town, or a school district of this state.

(19) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state."

Section 22. Section 16-1-101, MCA, is amended to read:

“16-1-101. Citation — declaration of policy — subject matters of regulation. (1) Chapters 1 through 4 and 6 of this title may be cited as the “Montana Alcoholic Beverage Code”.

(2) It is hereby declared to be the policy of the state of Montana to effectuate and ensure the entire control of the manufacture, sale, importation, and distribution of alcoholic beverages within the state of Montana, as that term is defined in this code, subject to the authority of the state of Montana acting through the Montana department of revenue.

(3) This code is an exercise of the police power of the state, in and for the protection of the welfare, health, peace, morals, and safety of the people of the state, and of the state’s power under the 21st amendment to the United States constitution to control the transportation and importation of alcoholic beverages into the state. The provisions of this code must be broadly construed to accomplish these purposes.”

Section 23. Section 17-2-131, MCA, is amended to read:

“17-2-131. Genetic engineering technology research and development account created. There is created in the current restricted subfund a restricted account for funds appropriated to Montana state university-Bozeman for applied genetic engineering technology research and development. Funds appropriated under section 2, Chapter 686, Laws of 1989, and money contributed by the Montana agriculture industry must be deposited in the account and are restricted to genetic engineering technology research and development only.”

Section 24. Section 17-5-507, MCA, is amended to read:

“17-5-507. State pledge of gasoline tax — use. (1) The state pledges, and appropriates, and directs to be credited as received to the debt service account, as herein defined in 17-5-401, that portion of the net proceeds from the collection of gasoline taxes which that may from time to time be needed to comply with the principal and interest and reserve requirements stated in subsection (2) of this section. The pledge and appropriation herein made shall be and in this section must remain at all times a first and prior charge upon all money received as net proceeds from the collection of gasoline taxation taxes. The term “net proceeds”, as used herein in this section, means all funds on hand in the state treasury of the state as of any date, derived from the collection of the license tax imposed on gasoline distributors by 15-70-204, enacted by section 3, Chapter 369, Laws of 1969, as amended by section 1, Chapter 202, and by section 2, Chapter 204, Laws of 1971, and by section 90, Chapter 516, Laws of 1973, or by any subsequent enactment, less the amount of all refunds of such those taxes for which applications have been made pursuant to law but which that have not yet been paid or rejected. The term “debt service account”, as used herein in this section, means a separate highway fund which that is created within the debt service fund type established by 17-2-102 and shall must be segregated by the treasurer from all other money in that or any other fund in the treasury and used only to pay highway bonds and interest thereon on those bonds when due, so long as any such the bonds or interest remain unpaid.

(2) Money in the debt service account shall must be used to:

(a) first, to pay interest and principal when due on highway bonds;

(b) second, to accumulate a reserve, in the amount required below in subsection (2)(c), for the further security of such those payments; and

(c) ~~and third, to~~ maintain ~~this~~ a reserve in an amount at least equal, after each interest and principal payment, to the maximum amount of interest and principal ~~which that~~ will become due on all ~~such bonds which that~~ are then outstanding in any subsequent fiscal year.

(3) Money ~~at any time~~ received in the debt service account in excess of the principal, interest, and reserve requirements stated in subsection (2) ~~shall must~~ be transferred by the treasurer to the *highway revenue account in the state special revenue fund, highway account*. If the balance at any time on hand in the debt service account is not sufficient for compliance with subsection (2), the treasurer shall credit to ~~said that~~ account an amount sufficient to restore ~~said the~~ balance from the next receipts of net proceeds from the collection of gasoline taxes.”

Section 25. Section 17-6-407, MCA, is amended to read:

“17-6-407. Microbusiness development loan account and finance program administrative account — criteria — limitations. (1) There is in the state special revenue fund a microbusiness development loan account into which ~~the funds appropriated pursuant to section 11, Chapter 602, Laws of 1991, money appropriated pursuant to section 3, Chapter 413, Laws of 1995, funds allocated for that purpose~~ and money received in repayment of the principal of development loans must be deposited. The department may make development loans from the account to a certified microbusiness development corporation.

(2) There is in the state special revenue fund a microbusiness finance program administrative account into which must be deposited:

- (a) all interest received on development loans received directly from microbusiness development corporations;
- (b) service charges or fees received from certified microbusiness development corporations; and
- (c) grants, donations, and private or public income.

(3) Money in the administrative account may be transferred to the development loan account or be used to pay the costs of the program, including personnel, travel, equipment, supplies, consulting costs, and other operating expenses of the program.

(4) Subject to subsection (1), a certified microbusiness development corporation that receives a development loan may apply for an additional loan if the applicant meets the performance criteria established by the department.

(5) To establish the criteria for making development loans, the department shall consider:

- (a) the plan for providing services to microbusinesses;
- (b) the scope of services to be provided by the certified microbusiness development corporation;
- (c) the geographic representation of all regions of the state, including urban, rural[, and tribal] communities;
- (d) the plan for providing service to minorities, women, and low-income persons;
- (e) the ability of the corporation to provide business training and technical assistance to microbusiness clients;

(f) the ability of the corporation, with its plan, to:

(i) monitor and provide financial oversight of recipients of microbusiness loans;

(ii) administer a revolving loan fund; and

(iii) investigate and qualify financing proposals and to service credit accounts;

(g) sources and sufficiency of operating funds for the certified microbusiness development corporation; and

(h) the intent of the corporation, with its plan and written indications of local institutional support, to provide services to a designated multicounty region of the state.

(6) Development loan funds may be used by a certified microbusiness development corporation to:

(a) satisfy matching fund requirements for other state, federal, or private funding only if funding is intended and used for the purpose of providing or enhancing the certified microbusiness development corporation's ability to provide and administer loans, technical assistance, or management training to microbusinesses;

(b) establish a revolving loan fund from which the certified microbusiness development corporation may make loans to qualified microbusinesses, provided that a single loan does not exceed \$35,000 and the outstanding balance of all loans to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share does not exceed \$35,000;

(c) establish a guarantee fund from which the certified microbusiness development corporation may guarantee loans made by financial institutions to qualified microbusinesses. However, a single guarantee may not exceed \$35,000, and the aggregate of all guarantees to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share may not exceed \$35,000.

(7) Development loan funds may not be:

(a) loaned for relending or investment in stocks, bonds, or other securities or for property not intended for use in production by the recipient of the loan; or

(b) used to:

(i) refinance a nonperforming loan held by a financial institution; or

(ii) pay the operating costs of a certified microbusiness development corporation. However, interest income earned from the proceeds of a development loan may be used to pay operating expenses.

(8) Certified microbusiness development corporations are required to contribute cash from other sources to leverage and secure development loans from the program. Contributions provided by the corporation must be on a ratio of at least \$1 from other sources for each \$6 from the program. These contributions may come from a public or private source other than the program and may be in the form of equity capital, loans, or grants.

(9) Development loans must be made pursuant to a development loan agreement and may be amortization or term loans, bear interest at less than the

market rate, be renewable, be callable, and contain other terms and conditions considered appropriate by the department that are consistent with the purposes of and with rules promulgated to implement this part.

(10) Each certified microbusiness development corporation that receives a development loan under this part shall provide the department with an annual audit from an independent certified public accountant. The audit must cover all of the microbusiness development corporation's activities and must include verification of compliance with requirements specific to the microbusiness program.

(11) A certified microbusiness development corporation that is in default for nonperformance under rules established by the department may be required to refund the outstanding balance of development loans awarded prior to the default declaration. A development loan is secured by a first lien on all funds and all receivables administered under the authority of the microbusiness development act by the corporation receiving the loan. (Bracketed language terminates June 30, 2005—sec. 5, Ch. 69, L. 2001.)”

Section 26. Section 20-3-351, MCA, is amended to read:

“20-3-351. Number of trustee positions in high school districts. (1) Except as provided in 20-3-352(3) and subsection (2) of this section, the trustees of a high school district must be composed of:

(a) the trustees of the elementary district in which the high school building is located ~~or, if there is more than one elementary district in which high school buildings are located, the trustees of the elementary district designated by the high school boundary commission;~~ and

(b) the additional trustee positions determined in accordance with 20-3-352(2).

(2) There must be seven trustee positions for each county high school.”

Section 27. Section 20-9-141, MCA, is amended to read:

“20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353, including any additional funding for a general fund budget that exceeds the maximum general fund budget.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(B) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid;

(iii) anticipated oil and natural gas production taxes;

(iv) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703; and

(v) school district block grants distributed under ~~section 244, Chapter 574, Laws of 2001~~ 20-9-630.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Determine the sum of any amount remaining after the determination in subsection (1)(c) and any tuition payments for out-of-district pupils to be received under the provisions of 20-5-320 through 20-5-324, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2).

(e) Subtract the amount determined in subsection (1)(d) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the current total taxable valuation of the district, as certified by the department of revenue under 15-10-202, divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703.”

Section 28. Section 20-9-501, MCA, is amended to read:

“20-9-501. Retirement costs and retirement fund. (1) The trustees of a district or the management board of a cooperative employing personnel who are members of the teachers’ retirement system or the public employees’ retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the

employer's contributions to the systems as provided in subsection (2)(a). The district's or the cooperative's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's or the cooperative's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's or the cooperative's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's or the cooperative's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) (a) The district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the retirement fund for the following:

(i) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from state or local funding sources;

(ii) a cooperative employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the cooperative's interlocal agreement fund if the fund is supported solely from districts' general funds and state special education allowable cost payments pursuant to 20-9-321; and

(iii) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district's school food services fund provided for in 20-10-204.

(b) For an employee whose benefits are not paid from the retirement fund, the district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the funding source that pays the employee's salary.

(3) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(4) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) countywide school retirement block grants distributed under ~~section 245, Chapter 574, Laws of 2001 20-9-631;~~

(v) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The

retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(vi) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (9), subtracting the money available for reduction of the levy requirement, as determined in subsection (4)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(5) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(6) The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

(7) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(8) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(9) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (5)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(10) The levy for a community college district may be applied only to property within the district.

(11) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements for county school funds supporting elementary and high school district retirement obligations to

the superintendent of public instruction not later than the second Monday in September. The report must be completed on forms supplied by the superintendent of public instruction.”

Section 29. Section 20-10-144, MCA, is amended to read:

“20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget. Before the second Monday of August, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The “schedule amount” of the budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate for each bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by the district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted in the budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or \$100, whichever is larger, the contingency amount on the budget must be reduced to the limitation amount and used in this determination of the schedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule amount determined in subsection (1) or the total transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be 50% of the schedule amount attributed to the transportation of special education pupils; and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of fund balance for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and fund balance reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the

county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of 20 U.S.C. 7701, et seq., or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated revenue from coal gross proceeds under 15-23-703;

(f) anticipated oil and natural gas production taxes;

(g) anticipated local government severance tax payments for calendar year 1995 production;

(h) anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

(i) school district block grants distributed under ~~section 244, Chapter 574, Laws of 2001~~ 20-9-630;

(j) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

(k) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the transportation fund levy

requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142.”

Section 30. Section 20-10-146, MCA, is amended to read:

“20-10-146. County transportation reimbursement. (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment, except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount;

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration; and

(c) when county transportation reimbursement is required under the mandatory attendance agreement provisions of 20-5-321.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts or reimbursements under the mandatory attendance agreement provisions of 20-5-321;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) anticipated local government severance tax payments for calendar year 1995 production;

(iv) coal gross proceeds taxes under 15-23-703;

(v) countywide school transportation block grants distributed under ~~section 246, Chapter 574, Laws of 2001 20-9-632;~~

(vi) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund;

(vii) federal forest reserve funds allocated under the provisions of 17-3-213; and

(viii) other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) subtracting the money available, as determined in subsection (2)(b), to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on the fourth Monday of August by the

county superintendent, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements to the superintendent of public instruction not later than the second Monday in September. The report must be completed on forms supplied by the superintendent of public instruction.

(5) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments.”

Section 31. Section 20-15-221, MCA, is amended to read:

“20-15-221. Election of trustees after organization of community college district. (1) After organization, the registered electors of the community college district qualified to vote under the provisions of 20-20-301 shall annually vote for trustees on the regular school election day provided for in 20-3-304. The election ~~shall must~~ be conducted in accordance with the election provisions of this title whenever ~~such the~~ provisions are made applicable to community college districts. ~~Such elections shall~~ Elections must be conducted by the component elementary school districts within ~~such the~~ community college district upon the order of the board of trustees of the community college district. The order ~~shall must~~ be transmitted to the appropriate trustees not less than 40 days prior to the regular school election day.

(2) Notice of the community college district trustee election ~~shall must~~ be given by the board of trustees of the community college district by publication in one or more newspapers of general circulation within each county, not less than once a week for 2 consecutive weeks, *with* the last insertion to be no more than 1 week prior to the date of the election. This notice ~~shall be~~ is in addition to the election notice to be given by the trustees of the component elementary districts under the school election laws.

(3) ~~Should~~ If trustees ~~be are~~ elected other than at large throughout the entire district, then only those qualified voters within the area from which the trustee or trustees are to be elected ~~shall may~~ cast their ballots for the trustee or trustees from that area. In addition to the nominating petition required by 20-15-219(2), all candidates for the office of trustee shall file their declarations of candidacy with the secretary of the board of trustees of the community college district not less than 30 days prior to the date of election. If an electronic voting system ~~or voting machines are~~ is not used in the component elementary school district or districts ~~which that~~ conduct the election, the board of trustees of the community college district shall cause ballots to be printed and distributed for the polling places in ~~such the~~ component districts at the expense of the community college district, but in all other respects ~~said the~~ elections ~~shall must~~ be conducted in accordance with the school election laws. All costs incident to election of the community college trustees ~~shall must~~ be borne by the community college district, including one-half of the compensation of the judges for the school elections; ~~provided that.~~ However, if the election of the community college district trustees is the only election conducted, the community college district shall compensate the district for the total cost of the election.”

Section 32. Section 20-20-303, MCA, is amended to read:

“20-20-303. Elector challenges. (1) An elector may challenge the qualifications of another elector under the provisions of ~~13-2-404 and~~ 13-13-301(1). Any person offering to vote in a school election may be challenged by any elector of the district on any of the grounds for challenge established in 13-13-301(2). The challenge ~~shall~~ *must* be determined in the same manner, using the same oath as provided in Title 13, chapter 13, part 3.

(2) Any person who has been challenged under any of the provisions of this section and who swears or affirms falsely before any school election judge is guilty of false swearing and is punishable as provided in 45-7-202.”

Section 33. Section 20-25-308, MCA, is amended to read:

“20-25-308. Prohibition on transfer to foundation. ~~(1) Except as provided in subsection (2), in~~ 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:

- ~~(a)~~(1) money in the higher education funds provided for in 17-2-102;
- ~~(b)~~(2) excess proceeds of money borrowed pursuant to 20-25-402; and
- ~~(c)~~(3) real or personal property acquired with money listed in subsection (1)~~(a)~~ or proceeds listed in subsection ~~(1)(b)~~ (2).

~~(2) Subsection (1) does not apply to the lease for the athletic complex at Montana state university-Bozeman provided for in section 5, Chapter 478, Laws of 1995. The land lease for the athletic complex must be of a term not to exceed 7 years from the date of approval of the lease.”~~

Section 34. 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 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) “Department” means the department of fish, wildlife, and parks of the state of Montana.

(4) “Documented vessel” means a vessel that has and is required to have a valid marine document as a vessel of the United States.

(5) “Identifying number” means the boat number set forth in the certificate of number and properly displayed on the motorboat *or sailboat*.

(6) “Lienholder” means a person holding a security interest.

(7) “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) (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) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(10) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

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

(14) "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) "Registration decal" means an adhesive sticker produced by the department of justice and issued by the department of justice, its authorized agent, or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft as proof of payment of all fees imposed on the motorboat, sailboat, or personal watercraft for the registration period indicated on the sticker as recorded by the department of justice under 61-3-101.

(16) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

(17) "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation and is valid against third parties generally.

(18) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

(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.

(20) "Waters of this state" means any waters within the territorial limits of this state."

Section 35. Section 23-2-511, MCA, is amended to read:

"23-2-511. Operation of unnumbered motorboats or sailboats prohibited — display of registration decal. (1) A motorboat on the waters of this state; *that is* propelled by a motor or an engine of any description; *or a sailboat on the waters of this state* must be properly numbered and display a valid registration decal. A person may not operate or give permission for the operation of any motorboat *or sailboat* on the waters of this state unless the motorboat *or sailboat* is numbered and displays a valid registration decal in accordance with this part and applicable federal law or with a federally approved numbering system of another state and unless:

(a) the certificate of number assigned to the motorboat *or sailboat* is in effect;

(b) the identifying number set forth in the certificate of number and the valid license decals are displayed on the motorboat *or sailboat*; and

(c) a temporary permit has been obtained from the county in which ~~the boat~~ *a motorboat* is being operated if that county requires a temporary permit for out-of-state motorboats, as provided in 7-16-2121.

(2) Upon transfer of ownership of a motorboat *or sailboat* from a registered ~~boat~~ dealer or manufacturer, the transferred motorboat *or sailboat* may be operated on the waters of this state for 30 consecutive calendar days immediately following the transfer of ownership without displaying the numbers and registration decal required by subsection (1) if when the motorboat *or sailboat* is operated during those 30 consecutive calendar days, a bill of sale or other evidence of transfer ~~reciting~~ *showing* the date of the transfer of ownership is retained in the motorboat *or sailboat* and is ~~exhibited~~ *shown* to a warden or other officer upon request."

Section 36. Section 23-2-514, MCA, is amended to read:

"23-2-514. Exemption from numbering provisions. A motorboat *or sailboat* is not required to be numbered under this part if it is:

(1) covered by a number in effect that has been assigned to it pursuant to federal law or a federally approved numbering system of another state if the motorboat *or sailboat* has not been within this state for a period in excess of 90 consecutive days. After 90 consecutive days within this state, this state becomes the motorboat's state of principal use *of the motorboat or sailboat* and the owner ~~must~~ *shall* apply for a Montana number, certificate of number, and registration decal.

(2) a motorboat *or sailboat* from a country other than the United States temporarily using the waters of this state;

(3) a motorboat *or sailboat* whose owner is the United States, a state, or a subdivision of a state; or

(4) a ship's lifeboat."

Section 37. 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 fee in lieu of tax as required by 15-16-202 for motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, or personal watercraft, 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, ~~or~~ sailboat, or *personal watercraft* do not expire while the motorboat, ~~or~~ 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 38. Section 23-2-521, MCA, is amended to read:

“23-2-521. Equipment. (1) Every motorboat or vessel must have aboard:

(a) ~~one personal flotation device that is approved by the United States coast guard approved personal flotation device and that is~~ in good and serviceable condition for each person on board, provided that a person who has not reached ~~his 12th birthday~~ 12 years of age must have a *life preserver that is approved by the United States coast guard approved life preserver* and that is properly fastened to ~~his~~ the person when occupying a motorboat or vessel under 26 feet in length while the motorboat or vessel is in motion;

(b) if carrying or using an inflammable or toxic fluid in an enclosure for any purpose and if the motorboat or vessel is not an entirely open one, an efficient natural or mechanical ventilation system prescribed by the department that must be used and be capable of removing resulting gases prior to and during the time the motorboat or vessel is occupied by a person;

(c) hand portable fire extinguishers approved by the United States coast guard, the number of which is to be determined by the department, or a *fixed fire extinguishing system that is approved by the United States coast guard approved fixed fire extinguishing system*, except that motorboats less than 26 feet in length of entirely open construction, propelled by outboard motors, and not carrying passengers for hire need not carry the portable fire extinguishers or fire extinguishing systems.

(2) ~~Every motorboat or vessel must have the~~ *The* carburetor or carburetors of each of ~~its~~ *the* engines of a motorboat or vessel (except outboard motors) ~~using that use~~ gasoline as fuel *must be* equipped with an efficient flame arrester, backfire trap, or other similar device.

(3) (a) Except as provided in subsection (3)(b), the exhaust of an internal combustion engine used on a motorboat or vessel must be muffled either by discharge underwater or by a functioning muffler capable of muffling exhaust noise to 90 dbA or less when measured at a distance of 1 meter from the muffler at idle speed in accordance with the stationary sound level measurement procedure for pleasure motorboats (SAE J2005). The muffler may not be modified or altered, such as by a cutout. The department may require a test at dockside to determine exhaust noise level.

(b) The provisions of subsection (3)(a) do not apply to a motorboat *or vessel*:

(i) competing in a state-sanctioned regatta or boat race while on trial runs between 9 a.m. and 5 p.m. and during a period not more than 48 hours immediately preceding the regatta or boat race;

(ii) operating under a separate permit issued by the department for the purpose of tuning engines, making test or trial runs, or competing in official trials for speed records other than in connection with regattas or boat races; or

(iii) operated by an authorized agent of federal, state, or local government to carry out ~~his~~ *the* duty of enforcement, search and rescue, firefighting, or research.

(4) (a) Except as provided in subsection (4)(b), a vessel may not be equipped with a siren, and a person may not use or install a siren on a vessel.

(b) An authorized emergency vessel may be equipped with a siren capable of sound audible under normal conditions from a distance of not less than 500 feet, but the siren may be used only when the vessel is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, and the operator of the vessel ~~must~~ *shall* sound the siren when necessary to warn persons of the vessel's approach.

(5) When in operation or at anchor or moored away from a docking facility between sunset and sunrise, all vessels must display lights as prescribed by the department.

(6) The department may designate waters where and the time of year on these waters when all persons aboard a motorboat or vessel shall wear approved life preservers at all times.

(7) Vessels, including houseboats and floating cabins, equipped with a galley or toilet must have a wastewater holding system sealed to prevent the discharge of water-carried waste products, whether treated or untreated, into the surrounding waters.

(8) The department may adopt rules modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation and safety laws or with the navigation and safety rules promulgated by the United States coast guard.

(9) A person may not operate or give permission for the operation of a vessel that is not equipped as required by this section."

Section 39. 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, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644, with respect to registration, registration decals, *certificates of title*, and ~~certification~~ *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, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644.

(2) The provisions of 23-2-601, 23-2-602, 23-2-611, 23-2-614 through 23-2-619, 23-2-621, 23-2-622, 23-2-626, 23-2-631 through 23-2-635, and 23-2-641 through 23-2-644 with respect to registration, registration decals, *certificates of title*, and ~~certification~~ *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 40. Section 27-1-306, MCA, is amended to read:

"27-1-306. When replacement value to be allowed. The measure of damages in a case in which the cost of repairing a motor vehicle exceeds its value is the actual replacement value of the motor vehicle rather than its "book" value unless, after the damages arise, the parties agree to use the "book" value. "Book" value must be determined by referring to the most recent volume of the Mountain States Edition of the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide, *or* the National Edition of N.A.D.A. Appraisal Guides Official Older Used Car Guide, ~~or another nationally published used vehicle or appraisal guide approved by the department of revenue.~~ Actual replacement value is the actual cash value of the motor vehicle immediately prior to the damage. "Book" value may be used to assist in determining the actual replacement value of the motor vehicle."

Section 41. Section 30-14-222, MCA, is amended to read:

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

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

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

(3) A defendant in an action brought under this section may be required to testify under the Montana Rules of Civil Procedure. In addition, the books and records of the defendant may be brought into court and introduced into evidence by reference. Information obtained pursuant to this subsection may not be used against the defendant as a basis for prosecution under 30-14-205 through 30-14-214, 30-14-216 through 30-14-218, or 30-14-224.

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

Section 42. Section 30-14-223, MCA, is amended to read:

"30-14-223. Department's institution of suit. Upon the violation of any of the provisions of 30-14-205; *through* 30-14-214; or 30-14-216 through

30-14-218 by any business, the department may institute a proceeding in a court of competent jurisdiction for the forfeiture of the business's charter, rights, franchises or privileges, and powers exercised by the business and to permanently enjoin it from transacting business in this state. If in the proceeding the court finds that the business is violating or has violated any of the provisions of 30-14-205, *through* 30-14-214, or 30-14-216 through 30-14-218, the court shall enjoin the business from doing business in this state permanently or for a period of time that the court orders or the court shall annul the charter or revoke the franchise of the business."

Section 43. Section 30-14-901, MCA, is amended to read:

"30-14-901. Discrimination in price. (1) It is unlawful for a business to discriminate, directly or indirectly, in the price charged to different purchasers of commodities of like grade and quality if the effect of the discrimination upon other businesses or customers is to substantially lessen competition, to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any business that grants or knowingly receives the benefit of the discrimination.

(2) This section does not prohibit:

(a) price differentials that make due allowance for the costs of manufacture, sale, or delivery resulting from the differing methods or quantities in which the commodities are sold or delivered to the purchasers;

(b) businesses engaged in selling commodities from selecting their own customers in bona fide transactions and not in restraint of trade; or

(c) price changes from time to time made in response to changing conditions affecting the market for, or the marketability of, the commodities, including but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasoned goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(3) It is unlawful for a business to discriminate in favor of one purchaser against another purchaser of a processed or unprocessed commodity bought for resale by contracting to furnish, by furnishing, or by contributing to the furnishing of any service or facility connected with the processing, handling, sale, or offering for sale of the commodity purchased upon terms not accorded to all purchasers on proportionally equal terms.

(4) It is unlawful for a business to knowingly induce or receive a discrimination in price that is prohibited by this section.

(5) This section does not apply to industry members regulated by Title 16, chapters 1 through 4 and 6."

Section 44. Section 30-14-1407, MCA, is amended to read:

"30-14-1407. Authority of department, attorney general, and county attorney. (1) The department, the attorney general, and a county attorney have the same authority in enforcing and carrying out the provisions of this part as they have under Title 30, chapter 14, part 1.

(2) All civil fines, costs, and fees received or recovered by the department pursuant to this section must be deposited into the state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this section and to fund the telemarketing fraud consumer

awareness program established in ~~30-14-1405~~ *30-14-1406*. Any excess civil fines, costs, or fees must be deposited in the general fund.

(3) All civil fines, costs, and fees received or recovered by the attorney general pursuant to this section must be deposited into the state special revenue account to the credit of the attorney general and must be used to defray the expenses of the office of the attorney general in discharging its duties in relation to this section and to establish a telemarketing fraud consumer awareness program similar to the program authorized in ~~30-14-1405~~ *30-14-1406*. Any excess civil fines, costs, or fees must be deposited in the general fund.

(4) All civil fines, costs, and fees received or recovered by a county attorney must be paid to the general fund of the county where the action was commenced.”

Section 45. 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 it relates to pediatric vaccines;
 - (b) Title I, subtitle B, part 6, excluding section 609, of the Employee Retirement Income Security Act of 1974, ~~Public Law 93-406~~ *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).
- (b) Creditable coverage does not include coverage consisting solely of coverage of excepted benefits.

(5) "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) "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) "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) "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) if the individual elected the continuation coverage described in subsection (8)(f).

(9) "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) "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) "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) "Health insurance issuer" means an insurer, a health service corporation, or a health maintenance organization.

(13) "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) "Individual market" means the market for health insurance coverage offered to individuals other than in connection with group health insurance coverage.

(15) "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 2 employees on the first day of the plan year.

(16) "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) "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) "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); or

(c) insurance covering medical care referred to in subsections (18)(a) and (18)(b).

(19) "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) "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) "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) "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) "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 46. Section 37-10-304, MCA, is amended to read:

"37-10-304. Course in use of diagnostic and therapeutic drugs required. (1) (a) In addition to the requirements of 37-10-302, each person desiring to commence the practice of optometry shall satisfactorily complete a course prescribed by the board of medical examiners with consultation and approval by the board of ~~optometrists~~ *optometry* with particular emphasis on the topical application of diagnostic agents to the eye for the purpose of examination of the human eye and the analysis of ocular functions.

(b) A person presently licensed to practice optometry who wishes to employ diagnostic agents ~~must~~ *shall* satisfactorily complete a course referred to in subsection (1)(a) and ~~must~~ pass an examination as provided in subsection (1)(d).

(c) The course referred to in subsection (1)(a) must be conducted by an institution accredited by a regional or professional accreditation organization ~~which that~~ is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course must also be approved by the board.

(d) The board shall provide for an examination in competency in the use of diagnostic drugs and shall issue a certificate to those applicants who pass the examination.

(2) (a) Each person desiring to commence the practice of optometry shall:

(i) pass an examination; of the international association of boards of examiners in optometry; on the diagnosis, treatment, and management of ocular disease; or

(ii) take a course and pass an examination in the diagnosis, treatment, and management of ocular diseases. The course and examination must be conducted by an institution accredited by a regional or professional accreditation organization ~~which~~ *that* is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course and examination must also be approved by the board.

(b) A person presently licensed to practice optometry who wishes to employ therapeutic pharmaceutical agents must meet the requirements of subsection (2)(a).

(c) The board shall:

(i) provide for an examination in competency in the diagnosis, treatment, and management of therapeutic pharmaceutical agents; and

(ii) issue a certificate to an applicant who passes the examination.”

Section 47. Section 39-11-201, MCA, is amended to read:

“39-11-201. (Temporary) Grant review committee — appointment — powers and duties — rulemaking authority. (1) There is a seven-member ~~loan~~ grant review committee, as follows:

(a) two representatives from the private sector representing economic development, appointed by the governor;

(b) two representatives from the business community, one appointed by the president of the senate and one appointed by the speaker of the house, one of whom serves on a local workforce investment board;

(c) one representative from the governor’s office, appointed by the governor;

(d) one representative from the department of revenue, appointed by the governor; and

(e) one representative from the department of labor and industry, appointed by the governor.

(2) The committee shall award training grants to a primary sector business qualified under 39-11-202 after a determination that the primary sector business:

(a) has prospects for achieving commercial success and for creating new jobs in the state;

(b) has prospects for collaboration between the public and private sectors of the state’s economy;

(c) has potential for commercial success related to the specific product, process, or business development methodology proposed;

(d) can provide matching funds; and

(e) can be reasonably expected to provide an economic return within a reasonable period of time.

(3) A committee member may not personally apply for or receive a primary sector business workforce training grant. If an organization with which a member is affiliated applies for a grant, the member shall disclose the nature of the affiliation and, if the committee member is a board member or officer of the organization, may not participate in the decision of the committee regarding the grant application.

(4) The committee shall adopt rules to:

(a) provide for grant application procedures;

(b) develop procedures for awarding grants pursuant to the criteria provided in 39-11-202; and

(c) develop independent review and audit procedures to ensure that grants made are used for the purposes identified in the grant contracts.

(5) All decisions of the committee are final and are not subject to the contested case provisions of Title 2, chapter 4.

(6) The committee is allocated to the office of economic development for administrative purposes only as provided in 2-15-121. (Terminates June 30, 2007—sec. 10, Ch. 567, L. 2003.)”

Section 48. Section 39-11-204, MCA, is amended to read:

“39-11-204. (Temporary) Board of investment loans. The office of economic development may obtain a maximum of \$10 million in outstanding loans from the board of investments issued pursuant to the Municipal Finance Consolidation Act of 1983 authorized in Title 17, chapter 5, part 16, to provide financial assistance for primary sector business workforce training grants authorized by the ~~loan~~ *grant review* committee pursuant to criteria outlined in 39-11-202. (Terminates June 30, 2007—sec. 10, Ch. 567, L. 2003.)”

Section 49. Section 39-71-1011, MCA, is amended to read:

“39-71-1011. Definitions. As used in this chapter, the following definitions apply:

(1) ~~“Board of rehabilitation certification”~~ *“Commission on rehabilitation counselor certification”* means the nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established to certify rehabilitation practitioners.

(2) “Disabled worker” means a worker who has a permanent impairment, established by objective medical findings, resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury or to a job with similar physical requirements and who has an actual wage loss as a result of the injury.

(3) “Rehabilitation benefits” means benefits provided in 39-71-1006 and 39-71-1025.

(4) “Rehabilitation plan” means a written individualized plan that assists a disabled worker in acquiring skills or aptitudes to return to work through job placement, on-the-job training, education, training, or specialized job modification and that reasonably reduces the worker’s actual wage loss.

(5) “Rehabilitation provider” means a rehabilitation counselor certified by the ~~board for rehabilitation certification~~ *commission on rehabilitation counselor certification* and designated by the insurer.

(6) "Rehabilitation services" means a program of evaluation, planning, and implementation of a rehabilitation plan to assist a disabled worker to return to work."

Section 50. Section 39-71-1014, MCA, is amended to read:

"39-71-1014. Rehabilitation services — required and provided by insurers. (1) Rehabilitation services are required for disabled workers and may be initiated by:

(a) an insurer by designating a rehabilitation provider; or

(b) a disabled worker through a request to the department. The department shall then require the insurer to designate a rehabilitation provider.

(2) Rehabilitation services provided under this part must be delivered through a rehabilitation counselor certified by the ~~board of rehabilitation certification~~ *commission on rehabilitation counselor certification.*"

Section 51. Section 39-71-2316, MCA, is amended to read:

"39-71-2316. Powers of state fund. (1) For the purposes of carrying out its functions, the state fund may:

(a) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, as part of the coverage, provide related employers' liability insurance upon approval of the board;

(b) sue and be sued;

(c) ~~except as provided in section 21, Chapter 4, Special Laws of May 1990,~~ enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(d) collect and disburse money received;

(e) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may ~~only~~ be adopted and changed *only by* using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund is required to belong to a licensed workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, and may use the classifications of employment adopted by the designated workers' compensation advisory organization, as provided in Title 33, chapter 16, part 10, and corresponding rates as a basis for setting its own rates. Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, or other person may not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's specific payroll or loss information, including but not limited to experience modification factors.

(f) pay the amounts determined to be due under a policy of insurance issued by the state fund;

(g) hire personnel;

(h) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside.

(i) adopt and implement one or more alternative personal leave plans pursuant to 39-71-2328;

(j) upon approval of the board, contract with licensed resident insurance producers;

(k) upon approval of the board, enter into agreements with licensed workers' compensation insurers, insurance associations, or insurance producers to provide workers' compensation coverage in other states to Montana-domiciled employers insured with the state fund;

(l) upon approval of the board, expend funds for scholarship, educational, or charitable purposes;

(m) upon approval of the board, including terms and conditions, provide employers coverage under the federal Longshore and Harbor Workers' Compensation Act, (33 U.S.C. 901, et seq.), the federal Merchant Marine Act, 1920 (Jones Act), 46 U.S.C. 688), and the federal Employers' Liability Act (45 U.S.C. 51, et seq.);

(n) perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund.

(2) The state fund shall include a provision in every policy of insurance issued pursuant to this part that incorporates the restriction on the use and transfer of money collected by the state fund as provided for in 39-71-2320."

Section 52. Section 40-5-906, MCA, is amended to read:

"40-5-906. Child support information and processing unit. (1) The department shall establish and maintain a centralized child support case registry and payment processing unit. The purpose of this unit is to facilitate mass case processing by utilizing computer technology to identify parents and their income and to initiate automated procedures to collect child support as it becomes due and payable.

(2) The case registry must include a database of information concerning child support orders, all cases receiving IV-D services, and all district court and administrative cases with support orders entered or modified after October 1, 1998.

(3) The case registry must use automated systems to obtain information from federal, state, and local databases with regard to the location of obligors and their income and assets. This information must be shared with the courts of this state and, upon request, may be shared with child support enforcement agencies of this and other states for the purpose of establishing paternity and establishing and enforcing child support obligations.

(4) To assist creditors, credit managers, and others who need timely verification of the existence of child support liens in IV-D cases, the case registry must include a directory of liens, which must include liens against an obligor's real and personal property filed by the department with other agencies and lien registries. Information in the lien registry may be made available through automated systems, which may include voice response units.

(5) Each IV-D case with a child support order must be electronically monitored so that when a timely payment of support is not made, enforcement action may be taken. To accomplish this purpose, payments due under a child support order must be paid to the department for processing and disbursement.

(6) In either a IV-D income-withholding case in this state or a state non IV-D case, if immediate income withholding is authorized after January 1, 1994, an employer or other payor of income shall pay all support withheld from an obligor's income to one centralized location as specified by the department.

(7) To facilitate automated disbursement of support payments, automated enforcement actions, and service of notice when required, an obligor or obligee must be directed to provide, and update as necessary, information sufficient to locate the obligor and obligee and to locate the obligor's income and assets.

[(8) An employer or labor organization shall report a newly hired or rehired employee. Information reported by an employer must be electronically compared to the information database to align an obligor who owes a duty of support with a source of income. When a match is revealed in a IV-D case, a notice must, if appropriate to the case, be promptly transmitted to the employer directing the employer to commence withholding for the payment of the obligor's support obligation.]

(9) The department may enter into contracts or cooperative agreements with any person, business, firm, corporation, or state agency to establish, operate, or maintain the case registry and payment processing unit or any function or service afforded by the unit, provided that:

(a) the department is ultimately responsible for operation of the case registry and payment processing unit, including any function or service afforded by the unit;

(b) there is a board to act in an advisory capacity to the case registry and payment processing unit. The board shall advise the department in the policy, direction, control, and management of the case registry and payment processing unit and in determining forms, data processing needs, terms of contracts and cooperative agreements, and other similar technical requirements. Board members who are not employed by the department shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503. Except for members who represent the department, appointed board members shall serve for ~~a term~~ terms of 2 years. The board consists of ~~five~~ six members as follows:

(i) a district court judge nominated by the district court judges' association;

(ii) a clerk of court nominated by the association of clerks of the district courts;

(iii) the supreme court administrator or *the administrator's* designee;

(iv) two members, appointed by the department director, one from the child support enforcement division and one from the operations and technology division; and

(v) a representative of a county data processing unit, nominated by the association of clerks of the district courts, ~~and~~

(c) the costs charged to the department under the contract or cooperative agreement may not exceed the actual costs that the department would have incurred without the contract or cooperative agreement.

(10) The department may adopt rules to implement 19-2-909, 19-20-306, 40-5-157, 40-5-291, and this part. Rules must be drafted, adopted, and applied in a manner that:

(a) minimizes the personal intrusiveness on the employer or employee of any requested information;

(b) minimizes the costs to the department and any employer or employee with respect to obtaining and submitting any requested information; and

(c) maximizes the confidentiality and security of any employer or employee information that the department gathers under 19-2-909, 19-20-306, 40-5-157, 40-5-291, and this part. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)”

Section 53. Section 40-6-405, MCA, is amended to read:

“40-6-405. Surrender of newborn to emergency services provider — temporary protective custody. (1) If a parent surrenders an infant who may be a newborn to an emergency services provider, the emergency services provider shall comply with the requirements of this section under the assumption that the infant is a newborn. The emergency services provider shall, without a court order, immediately accept the newborn, taking the newborn into temporary protective custody, and shall take action necessary to protect the physical health and safety of the newborn.

(2) The emergency services provider shall make a reasonable effort to do all of the following:

(a) if possible, inform the parent that by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption according to law;

(b) if possible, inform the parent that the parent has 60 days to petition the court to regain custody of the newborn;

(c) if possible, ascertain whether the newborn has a tribal affiliation, and if so, ascertain relevant information pertaining to any Indian heritage of the newborn;

(d) provide the parent with written material approved by or produced by the department, which includes but is not limited to all of the following statements:

(i) by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption and the department shall initiate court proceedings according to law to place the newborn for adoption, including proceedings to terminate parental rights;

(ii) the parent has 60 days after surrendering the newborn to petition the court to regain custody of the newborn;

(iii) the parent may not receive personal notice of the court proceedings begun by the department;

(iv) information that the parent provides to an emergency services provider will not be made public; *and*

~~(v) a parent may contact the safe delivery line established under 40-6-415 for more information and counseling; and~~

~~(vi)~~(v) any Indian heritage of the newborn brings the newborn within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.

(3) After providing a parent with the information described in subsection (1), if possible, an emergency services provider shall make a reasonable effort to:

(a) encourage the parent to provide any relevant family or medical information, including information regarding any tribal affiliation;

~~(b) provide the parent with the pamphlet produced under 40-6-415 and inform the parent that the parent may receive counseling or medical attention;~~

~~(c)~~(b) inform the parent that information that the parent provides will not be made public;

~~(d)~~(c) ask the parent for the parent's name;

~~(e)~~(d) inform the parent that in order to place the newborn for adoption, the state is required to make a reasonable attempt to identify the other parent and to obtain relevant medical family history and then ask the parent to identify the other parent;

~~(f)~~(e) inform the parent that the department can provide confidential services to the parent; and

~~(g)~~(f) inform the parent that the parent may sign a relinquishment for the newborn to be used at a hearing to terminate parental rights.”

Section 54. Section 41-3-302, MCA, is amended to read:

“41-3-302. Responsibility of providing protective services — voluntary protective services agreement. (1) The department of public health and human services has the primary responsibility to provide the protective services authorized by this chapter and has the authority pursuant to this chapter to take temporary or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

(2) The department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week.

(3) (a) The department may provide voluntary protective services by entering into a written voluntary protective services agreement with a parent or other person responsible for a child's welfare for the purpose of keeping the child safely in the home.

(b) The department shall inform a parent or other person responsible for a child's welfare who is considering entering into a voluntary protective services agreement that the parent or other person may have another person of the parent's or responsible person's choice present whenever the terms of the voluntary protective services agreement are under discussion by the parent or other person responsible for the child's welfare and the department. Reasonable accommodations must be made regarding the time and place of meetings at which a voluntary protective services agreement is discussed.

(4) A voluntary protective services agreement may include provisions for:

(a) a family group decisionmaking meeting and implementation of safety plans developed during the ~~conference~~ *meeting*;

(b) a professional evaluation and treatment of a parent or child, or both;

(c) a safety plan for the child;

(d) in-home services aimed at permitting the child to remain safely in the home;

(e) temporary relocation of a parent in order to permit the child to remain safely in the home;

(f) a 30-day temporary out-of-home protective placement; or

(g) any other terms or conditions agreed upon by the parties that would allow the child to remain safely in the home or allow the child to safely return to the home within the 30-day period, including referrals to other service providers.

(5) A voluntary protective services agreement is subject to termination by either party at any time. Termination of a voluntary protective services agreement does not preclude the department from filing a petition pursuant to 41-3-422 in any case in which the department determines that there is a risk of harm to a child.

(6) If a voluntary protective services agreement is terminated by a party to the agreement, a child who has been placed in a temporary out-of-home placement pursuant to the agreement must be returned to the parents within 2 working days of termination of the agreement unless an abuse and neglect petition is filed by the department.”

Section 55. Section 41-3-437, MCA, is amended to read:

“41-3-437. Adjudication — temporary disposition — findings — order. (1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a preponderance of the evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that the child is a youth in need of care. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.

(3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is admissible according to the Montana Rules of Evidence.

(4) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

(a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child’s parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person; and

(ii) the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

(B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

(5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

(6) (a) If the court determines that the child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

(b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 20 days, as provided in ~~41-3-438(2)~~ 41-3-438(1), and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

(7) (a) Before making an adjudication, the court may make oral findings, and following the adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;

(ii) whether there is a legal basis for continued court and department intervention; and

(iii) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.

(b) The court may order:

(i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;

(ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;

(iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and

(v) the department to continue efforts to notify noncustodial parents."

Section 56. Section 41-3-445, MCA, is amended to read:

"41-3-445. Permanency plan hearing. (1) (a) (i) Subject to subsection (1)(b), a permanency plan hearing must be held by the court:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); and

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed in either an adoptive or a guardianship placement, the court shall conduct a hearing and make a finding *as to* whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency plan hearing is not required if the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian.

(c) The permanency plan hearing may be combined with a hearing that is required in other sections of this part if held within the time limits of that section. If a permanency plan hearing is combined with another hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section.

(2) At least 3 working days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court for review. The report must address the department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.

(3) At least 3 working days prior to the permanency plan hearing, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) The court's order must be issued within a reasonable time after the permanency plan hearing. The court shall make findings on whether the permanency plan is in the best interests of the child and whether the department has made reasonable efforts to finalize the plan. The court shall order the department to take whatever additional steps are necessary to effectuate the terms of the plan.

(5) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the options provided in subsection (6) and that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditures are reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(6) Permanency options include:

(a) reunification of the child with the child's parent or guardian;

(b) adoption;

(c) appointment of a guardian pursuant to 41-3-444; or

(d) long-term custody if the child is in a planned permanent living arrangement *and if it is* established by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;

(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or

(v) the child meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the child's best interests *of the child*; and

(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(7) The court may terminate a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

Section 57. Section 44-1-1102, MCA, is amended to read:

"44-1-1102. Procedure when patrol officer accepts bail or driver's license in lieu of bail. (1) If the patrol officer accepts bail, the patrol officer shall give a signed receipt to the offender, setting forth the amount received. The patrol officer shall then deliver the bail money to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the patrol officer for the amount of bail money delivered. After the filing of the complaint and the appearance of the defendant, the justice of the peace shall assume jurisdiction and may set and accept further bail bond.

(2) If the patrol officer accepts an unexpired driver's license in lieu of bail, the patrol officer shall give the offender a signed driving permit, in a form prescribed by the department. The permit must acknowledge the officer's acceptance of the offender's driver's license and serves as a valid temporary driving permit authorizing the operation of a motor vehicle by the offender. The permit is effective as of the date the permit is signed and remains in effect through the date of the appearance listed on the permit. The patrol officer shall deliver the driver's license to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the patrol officer acknowledging delivery of the offender's driver's license to the court. After the filing of the complaint and the appearance of the defendant, the justice of the peace shall assume jurisdiction and may extend the date of the driving permit for a period up to 6 months from the defendant's initial appearance date.

(3) The ~~judge~~ *justice of the peace* shall return a driver's license that has been accepted in lieu of bail to a defendant:

(a) after the required bail has been posted or there has been a final determination of the charge; and

(b) if the defendant pleaded guilty or was convicted, after a \$25 administrative fee has been paid to the court."

Section 58. Section 46-14-221, MCA, is amended to read:

"46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses. (1) The issue of the defendant's fitness to proceed may be raised by the court, by the defendant or the defendant's counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If neither the prosecutor nor the defendant's counsel contests the finding of the report filed under 46-14-206, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) (a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility, as defined in 53-21-102, or residential facility, as defined in 53-20-102, of the department of public health and human services for so long as the unfitness endures or until disposition of the defendant is made pursuant to this section, whichever occurs first.

(b) The facility shall develop an individualized treatment plan to assist the defendant to gain fitness to proceed. The treatment plan may include a physician's prescription of reasonable and appropriate medication that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan, the facility may petition the court for an order requiring compliance. The defendant has a right to a hearing on the petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific findings that the state has proved an overriding justification for the order and that the treatment being ordered is medically appropriate.

(3) (a) The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in subsection (4).

(b) If the court determines that the defendant lacks fitness to proceed because the defendant has a mental disorder, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 21, to determine the disposition of the defendant pursuant to those provisions.

(c) If the court determines that the defendant lacks fitness to proceed because the defendant has a developmental disability as defined in 53-20-102, the proceeding against the defendant must be dismissed and the prosecutor

shall petition the court in the manner provided in Title 53, chapter 20, to determine the disposition of the defendant pursuant to those provisions.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution that is susceptible to fair determination prior to trial and that is made without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate ~~institution~~ *facility* of the department of public health and human services, of keeping the defendant there, and of bringing the defendant back are payable by the state as a district court expense.”

Section 59. Section 46-14-222, MCA, is amended to read:

“46-14-222. Proceedings if fitness regained. When the court, on its own motion or upon the application of the director of the department of public health and human services, the prosecution, or the defendant or the defendant’s legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding must be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil commitment of persons suffering from serious mental illness, order the defendant committed to an appropriate ~~institution~~ *facility* of the department of public health and human services.”

Section 60. Section 46-19-202, MCA, is amended to read:

“46-19-202. Proceedings following determination regarding fitness.

(1) If it is found that defendant is mentally fit as provided in 46-19-201, the warden of the Montana state prison shall execute the judgment.

(2) If it is found that the defendant lacks fitness, the execution of judgment must be suspended and the court shall commit the defendant to the custody of the superintendent of the Montana state hospital to be placed in an appropriate ~~institution~~ *facility* of the department of public health and human services for as long as the lack of fitness endures.

(3) When the court, on its own motion or upon application of the superintendent of the Montana state hospital, the county prosecuting officer, or the defendant or the defendant’s legal representative, determines after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the warden must be directed by the court to carry out the execution. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to proceed with execution of the sentence, the court may suspend the execution of the sentence and may order the defendant to be discharged.”

Section 61. Section 50-20-101, MCA, is amended to read:

“50-20-101. Short title. This chapter shall be known and *part* may be cited as the “Montana Abortion Control Act”.”

Section 62. Section 50-60-203, MCA, is amended to read:

“50-60-203. Department to adopt state building code by rule. (1) (a) The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all buildings or classes of buildings, including provisions dealing with safety, accessibility to

persons with disabilities, sanitation, and conservation of energy. The adoption, amendment, or repeal of a rule is of significant public interest for purposes of 2-3-103.

(b) Rules concerning the conservation of energy must conform to the policy established in 50-60-801 and to relevant policies developed under the provisions of Title 90, chapter 4, part 10.

(2) The department may adopt by reference nationally recognized building codes in whole or in part and may adopt rules more stringent than those contained in national codes.

(3) The rules, when adopted as provided in parts 1 through 4, constitute the "state building code" and are acceptable for the buildings to which they are applicable.

(4) The department shall adopt rules that permit the installation of below-grade liquefied petroleum gas-burning appliances.

(5) (a) The department shall, by rule, adopt by reference the most recently published edition of the national fire protection association's publication NFPA 99C for the installation of medical gas piping systems. The department may, by rule, issue plumbing permits for medical gas piping systems and require inspections of medical gas piping systems.

(b) A state, ~~or local government~~ county, city, or town building code compliance officer shall, as part of any inspection, request proof of a medical gas piping installation endorsement from any person who is required to hold an endorsement or who, in the inspector's judgment, appears to be involved with onsite medical gas piping activity. The inspector shall report any instance of endorsement violation to the inspector's employing agency, and the employing agency shall report the violation to the board of plumbers."

Section 63. Section 52-2-304, MCA, is amended to read:

"52-2-304. Committee duties. (1) The committee established in 52-2-303 shall, to the extent possible within existing resources:

(a) develop policies aimed at eliminating or reducing barriers to the implementation of a system of care;

(b) promote the development of an in-state quality array of core services in order to assist in returning high-risk children with multiagency service needs from out-of-state placements, limiting and preventing the placement of high-risk children with multiagency service needs out of state, and maintaining high-risk children with multiagency service needs within the least restrictive and most appropriate setting;

(c) advise local agencies to ensure that the agencies comply with applicable statutes, administrative rules, and department policy in committing funds and resources for the implementation of unified plans of care for high-risk children with multiagency service needs and in making any determination that a high-risk child with multiagency service needs cannot be served by an in-state provider;

(d) encourage the development of local interagency teams with participation from representatives from child serving agencies who are authorized to commit resources and make decisions on behalf of the agency represented;

(e) specify outcome indicators and measures to evaluate the effectiveness of the system of care; and

(f) develop mechanisms to elicit meaningful participation from parents, family members, and youth who are currently being served or who have been served in the children's system of care ~~in the initiative~~.

(2) The committee shall coordinate responsibility for the development of a stable system of care for high-risk children with multiagency service needs that may include, as appropriate within existing resources:

(a) pooling funding from federal, state, and local sources to maximize the most cost-effective use of funds to provide services in the least restrictive and most appropriate setting to high-risk children with multiagency service needs;

(b) applying for federal waivers and grants to improve the delivery of integrated services to high-risk children with multiagency service needs;

(c) providing for multiagency data collection and for analysis relevant to the creation of an accurate profile of the state's high-risk children with multiagency service needs in order to provide for the use of services based on client needs and outcomes and use of the analysis in the decisionmaking process;

(d) developing mechanisms for the pooling of human and fiscal resources; and

(e) providing training and technical assistance, as funds permit, at the local level regarding governance, development of a system of care, and delivery of integrated multiagency children's services.

(3) (a) In order to maximize integration and minimize duplication, the local interagency team, provided for in subsection (1)(d), may be facilitated in conjunction with an existing statutory team for providing youth services, including:

(i) a child protective team as provided for in 41-3-108;

(ii) a youth placement committee as provided for in 41-5-121 and 41-5-122;

(iii) a county interdisciplinary child information team or an auxiliary team as provided for in 52-2-211;

(iv) a foster care review committee as provided for in 41-3-115; and

(v) a local citizen review board as provided for in 41-3-1003.

(b) If the local interagency team decides to coordinate and consolidate statutory teams, it shall ensure that all state and federal rules, laws, and policies required of the individual statutory teams are fulfilled."

Section 64. Section 53-6-703, MCA, is amended to read:

"53-6-703. Managed care community network. (1) A managed care community network shall comply with the federal requirements for prepaid health plans as provided in 42 CFR, part 434.

(2) A managed care community network may contract with the department to provide any combination of medicaid-covered health care services that is acceptable to the department.

(3) The department, prior to entering into a contract, shall require that a managed care community network demonstrate to the department its ability to bear the level of financial risk being assumed by servicing enrollees under a contract for comprehensive physical or mental health care services. The department shall by rule adopt criteria for assessing the financial solvency of a network. The rules must consider risk-bearing and management techniques and protections against financial insolvency; if a managed care community

network is declared insolvent or bankrupt, as determined appropriate by the department. The rules must also consider whether a network has sufficiently demonstrated its financial solvency and net worth. The department's criteria must be based on sound actuarial, financial, and accounting principles. The department is responsible for monitoring compliance with the rules. The department shall provide for independent review of any contract provisions and contract compliance with the financial solvency rules.

(4) A managed care community network may not begin operation before the effective date of rules adopted by the department to implement the changes made by Chapter 466, Laws of 2001, under this part, the approval of any necessary federal waivers, and the completion of the review of an application submitted to the department. The department may charge the applicant an application review fee for the department's actual cost of review of the application. The fee must be adopted by rule by the department. Fees collected by the department must be deposited in an account in the special revenue fund and are statutorily appropriated, as provided in 17-7-502, to the department to defray the cost of application review.

(5) A health care delivery system that contracts with the department under the program may not be required to provide or arrange for any health care or medical service, procedure, or product that violates religious or moral teachings and beliefs if that health care delivery system is owned, controlled, or sponsored by or affiliated with a religious institution or religious organization but must comply with the notice requirements of 53-6-705(4)(c)."

Section 65. Section 53-7-109, MCA, is amended to read:

"53-7-109. Administration of vocational rehabilitation programs — applicability. (1) Those divisions of the department that have programs for the provision of vocational rehabilitation services may share administrative personnel, operations, and policies so as to assure *in order to ensure* uniform administration necessary under the federal Rehabilitation Act of 1973, (29 U.S.C. 701, et seq.), as may be amended. ~~Within the department, the vocational rehabilitation services provided under the federal act must be administered in such a way that they are kept separate and independent from other programs, except as provided in section 15, Chapter 396, Laws of 1989.~~

(2) This section applies to all programs and services in Title 53, chapter 7, administered by the department with funds provided under the federal Rehabilitation Act of 1973, (29 U.S.C. 701, et seq.), as may be amended."

Section 66. Section 61-3-403, MCA, is amended to read:

"61-3-403. Color and design of personalized license plates — exception — county designation. (1) Except as provided in 61-3-466, the personalized license plates must be the same color and design as regular passenger motor vehicle license plates and must consist of numbers or letters, or any combination ~~thereof~~ *of numbers and letters*, not exceeding eight positions and not less than two positions, provided that there are no conflicts with existing passenger, commercial, trailer, motorcycle, quadricycle, or special license plate series under this title.

(2) Upon the issuance of personalized license plates or upon the reregistration of any motor vehicle assigned personalized license plates that do not bear a county designation or no longer bear the correct county designation, the department shall provide ~~nonremovable stickers~~ *registration decals* bearing

the appropriate county designation, which must be affixed to the license plates in use in accordance with instructions by the department.”

Section 67. Section 61-3-522, MCA, is amended to read:

“61-3-522. Schedule of fees for motor homes. (1) The owner of a motor home shall pay a fee based on the age of the motor home according to the following schedule:

| | |
|---|-------|
| less than 2 years old | \$250 |
| 2 years old and less than 3 years old | 230 |
| 3 years old and less than 4 years old | 195 |
| 4 years old and less than 5 years old | 150 |
| 5 years old and less than 6 years old | 125 |
| 6 years old and less than 7 years old | 100 |
| 7 years old and less than 8 years old | 75 |
| 8 years old and older | 65 |

(2) (a) Except as provided in subsection (2)(b), the age of a motor home is determined by subtracting the manufacturer’s designated model year from the current calendar year.

(b) 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.~~”

Section 68. Section 61-3-722, MCA, is amended to read:

“61-3-722. Registration and identification of proportionally registered vehicles — fees — effect of registration. (1) The department shall register each proportionally registered vehicle and issue a license plate or plates, a distinctive ~~sticker~~ *registration decal*, or other suitable identification device for each vehicle described in the application upon payment of the appropriate fees and property taxes, as provided by law, for the application and for the license plates, ~~stickers~~ *registration decals*, or devices issued. A fee of \$2 must be paid for each license plate, each ~~sticker~~ *registration decal*, and each device issued for each proportionally registered vehicle. A fee of \$5 must be paid for each vehicle receiving temporary registration as authorized by section 704 of the international registration plan of the American association of motor vehicle administrators, adopted in April 1988. A registration card must be issued for each proportionally registered vehicle. The registration card must, in addition to other information required by chapter 3, show the number of the license, ~~sticker~~ *registration decal*, or other device issued for the proportionally registered vehicle and must be carried in the vehicle at all times.

(2) Fleet vehicles registered and identified as fleet vehicles are considered fully licensed and registered in this state for any type of movement or operation, except that, in those instances in which a grant of authority is required for intrastate movement or operation, the vehicle may not be operated in intrastate commerce in this state unless the owner has been granted intrastate authority by the public service commission and unless the vehicle is being operated in conformity with that authority.”

Section 69. Section 61-4-223, MCA, is amended to read:

“61-4-223. Assignment of numbers. (1) Upon the licensing of a manufacturer under 61-4-202, the department shall assign to the manufacturer a distinctive serial number and, after payment of fees provided for in 61-4-222, furnish every qualified manufacturer’s representative of that manufacturer with one set of number plates. Assigned number plates must be similar to number plates furnished to owners of motor vehicles but must bear, in addition to the serial number assigned to the manufacturer, the letters “MFG”.

(2) The department shall cause to be placed on each set of license plates issued to a manufacturer a serial number assigned to the manufacturer and the actual number of license plates issued to the manufacturer. The department shall provide ~~nonremovable stickers~~ *registration decals* bearing the appropriate county designation. The ~~stickers~~ *registration decals* must be affixed to the license plates in use in accordance with instructions by the department.

(3) A manufacturer’s representative who qualifies as provided in 61-4-221(1) may display manufacturer’s license plates on a motor vehicle held for bona fide sale or used solely in the conduct of the manufacturer’s business and operated by or under the control of the manufacturer’s representative.

(4) When the department has reasonable cause to believe, from an investigation made by it or information furnished to it by a sheriff or any other law enforcement officer, that a manufacturer has been improperly licensed, has used the manufacturer’s license other than as authorized in this section, or is not qualified as a manufacturer under the requirements of this part, the department may revoke the manufacturer’s license.”

Section 70. Section 61-4-515, MCA, is amended to read:

“61-4-515. Arbitration procedure. (1) The department of administration shall provide an independent forum and arbitration procedure for the settlement of disputes between consumers and manufacturers of motor vehicles that do not conform to all applicable warranties under the provisions of this part. The procedure must conform to Title 27, chapter 5. All arbitration must take place in Montana at a place reasonably convenient to the consumer.

(2) Except as provided in 61-4-520, a consumer owning a motor vehicle that fails to conform to all applicable warranties may bring a grievance before an ~~arbitration panel~~ *arbitrator* only if the manufacturer of the motor vehicle has not established an informal dispute settlement procedure that has been certified by the department of administration under 61-4-511.”

Section 71. Section 61-4-520, MCA, is amended to read:

“61-4-520. Nonconforming procedure — arbitration de novo. A consumer injured by the operation of any procedure that does not conform with procedures established by a manufacturer pursuant to 61-4-511 and the provisions of Title 16, Code of Federal Regulations, part 703, as in effect on October 1, 1983, may appeal any decision rendered as the result of the procedure by requesting arbitration de novo of the dispute by a department of administration ~~panel~~ *arbitrator*. Filing procedures and fees for appeals must be the same as those required in 61-4-515 through 61-4-517. The findings of the manufacturer’s informal dispute settlement procedure are admissible in evidence at the department of administration ~~arbitration panel~~ hearing and in any civil action arising out of any warranty obligation or matter related to the dispute.”

Section 72. Section 61-8-906, MCA, is amended to read:

“61-8-906. Liability insurance — storage requirements. (1) Notwithstanding the provisions of 61-6-301, a commercial tow truck operator shall continuously provide:

(a) insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property caused by the maintenance or use of a commercial tow truck, as defined in 61-9-416, or occurring on the business premises of a commercial tow truck operator in an amount not less than:

- (i) \$300,000 for class A tow trucks;
- (ii) \$500,000 for class B tow trucks; and
- (iii) \$750,000 for class C tow trucks;

(b) insurance in an amount not less than \$20,000 to cover the damage to cargo or other property entrusted to the care of the commercial tow truck operator; and

(c) *garage keepers legal liability insurance* or on-hook liability insurance in an amount not less than \$50,000.

(2) A commercial tow truck operator shall provide proof of the insurance required in subsection (1) to the public service commission.

(3) A qualified tow truck operator shall provide a storage facility, either a fenced lot or a building, that is:

- (a) adequate for the secure storage and safekeeping of stored vehicles;
- (b) located in a place that is reasonably convenient for public access;
- (c) available to public access between 8 a.m. and 5 p.m., Monday through Friday, excluding legal holidays;
- (d) large enough to store all the vehicles towed for law enforcement agencies; and

(e) if a fenced lot, constructed of chain link at least 6 feet high or constructed of materials and in a manner sufficient to deter trespassing or vandalism.”

Section 73. Section 61-8-913, MCA, is amended to read:

“61-8-913. Notice to owner — payment of removal and storage costs — request for reissuance of certificate of ownership title. (1) Within 15 days after the date that a wrecked or disabled vehicle is removed from a public roadway by a qualified tow truck operator at the request of a law enforcement officer under 61-8-908, the qualified tow truck operator shall send a certified letter to the vehicle owner or lienholder, as shown in the department’s records, notifying the owner or lienholder that the vehicle has been towed and is being stored by the qualified tow truck operator. The certified letter must be sent return receipt requested and postage prepaid to the owner or lienholder at the latest address shown in the department’s records.

(2) The owner or lienholder of the vehicle may not reclaim the vehicle until the owner, the lienholder, or the owner’s or lienholder’s insurance provider has paid the costs incurred by the qualified tow truck operator in removing and storing the vehicle.

(3) If the removal and storage costs have not been paid within 60 days after the date that the notice provided for in subsection (1) was postmarked, the qualified tow truck operator may request, on a form provided by the department, that the department cancel the vehicle’s certificate of ~~ownership~~ *title*, remove any perfected security interest, and reissue the certificate of

~~ownership title~~ to the qualified tow truck operator. In the request, the qualified tow truck operator shall certify that the notice required in subsection (1) was sent and that the owner or lienholder has not made payment as required in subsection (2). A copy of the notice required in subsection (1) must be attached to the request.

(4) Upon receipt of a valid request as provided in subsection (3), the department shall cancel the certificate of ~~ownership title~~ to the vehicle and reissue the certificate of ~~ownership title~~ to the qualified tow truck operator. The qualified tow truck operator shall pay all required fees on the vehicle. After the department has reissued the certificate of ~~ownership title~~, the former owner or lienholder has no further right, title, claim, or interest in or to the vehicle.”

Section 74. Section 61-10-227, MCA, is amended to read:

“61-10-227. Blank forms furnished to county treasurers. The department shall furnish all county treasurers with the following:

- (1) blank application forms and affidavit forms outlining and providing for the information needed in each classification of license required;
- (2) GVW licenses in a form determined most suitable by the department;
- (3) the other forms, ~~stickers~~ *registration decals*, certificates, or blanks *that* the department considers necessary to carry out this part.”

Section 75. Section 61-10-233, MCA, is amended to read:

“61-10-233. Excess weight — penalties. (1) The operator is subject to the penalties stated in 61-10-232 whenever the gross loaded weight of any trucks, truck tractor, trailer, or semitrailer operated upon any highway in this state exceeds the gross vehicle weight shown on:

(a) the owner’s certificate of registration and ~~payment~~ *registration* receipt issued under 61-3-322; or

(b) the gross vehicle weight ~~receipt~~ *license* issued under ~~61-10-227~~ *this part*.

(2) In addition, the operator shall immediately pay to the nearest county treasurer or to the department the difference between the fee already paid and that applicable to the gross weight of ~~his~~ *the* vehicle before unloading the excess, provided that it does not exceed the legal axle weight.”

Section 76. Section 71-3-534, MCA, is amended to read:

“71-3-534. Filing with county clerk — notification of owner. (1) The county clerk ~~must~~ *shall* endorse upon every lien the day of its filing and make an abstract ~~thereof of the lien~~ in a book ~~by him~~ to be kept for that purpose and properly indexed, containing the date of the filing, the name of the person holding the lien, the amount ~~thereof of the lien~~, the name of the person against whose property the lien is filed, and the description of the property to be charged with ~~same~~ *the lien*.

(2) The clerk ~~shall~~ *may* not file the lien unless ~~there is attached thereto~~ *it is accompanied by* a certification by the lien claimant or ~~his~~ *the claimant’s* agent that a copy of the lien has been served upon each owner of record of the property named in the lien. Service ~~shall~~ *must* be made by personal service on each owner or by mailing a copy of the lien by certified ~~or registered~~ mail with return receipt requested to each owner’s ~~last known~~ *last-known* address. The certification ~~shall~~ *must* state ~~whether that service was made by delivery of certified or registered mail.~~

Section 77. Section 72-1-103, MCA, is amended to read:

“72-1-103. General definitions. Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise requires, in chapters 1 through 5, the following definitions apply:

(1) “Agent” includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another’s health care, and an individual authorized to make decisions for another under a natural death act.

(2) “Application” means a written request to the clerk for an order of informal probate or appointment under chapter 3, part 2.

(3) “Beneficiary”, as it relates to:

(a) a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer;

(b) a charitable trust, includes any person entitled to enforce the trust;

(c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

(i) an account with POD designation or a security registered in beneficiary form (TOD); or

(ii) any other nonprobate transfer at death; and

(d) a beneficiary designated in a governing instrument, includes a grantee of a deed; a devisee; a trust beneficiary; a beneficiary of a beneficiary designation; a donee; and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) “Beneficiary designation” refers to a governing instrument naming a beneficiary of:

(a) an account with POD designation or a security registered in beneficiary form (TOD); or

(b) any other nonprobate transfer at death.

(5) “Child” includes an individual entitled to take as a child under chapters 1 through 5 by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) (a) “Claims”, in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate that arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration.

(b) The term does not include estate taxes or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) “Clerk” or “clerk of court” means the clerk of the district court.

(8) “Conservator” means a person who is appointed by a court to manage the estate of a protected person.

(9) “Court” means the district court in this state having jurisdiction in matters relating to the affairs of decedents.

(10) "Descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this section.

(11) "Devise" when used as a noun means a testamentary disposition of real or personal property and when used as a verb means to dispose of real or personal property by will.

(12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3, in the case of a devise to an existing trust or trustee or to a trustee ~~on~~ or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(13) "Disability" means cause for a protective order as described by 72-5-409.

(14) "Distributee" means any person who has received property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment to distributed assets remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

(16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

(17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

(18) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

(19) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

(20) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive, or nominative instrument of any similar type.

(21) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

(22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

(23) "Incapacitated person" has the meaning provided in 72-5-101.

(24) "Informal proceedings" means proceedings conducted without notice to interested persons by the clerk of court for probate of a will or appointment of a personal representative.

(25) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim

against a trust estate or the estate of a decedent, ward, or protected person. The term also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.

(26) "Issue" of a person means a descendant.

(27) "Joint tenants with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

(28) "Lease" includes an oil, gas, coal, or other mineral lease.

(29) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(30) "Minor" means a person who is under 18 years of age.

(31) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.

(32) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.

(33) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

(34) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under chapters 1 through 5 by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(35) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(36) "Person" means an individual, a corporation, an organization, or other legal entity.

(37) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(38) "Petition" means a written request to the court for an order after notice.

(39) "Proceeding" includes action at law and suit in equity.

(40) "Property" includes both real and personal property or any interest in that property and means anything that may be the subject of ownership.

(41) "Protected person" has the meaning provided in 72-5-101.

(42) "Protective proceeding" has the meaning provided in 72-5-101.

(43) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; transferable share; voting trust certificate; in general, any interest or instrument commonly known as a security; any

certificate of interest or participation; or any temporary or interim certificate, receipt, or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing.

(44) "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(45) "Special administrator" means a personal representative as described by chapter 3, part 7.

(46) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(47) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(48) "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or chapters 1 through 5.

(49) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

(50) "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under 72-2-114 or 72-2-712. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

(51) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(52) "Testator" includes an individual of either sex.

(53) "Trust" includes an express trust, private or charitable, with additions to the trust, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined in 72-6-111 and Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

(54) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(55) "Ward" means an individual described in 72-5-101.

(56) "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession."

Section 78. Section 82-15-103, MCA, is amended to read:

"82-15-103. Standards and specifications for petroleum products. The standards and specifications for petroleum products, including but not limited to gasoline, fuel oils, diesel fuel, kerosene, and liquefied petroleum gases, ~~shall~~ *must* be determined by the department and ~~shall~~ *must* be based

upon nationally recognized standards and specifications such as *the standards and specifications that* are published ~~from time to time~~ by the American society for testing and materials. When ~~so the standards and specifications are~~ determined by the department and adopted as rules, ~~such those~~ standards and specifications are the standards and specifications for ~~such~~ products sold in this state and official tests of ~~such the~~ products ~~shall must~~ be based upon ~~them the standards and specifications.~~

Section 79. Section 85-7-304, MCA, is amended to read:

“85-7-304. Sections not applicable. The provisions of 85-7-1911(1) and (2), 85-7-1934, 85-7-1935, 85-7-1941 through 85-7-1943, 85-7-2001, 85-7-2011 through 85-7-2027, 85-7-2031, and 85-7-2032, ~~and 85-7-2141 shall have no application do not apply~~ to the organization of irrigation districts under this part.”

Section 80. Repealer. Sections 15-7-104, 15-32-108, 20-6-212, and 85-7-2141, MCA, are repealed.

Section 81. Directions to code commissioner. The code commissioner is directed to implement 1-11-101(2)(g)(ii) by correcting any clearly inaccurate references to other sections of the Montana Code Annotated contained in material enacted by the 59th legislature.

Approved March 30, 2005

CHAPTER NO. 131

[SB 51]

AN ACT AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO REVOKE A LICENSE FOR FAILURE TO ASSESS, REPORT, OR PAY ASSESSMENTS; REQUIRING COMMODITY DEALERS TO RETAIN AND MAINTAIN RECORDS FOR 5 YEARS; AMENDING SECTIONS 80-4-421 AND 80-4-606, 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 80-4-421, MCA, is amended to read:

“80-4-421. License suspension and revocation — renewal. (1) The department may revoke, suspend, or modify a *commodity warehouse operator’s* or *commodity dealer’s* license when it has reasonable cause to believe that the licensee has committed any of the following acts, each of which is a violation of parts 4 through 7 of this chapter:

(a) failure to maintain all initial licensing requirements, including insurance, bonding, and net asset requirements. In determining compliance with net asset requirements, the department may consider the licensee’s status under any prior or current bankruptcy proceedings, as well as any outstanding civil settlements or judgments.

(b) aiding or abetting another person in the violation of the licensure or any other provisions of parts 4 through 7 of this chapter;

(c) conviction of any criminal offense defined under Title 45, after considering Title 37, chapter 1, part 2;

(d) failure or refusal to allow inspection or maintain and provide records, reports, and other information required by the department;

(e) failure or refusal to post storage and other charges as filed with the department;

(f) failure or refusal to accept agricultural commodities for storage as required under 80-4-523;

(g) failure to comply with the warehouse receipt and scale weight ticket requirements of 80-4-525 and 80-4-527;

(h) failure of a warehouse operator to maintain and deliver upon request sufficient agricultural commodities to cover outstanding warehouse receipts as required under 80-4-531;

(i) discrimination in charges by a warehouse operator as provided in 80-4-524;

(j) failure to provide payment for any agricultural commodity;

(k) failure to satisfy a judgment entered as a result of a violation of this chapter; or

(l) violation of or failure or refusal to comply with any other provision of parts 4 through 7 of this chapter or any rule adopted by the department pursuant to parts 4 through 7; or

(m) *failure to assess, report, or pay an assessment authorized and required pursuant to Title 80, chapter 4 or 11.*

(2) The department may refuse to issue or renew a license if the applicant or licensee:

(a) has a license as a warehouse operator or commodity dealer that was previously or is currently suspended or revoked. In determining the sufficiency of cause, the department shall consider the nature and length of the action and any subsequent licensure or other evidence of rehabilitation.

(b) does not satisfy the bonding, insurance, or net asset requirements as specified in subsection (1)(a) or any other provisions required as a condition to licensing;

(c) has been convicted of a criminal offense and the denial or refusal is made after considering Title 37, chapter 1, part 2.

(3) The issuance of a license based on information provided by the applicant that the department subsequently determines incorrect is void, and any conduct under that license is a violation.

(4) All proceedings brought under subsections (1) and (2) must be conducted under the provisions of the Montana Administrative Procedure Act.

(5) The department is authorized to issue summary revocations, suspensions, or denials without hearing pursuant to the procedures established in 2-4-631."

Section 2. Section 80-4-606, MCA, is amended to read:

"80-4-606. Inspection of premises, books, and records. (1) The department may at any reasonable time inspect the premises and records of any commodity dealer used in the conduct of ~~his~~ *the commodity dealer's* business. A commodity dealer shall, upon request of the director, furnish to the department at any reasonable time and place all books, accounts, records, and papers relating to agricultural commodity transactions within the state, *including*

those pertaining to the collecting, reporting, and paying of authorized assessments pursuant to Title 80, chapter 4 or 11.

(2) A commodity dealer shall retain and maintain the records provided for in subsection (1) for a period of 5 years from the date of the transaction.

(3) If there exists good cause to believe that a person is doing business as a commodity dealer without a license, the department may inspect the books, papers, and records of the person that pertain to agricultural commodity purchases.”

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

Section 4. Applicability. [Section 2(2)] applies to transactions with a date after [the effective date of this act].

Approved March 30, 2005

CHAPTER NO. 132

[SB 57]

AN ACT PROHIBITING A STUDENT WHO IS ATTENDING A JOB CORPS PROGRAM FROM CLAIMING THE JOB CORPS FACILITY AS THE STUDENT'S RESIDENCE FOR EDUCATIONAL PURPOSES; AMENDING SECTIONS 20-5-322, 20-7-420, 20-9-707, AND 20-10-105, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 20-5-322, MCA, is amended to read:

“20-5-322. Residency determination — notification — appeal for attendance agreement. (1) In considering an out-of-district attendance agreement, *except as provided in 20-9-707*, the trustees shall determine the child's district of residence on the basis of the provisions of 1-1-215.

(2) Within 10 days of the initial application for an agreement, the trustees of the district of choice shall notify the parent or guardian of the child and the trustees of the district of residence involved in the out-of-district attendance agreement of the anticipated date for approval or disapproval of the agreement.

(3) Within 10 days of approval or disapproval of an out-of-district attendance agreement, the trustees shall provide copies of the approved or disapproved attendance agreement to the parent or guardian and to the child's district of residence.

(4) Within 15 days of receipt of an approved out-of-district attendance agreement, the trustees of the district of residence shall approve or disapprove the agreement under the provisions of this part and forward the completed agreement to the county superintendent of schools of the county of residence, the trustees of the district of choice, and the parent or guardian.

(5) If an out-of-district attendance agreement is disapproved or no action is taken, the parent may appeal the disapproval or lack of action to the county superintendent and, subsequently, to the superintendent of public instruction under the provisions for the appeal of controversies in this title.”

Section 2. Section 20-7-420, MCA, is amended to read:

“20-7-420. Residency requirements — financial responsibility for special education. (1) ~~In accordance with the provisions of 1-1-215~~ *Except for a pupil attending a job corps program pursuant to 20-9-707, a child’s district of residence for special education purposes is the residence of the child’s parents or of the child’s guardian if the parents are deceased must be determined in accordance with the provisions of 1-1-215, unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent’s last-known district of residence is the child’s district of residence.*

(2) The county of residence is financially responsible for tuition and transportation as established under 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401, who attends school outside the district and county of residence because the student has been placed by a state agency in a foster care or group home licensed by the state. The county of residence is not financially responsible for tuition and transportation for a child who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential treatment facility or children’s psychiatric hospital, as defined in 20-7-436, and the educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district’s costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from available funds. However, the amount spent from available funds for this purpose may not exceed \$500,000 during a biennium.

(4) A state agency that makes a placement of a child with a disability is responsible for the financial costs of room and board and the treatment of the child. The state agency that makes an out-of-state placement of a child with a disability is responsible for the education fees required to provide a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4.”

Section 3. Section 20-9-707, MCA, is amended to read:

“20-9-707. Agreement with accredited Montana job corps program.

(1) The trustees of a school district may enter into an interlocal cooperative agreement for the ensuing school fiscal year under the provisions of Title 7, chapter 11, part 1, with a Montana job corps program accredited by the northwest association of schools and colleges to provide educational or vocational services that are supplemental to the educational programs offered by the resident school district.

(2) A student who receives educational or vocational services at a Montana job corps program pursuant to an agreement authorized under subsection (1) must be enrolled, for purposes of calculating average number belonging, in a public school in the student’s district of residence. Credits taken at the accredited Montana job corps program must be approved by the school district and meet the requirements for graduation at a school in the student’s district of residence, must be taught by an instructor who has a current and appropriate

Montana high school certification, and must be reported by the institution to the student's district of residence. Upon accumulating the necessary credits at either a school in the district of residence or at an accredited Montana job corps program pursuant to an interlocal cooperative agreement, a student must be allowed to graduate from the school in the student's district of residence.

(3) A school district that, pursuant to an interlocal cooperative agreement, allows an enrolled student to attend a Montana job corps program accredited as prescribed in subsection (1) is not responsible for payment of the student's transportation costs to the job corps program.

(4) *A student attending a job corps program may not claim the job corps program's facility as the student's residence for the purposes of this section.*"

Section 4. Section 20-10-105, MCA, is amended to read:

"20-10-105. Determination of residence. When the residence of an eligible transportee is a matter of controversy and is an issue before a board of trustees, a county transportation committee, or the superintendent of public instruction, *except as provided in 20-9-707*, the residence must be established on the basis of the general state residence law as provided in 1-1-215. Whenever a county is determined to be responsible for paying tuition for any pupil in accordance with 20-5-321 through 20-5-323, the residence of the pupil for tuition purposes is the residence of the pupil for transportation purposes."

Section 5. Effective date. [This act] is effective July 1, 2005.

Approved March 30, 2005

CHAPTER NO. 133

[SB 64]

AN ACT REVISING LAWS GOVERNING CONTRACTOR REGISTRATION; REVISING REGISTRATION AND FEE PROVISIONS FOR CONSTRUCTION CONTRACTORS; SPECIFYING DISPOSITION OF CONSTRUCTION CONTRACTOR AND INDEPENDENT CONTRACTOR REGISTRATION FEES; AMENDING SECTIONS 39-9-201, 39-9-206, 39-71-201, AND 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 39-9-201, MCA, is amended to read:

"39-9-201. Registration required — application. (1) Each construction contractor shall register with the department.

(2) An applicant for registration as a construction contractor shall submit an application ~~under oath~~ on a form to be provided by the department that must include the following information:

- (a) the applicant's social security number;
- (b) proof of compliance with workers' compensation laws;
- (c) the I.R.S. employer identification number, if any; and
- (d) the name and address of:
 - (i) each partner if the applicant is a firm or partnership;
 - (ii) the owner if the applicant is an individual proprietorship;

(iii) the corporate officers and registered agent if the applicant is a corporation; or

(iv) the manager of a manager-managed limited liability company or the members of a member-managed limited liability company and the registered agent if the applicant is a limited liability company.”

Section 2. Section 39-9-206, MCA, is amended to read:

“39-9-206. Fees — education program. (1) The department shall charge fees for:

- (a) issuance, renewal, and reinstatement of certificates of registration; and
- (b) ~~changes~~ *change* of name, address, or business structure.

(2) The department shall set the fees by administrative rule. The fees ~~shall~~ *must* cover the full cost of issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs include reproduction, travel, per diem, and administrative and legal support costs.

(3) The fees charged in subsection (1)(a) may not exceed:

- (a) \$70 for the initial registration certificate; or
- (b) \$70 for the renewal or reinstatement of a registration certificate.

(4) The fees collected under this section must be deposited in the state special revenue *fund in an* account to the credit of the department for the administration and enforcement of this chapter *and independent contractor certification provided for in Title 39, chapter 71, part 4.*

(5) The department shall establish, cooperatively with representatives of the building industry, an industry and consumer information program, funded with 15% of the fees, to educate the building industry about the registration program and to educate the public regarding the hiring of building construction contractors.

(6) The fee for a joint application for a certificate of registration and an independent contractor exemption *certificate* may not exceed the *total* fee charged for a certificate of registration *and an independent contractor exemption certificate that are obtained separately. The fee paid for the independent contractor exemption certificate may be used by the department to offset the cost of administering independent contractor certification provided for in Title 39, chapter 71, part 4.*

Section 3. Section 39-71-201, MCA, is amended to read:

“39-71-201. Administration fund. (1) A workers’ compensation administration fund is established out of which *are to be paid upon lawful appropriation* all costs of administering the Workers’ Compensation and Occupational Disease Acts and the statutory occupational safety acts the department is required to administer, with the exception of ~~the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers’ fund, are to be paid upon lawful appropriation provided for in 39-71-503.~~ The department shall collect and deposit in the state treasury to the credit of the workers’ compensation administration fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment of 3% of paid losses, plus administrative fines and interest provided by this section.

(2) For the purposes of this section, paid losses include the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act and the Occupational Disease Act of Montana without regard to the application of any deductible whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 1 in the form and containing the information required by the department a report of paid losses pursuant to subsection (2).

(4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation plan No. 3, the state fund, shall pay a proportionate share of all costs of administering and regulating the Workers' Compensation Act and the Occupational Disease Act of Montana and the statutory occupational safety acts that the department is required to administer, with the exception of the *certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503*. In addition, compensation plan No. 3, the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before July 1, 1990.

(5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the plan No. 1 employer or \$500, whichever is greater. Any entity, other than the department, that assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the purposes of this section.

(b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled under compensation plan No. 1.

(c) Payment of the assessment provided for by this subsection (5) must be paid by the employer in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(d) If an employer fails to timely pay to the department the assessment under this section, the department may impose on the employer an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative and regulatory costs attributable to claims arising before

July 1, 1990. The assessment is equal to 3% of the paid losses paid in the preceding calendar year for claims arising before July 1, 1990. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the assessment for administrative and regulatory costs that is attributable to claims arising before July 1, 1990.

(b) Payment of the assessment must be paid in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(c) If the state fund fails to timely pay to the department the assessment under this section, the department may impose on the state fund an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(7) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall pay a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be collected by each plan No. 2 insurer and by plan No. 3, the state fund, from each employer that it insures. The premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed upon insured employers.

(b) The amount to be funded by the premium surcharge is equal to 3% of the paid losses paid in the preceding calendar year by or on behalf of all plan No. 2 insurers and 3% of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be calculated annually by the department by not later than April 30. The resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in the next fiscal year.

(c) On or before April 30, 2001, and on of each succeeding April 30 year, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay to the department all money collected as a premium surcharge within 20 days of the end of the calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge collected under this section, the department may impose on the insurer an administrative fine of

\$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(e) If an employer fails to remit to an insurer the total amount due for the premium and premium surcharge, the amount received by the insurer must be applied to the premium surcharge first and the remaining amount applied to the premium due.

(f) The amount actually collected as a premium surcharge in a given year must be compared to the 3% of paid losses paid in the preceding year. Any amount collected in excess of the 3% must be deducted from the amount to be collected as a premium surcharge in the following year. The amount collected that is less than the 3% must be added to the amount to be collected as a premium surcharge in the following year.

(8) On or before April 30, 2001, and on of each succeeding April 30 year, upon a determination by the department, an insurer under compensation plan No. 2 that pays benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment equal to 3% of paid losses paid in the preceding calendar year, subject to a minimum assessment of \$500, that is due on July 1.

(9) An employer that makes a first-time application for permission to enroll under compensation plan No. 1 shall pay an assessment of \$500 within 15 days of being granted permission by the department to enroll under compensation plan No. 1.

(10) The department shall deposit all funds received pursuant to this section in the state treasury, as provided in this section.

(11) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, incurred while on the business of the department either within or without the state.

(12) Disbursements from the administration money must be made after being approved by the department upon claim for disbursement.

(13) The department may assess and collect the workers' compensation regulatory assessment surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage requirements of the Workers' Compensation Act and the Occupational Disease Act of Montana. Any amounts collected by the department pursuant to this subsection must be deposited in the workers' compensation administration fund."

Section 4. 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, as defined in 39-71-117, and to all employees, as defined in 39-71-118. 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 and domestic employment;
- (b) casual employment as defined in 39-71-116;
- (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, "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":
 - (i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but
 - (ii) 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 defined 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).

(3) (a) 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 who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

~~(b) The application must be made in accordance with the rules adopted by the department. There is a \$17 fee for the initial application. Any subsequent application renewal must be accompanied by a \$17 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.~~

(b) 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.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) The exemption, if approved, remains in effect for 2 years following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall submit a renewal application every 2 years. The renewal application and the \$17 renewal application fee must be received by the department at least 30 days before the anniversary date of the previously approved exemption.

(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

(f) If the department denies the application for exemption, the applicant may, after mediation pursuant to department rules, contest the denial by petitioning the workers' compensation court.

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

Approved March 30, 2005

CHAPTER NO. 134

[SB 84]

AN ACT PROVIDING A PROCEDURE FOR FORFEITURE OF SEIZED EVIDENCE IN GAMBLING CASES; PROVIDING FOR PRIVATE VIDEO GAMBLING MACHINE TESTING FACILITIES TO BE LICENSED AS MANUFACTURERS; PROVIDING FOR PUBLIC DISPLAY OF ANTIQUE SLOT MACHINES; PROVIDING REMEDIES TO PURSUE VIOLATIONS BY A LICENSEE FOLLOWING THE EXPIRATION OF A LICENSE OR A PERMIT; PROVIDING FOR MULTIPLE WINNING PATTERNS FOR THE GAME OF BINGO; PROVIDING A DEFINITION OF A BONUS GAME TO BE PLAYED ON A VIDEO GAMBLING MACHINE; INCREASING THE TYPES OF POKER GAMES THAT MAY BE PLAYED ON A POKER MACHINE; PROVIDING RULEMAKING AUTHORITY FOR THE DISPLAY OF IMAGES AND SCREENS FOR VIDEO GAMBLING MACHINES; AMENDING SECTIONS 23-5-112, 23-5-113, 23-5-123, 23-5-152, 23-5-153, 23-5-412, 23-5-602, 23-5-621, AND 23-5-625, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Property subject to forfeiture. (1) The following property is subject to forfeiture:

(a) gambling implements, apparatus, paraphernalia, slips, tickets, and devices kept, possessed, or used in violation of a provision of this chapter;

(b) personal property not listed in subsection (1)(a), including but not limited to motor vehicles and money or negotiable instruments, kept, possessed, derived from, or used in violation of a provision of this chapter.

(2) Personal property is not subject to forfeiture unless the owner of the property had actual or constructive knowledge of and was a consenting party to the illegal act.

Section 2. Petition — summons — service — answer. (1) A peace officer that seizes personal property under [section 1] shall within 45 days of the seizure file a petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurred. The clerk shall issue a summons, which the petitioning party shall by one of the following methods serve upon each owner or claimant of the personal property:

(a) upon an owner or claimant whose name and address are known, by personal service of a copy of the petition and summons as provided in the Montana Rules of Civil Procedure;

(b) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county and by mailing a copy of the petition and summons to the most recent address of the owner or claimant, if any, shown in the records of the department.

(2) Within 20 days after service under subsection (1), the owner or claimant of the seized property may file a verified answer to the allegations concerning the use of the property described in the petition. An extension of time for filing the answer may not be granted. Failure to answer within 20 days bars the owner or claimant from presenting evidence at any subsequent evidentiary hearing unless extraordinary circumstances exist.

Section 3. Effect of failure to answer — hearing date following answer. (1) If a verified answer to the petition is not filed within 20 days after service under [section 2], the court, upon motion, shall order the property forfeited to the state.

(2) If a verified answer is filed within 20 days after service under [section 2], the forfeiture proceedings must be set for hearing without a jury, to be held no sooner than 60 days after the answer is filed. Notice of the hearing must be given in the manner provided for service under [section 2].

Section 4. Rebuttable presumption of forfeiture — rebuttal of presumption. (1) There is a rebuttable presumption of forfeiture.

(2) An owner of the personal property who has a verified answer on file may rebut the presumption by proving that the property was not used for the purpose charged or that the use of the property occurred without the owner's knowledge or consent.

(3) A claimant of a security interest in the personal property who has a verified answer on file may preserve the security interest by proving that the security interest:

(a) is bona fide; and

(b) was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser of the personal property and without knowledge that the personal property was going to be or was used for the purpose charged.

(4) Subsection (3)(b) does not apply to:

(a) a person who has a lien for making repairs or performing labor upon, furnishing supplies or materials for, or providing storage for or safekeeping of the personal property;

(b) a person doing business under any law of this state or the United States relating to financial institutions, as defined in 32-6-103, loan companies, or licensed pawnbrokers; or

(c) a person regularly engaged in the business of selling or of purchasing conditional sales contracts for that type of personal property.

Section 5. Disposition of property. (1) If the court finds that the personal property was not used for the purpose charged or was used without the knowledge or consent of the owner, it shall order the property released to the owner.

(2) If the court finds that the personal property was used for the purpose charged and was used with the knowledge or consent of the owner, the personal property shall be disposed of as follows:

(a) If proper proof of a claim is presented at the hearing by the holder of a security interest, the court shall order the personal property released to the holder of the security interest if the amount due the holder is equal to or in excess of the value of the personal property as of the date of seizure. If the amount due the holder of the security interest is less than the value of the personal property, the personal property may be sold at public auction by the law enforcement agency that seized the personal property in the manner provided by law for the sale of property under execution. The proceeds of the sale must be first used to pay the amount due to the holder of the security interest, with the remainder deposited in the account provided for in subsection (3). Instead of sale at public auction, the law enforcement agency may turn the personal property over to the holder of the security interest. The personal property may not be sold to an officer or employee of the law enforcement agency that seized the property or to a person related to an officer or employee by blood or marriage.

(b) If there is no security interest claimant and the law enforcement agency that seized the personal property wishes to retain the property for its official use, it may do so. If the personal property is not retained, it must be sold at public auction by the law enforcement agency that seized the personal property in the manner provided by law for the sale of property under execution and the proceeds of the sale must be deposited in the account provided for in subsection (3).

(c) If a security interest claimant has presented proper proof of a claim and the law enforcement agency that seized the personal property wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

(3) Any forfeited negotiable instruments must be liquidated to cash. All forfeited cash and the proceeds of liquidated negotiable instruments must be deposited in a state special revenue account to the credit of the department of justice. The department may expend the money deposited in the account only for purposes of enforcement of gambling laws.

(4) In making a disposition of personal property, the court may take any action to protect the rights of innocent persons.

Section 6. Pursuing violation by or determining suitability for licensure of person whose license has expired. The expiration of a license or permit issued under this chapter does not prevent the department from pursuing a violation by the person holding the license or permit or from determining that person's suitability for a future license or permit.

Section 7. 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 ~~any~~ 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:

~~(a)~~(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;

~~(b)~~(ii) a promotional game of chance; or

~~(c)~~(iii) an amusement game regulated under *Title 23*, chapter 6 of this title.

(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, of this title 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, of this title and parts 2, 5, and 8 of this chapter; and

(d) credit gambling.

(18) "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.

(19) "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.

(20) "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.

(21) "Licensee" means a person who has received a license from the department.

(22) "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.

(23) (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 of this title.

(24) "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.*

(25) "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.

(26) "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.

(27) "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.

(28) "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

(29) "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.

(30) "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.

(31) "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.

(32) "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.

(33) "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.

(34) "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.

(35) (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.

(36) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

Section 8. Section 23-5-113, MCA, is amended to read:

"23-5-113. Department as criminal justice agency — seized property. (4) The department is a criminal justice agency. Designated agents of the department are granted peace officer status, with the power of search, seizure, and arrest, to investigate gambling activities in this state regulated by

parts 1 through 8 of this chapter and the rules of the department and to report violations to the county attorney of the county in which they occur.

~~(2) Upon conviction for any violation of parts 1 through 8 of this chapter, the court may order any property seized by a department or local law enforcement agent during a lawful search to be forfeited to the department, sold, if necessary, and disposed of under 23-5-123."~~

Section 9. Section 23-5-123, MCA, is amended to read:

"23-5-123. Disposal of money confiscated by reason of fines and penalties for violation of gambling laws. All fines, penalties, forfeitures, and confiscated money and penalties collected by criminal, civil, or administrative process for a violation of a provision of parts 1 through 8 of this chapter or a rule of the department must be deposited in the state general fund."

Section 10. 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) 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.”

Section 11. Section 23-5-153, MCA, is amended to read:

“23-5-153. Possession and sale of antique slot machines. (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.

(2) Except as provided in subsection (3), an antique slot machine may be possessed, located, and operated only in a private residential dwelling.

(3) (a) An antique slot machine may be possessed or located for purposes of display only and not for operation:

(i) ~~in any~~ a public or private museum; or

(ii) ~~owned and operated by the state, a county, or a city~~ in any other public place if the machine 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 for purposes of commercially selling or otherwise supplying the machines.

(4) A person other than a licensed manufacturer-distributor may not sell more than three antique slot machines in a 12-month period without first obtaining from the department an annual license for selling the machines. The fee for the license is \$50 a year. 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 slot machine under subsection (2) or (3) may sell or otherwise supply a machine to another person or entity who may legally possess a slot machine.

(6) An antique slot machine may not be operated for any commercial or charitable purpose.”

Section 12. Section 23-5-412, MCA, is amended to read:

“23-5-412. Card prices and prizes — exception. (1) Except as provided in subsection (3):

(a) the price for an individual bingo or keno card may not exceed 50 cents;

(b) a prize may not exceed the value of \$100 for each individual bingo game or keno card; and

(c) it is unlawful to, in any manner, combine any bingo or keno games so as to increase the ultimate value of the prize.

(2) Bingo and keno prizes may be paid in either tangible personal property or cash.

(3) (a) A variation of the game of keno, as approved by the department, in which a player selects three or more numbers and places a wager on various combinations of these numbers is permissible if:

~~(a)~~(i) no more than 50 cents is wagered on each combination of numbers; and

~~(b)~~(ii) a winning combination does not pay more than \$100.

(b) A variation of the game of bingo, as approved by the department, in which prizes may be awarded for each winning bingo pattern on a card is permissible if:

(i) no more than 50 cents is wagered on each bingo pattern; and

(ii) a winning pattern does not pay more than \$100.

(4) A player may give a keno caller a card with instructions on the card to play that card and its marked numbers for up to the number of successive games that the house allows and that the player has indicated on the card, upon payment of the price per game times the number of successive games indicated. The player shall remain on the house premises until the card is played or withdrawn. The caller shall keep the card until the end of the number of games indicated, and the department may by rule provide that at that time the caller shall pay the player any prizes won.

(5) If a licensed operator conducts a promotional game of chance involving bingo or keno, the prize limit provided for in subsection (1) applies to prizes awarded as a result of the promotional game of chance.”

Section 13. Section 23-5-602, MCA, is amended to read:

“23-5-602. Definitions. As used in this part, the following definitions apply:

(1) “Associated equipment” means all proprietary devices, machines, or parts used in the manufacture or maintenance of a video gambling machine, including but not limited to integrated circuit chips, printed wired assembly, printed wired boards, printing mechanisms, video display monitors, metering devices, and cabinetry.

(2) “Available connection date” means the date on which the department begins to accept applications for connection of machines to the automated accounting and reporting system.

(3) (a) “Bingo machine” means an electronic video gambling machine that, upon insertion of cash, is available to play bingo, as defined by rules of the department. The machine uses a video display and microprocessors ~~in which~~ and, by the skill of the player, by chance, or by both, ~~allows~~ the player ~~may~~ to receive free games, *bonus games*, or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(4) (a) “*Bonus game*” means a game other than bingo, poker, or keno that is offered as a prize for playing and achieving a win by playing bingo, poker, or keno. The term includes a game that allows a player to win free credits, free

games, or a multiplier of credits already won or to move to an accelerated pay table for the play of poker, bingo, or keno. A bonus game must make available to the player a display of the rules for the bonus game.

(b) The term does not include a game that allows the player to wager money or credits on the game or to lose money or credits already won. The term does not include a game by which the bonus game would become the predominant game rather than bingo, poker, or keno. The department shall by administrative rule define the conditions that would cause a bonus game to be the predominant game. The term does not include a game that displays or simulates a gambling activity that is not legal under state law.

~~(4) (a) "Draw poker machine" means an electronic video gambling machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker as defined by rules of the department. The machine uses a video display and microprocessors in which, by the skill of the player, by chance, or by both, the player may receive free games or credits that may be redeemed for cash.~~

~~(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.~~

(5) "Gross income" means money put into a video gambling machine minus credits paid out in cash.

(6) (a) "Keno machine" means an electronic video gambling machine that, upon insertion of cash, is available to play keno, as defined by rules of the department. The machine uses a video display and microprocessors ~~in which~~ and, by the skill of the player, by chance, or by both, ~~allows the player may to~~ receive free games, *bonus games*, or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(7) "Licensed machine owner" means a licensed operator or route operator who owns a video gambling machine for which a permit has been issued by the department.

(8) "Permitholder" means a licensed operator on whose premises is located one or more video gambling machines for which a permit has been issued by the department.

(9) (a) "*Poker machine*" means an electronic video gambling machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker, 5-card stud, 7-card stud, or hold 'em, as defined by rules of the department. The machine uses a video display and microprocessors and, by the skill of the player, by chance, or by both, allows the player to receive free games, *bonus games*, or credits that may be redeemed for cash.

(b) The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value."

Section 14. Section 23-5-621, MCA, is amended to read:

"23-5-621. Rules. (1) The department shall adopt rules that:

(a) implement 23-5-637;

(b) describe the video gambling machines authorized by this part and state the specifications for video gambling machines authorized by this part, *including a description of the images and the minimum area of a screen that depicts a bingo, poker, or keno game;*

(c) allow video gambling machines to be imported into this state and used for the purposes of trade shows, exhibitions, and similar activities;

(d) allow each video gambling machine approved for connection to the department's automated accounting and reporting system to offer any combination of approved poker, keno, and bingo games within the same video gambling machine cabinet if:

(i) after October 1, 2002, the owner of the video gambling machine has received approval of an application for connection of the machine to the automated accounting and reporting system or has entered into an agreement with the department for connection of the machine to the system; or

(ii) after October 1, 2003, the owner of the video gambling machine has received approval of an application for connection of the machine to the automated accounting and reporting system or has entered into an agreement with the department for connection of the machine to the system, but the system is unavailable for connection;

(e) allow, on an individual license basis, licensed machine owners and operators of machines connected to the department's automated accounting and reporting system to:

(i) electronically acquire and use for an individual licensed premises the information and data collected by the department for business management, accounting, and payroll purposes; however, the rules must specify that the data made available as a result of the department's automated accounting and reporting system may not be used by licensees for player tracking purposes; and

(ii) acquire and use, at the expense of a licensee, a department-approved site controller;

(f) provide that, for video gambling machines connected to the department's automated accounting and reporting system, machine paper audit and accounting rolls need not be retained for more than 4 consecutive quarters; and

(g) minimize, whenever possible, the recordkeeping and retention requirements for video gambling machines that are connected to the department's automated accounting and reporting system.

(2) The department's rules for an automated accounting and reporting system must, at a minimum:

(a) provide for confidentiality of information received through the automated accounting and reporting system within the limits prescribed by 23-5-115(6) and 23-5-116;

(b) prescribe specifications for maintaining the security and integrity of the automated accounting and reporting system;

(c) limit and prescribe the circumstances for electronic issuance of video gambling machine permits and electronic transfer of funds for payment of taxes, fees, or penalties to the department based on the requirement that electronic permitting and transfer of funds may be done only when the department has a request in writing from the owner of the electronic funds transfer account;

(d) limit and prescribe the circumstances under which machines may be disabled for malfunctions or violations detected by use of the automated accounting and reporting system or for other violations of this chapter. Under no circumstances may machines connected to the automated system be disabled for violations except upon clear and convincing evidence supporting a

determination made after notice and an opportunity for hearing and with the right of judicial review under the Montana Administrative Procedure Act.

(e) provide for training by the department of technicians who install, maintain, and repair video gambling machines and components connected to the automated accounting and reporting system and for a department list of technicians who have completed department training.”

Section 15. Section 23-5-625, MCA, is amended to read:

“23-5-625. Video gambling machine manufacturer — license — fees — restrictions. (1) It is unlawful for any person to assemble, produce, *test*, or manufacture any video gambling machine or associated equipment for use or play in the state without having first been issued a video gambling machine manufacturer’s license by the department. A licensed manufacturer may supply a video gambling machine only to another licensed manufacturer or to a licensed distributor, route operator, or operator.

(2) Except as provided in subsection (6), the department shall charge an annual license fee of \$1,000 for the issuance or renewal of a video gambling machine manufacturer’s license.

(3) Except as provided in subsection (6), the department may charge the applicant an additional, one-time video gambling machine manufacturer’s license application processing fee. The application processing fee may not exceed the department’s actual costs for processing an application.

(4) All video gambling machine manufacturer’s licenses expire on June 30 of each year, and the license fee may not be prorated.

(5) The department shall retain the license and processing fees collected for purposes of administering this part, unless otherwise provided.

(6) The department may waive the license fee provided for in subsection (2) if the applicant is licensed as a distributor or route operator and may waive the application processing fee provided for in subsection (3) if the applicant is licensed as a distributor, route operator, or operator.”

Section 16. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 23, chapter 5, part 1, and the provisions of Title 23, chapter 5, part 1, apply to [sections 1 through 6].

Section 17. Effective date. [This act] is effective July 1, 2005.

Approved March 30, 2005

CHAPTER NO. 135

[SB 98]

AN ACT CREATING THE MONTANA LAND INFORMATION ACT; STATING THE PURPOSES OF THE MONTANA LAND INFORMATION ACT; DEFINING CERTAIN TERMS; ESTABLISHING CERTAIN DUTIES FOR THE DEPARTMENT OF ADMINISTRATION REGARDING LAND INFORMATION; CREATING THE LAND INFORMATION ADVISORY COUNCIL AND DESCRIBING APPOINTMENTS, TERMS, VACANCIES, AND COMPENSATION OF COUNCIL MEMBERS; CREATING THE MONTANA LAND INFORMATION ACCOUNT AND PROVIDING FOR ADMINISTRATION OF THE ACCOUNT; REQUIRING EACH COUNTY GOVERNING BODY TO CREATE A COUNTY LAND INFORMATION

ACCOUNT AND DESCRIBING THE PURPOSES AND ALLOWABLE USES OF THE ACCOUNT; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ADOPT RULES TO ADMINISTER THE MONTANA LAND INFORMATION ACT; REVISING CERTAIN FEES CHARGED FOR RECORDING CERTAIN DOCUMENTS AND REVISING THE DISTRIBUTION OF THE FEES COLLECTED; AMENDING SECTIONS 7-4-2632 AND 7-4-2637, MCA; AND PROVIDING AN EFFECTIVE 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 Land Information Act”.

Section 2. Purpose. The purpose of [sections 1 through 10] is to develop a standardized, sustainable method to collect, maintain, and disseminate information in digital formats about the natural and artificial land characteristics of Montana. Land information changes continuously and is needed by businesses, citizens, governmental entities, and others in digital formats to be most effective and productive. [Sections 1 through 10] will ensure that digital land information is collected consistently, maintained accurately in accordance with standards, and made available in common ways for all potential uses and users, both private and public. [Sections 1 through 10] prioritize consistent collection, accurate maintenance, and common availability of land information to provide needed, standardized, and uniform land information in digital formats.

Section 3. Definitions. As used in [sections 1 through 10], unless the context requires otherwise, the following definitions apply:

(1) “Account” means the Montana land information account created in [section 7].

(2) “Council” means the land information advisory council established in [section 5].

(3) “Department” means the department of administration provided for in 2-15-1001.

(4) “Digital format” means information that is scanned, electronically drawn, layered through the GIS, or digitized by other electronic methods.

(5) “Geographic information system” or “GIS” means an organized collection of computer hardware, software, land information, and other resources, including personnel, that is designed to or assists to efficiently collect, maintain, and disseminate all forms of geographically referenced information.

(6) “Land information” means data that describes the geographic location and characteristics of natural or constructed features and boundaries within or pertaining to Montana.

Section 4. 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 [sections 1 through 10];

(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.

(2) To fulfill the responsibilities described in subsection (1), the department or any recipient of funds granted pursuant to [sections 1 through 10] may contract with a public or private entity.

Section 5. Land information advisory council — appointments — terms — vacancies — compensation. (1) There is a land information advisory council.

(2) The council is composed of the following members:

(a) the director of the department or the director's designee who shall:

(i) serve as the presiding officer of the council; or

(ii) appoint the presiding officer from among the other members of the council.

(b) the state librarian or the state librarian's designee;

(c) to be appointed by the governor:

(i) the directors of four other departments established in Title 2, chapter 15. A director may designate a person to act in the director's absence.

(ii) three persons who represent county or municipal government, at least one of whom is active in land information systems;

(iii) two persons who are employed by the U.S. department of agriculture;

(iv) two persons who are employed by the U.S. department of the interior;

(v) two persons who are active in land information systems and represent public utilities or private businesses;

(vi) one person who represents Indian tribal interests;

(vii) one person who represents the Montana university system;

(viii) two persons who are members of a Montana association of GIS professionals; and

(ix) one person who represents the interests of a Montana association of registered land surveyors;

(d) one member of the Montana state senate, appointed by the committee on committees, who must be appointed prior to the appointment of the member described in subsection (2)(e); and

(e) one member of the Montana house of representatives, appointed by the speaker of the house of representatives, who may not be a member of the same political party as the member of the senate appointed under subsection (2)(d).

(3) Each council member is appointed for a 2-year term that begins on July 1 of the odd-numbered year and ends on June 30 of the succeeding odd-numbered year. A member may be reappointed to the council.

(4) A vacancy on the council must be filled in the same manner as the original appointment, and the person appointed to fill the vacancy shall serve for the remainder of the unexpired term.

(5) (a) A member of the council who is not a legislator or an employee of the state or a political subdivision of the state is eligible to be reimbursed and compensated, as provided in 2-15-124.

(b) A member of the council who is not a legislator but is an employee of the state or a political subdivision of the state is not entitled to compensation but is entitled to be reimbursed for expenses, as provided in 2-18-501 through 2-18-503.

(c) A legislator who is a member of the council is eligible to be compensated and reimbursed, as provided in 5-2-302.

Section 6. Land information advisory council — duties — advisory only. (1) The council shall:

(a) advise the department with regard to issues relating to the geographic information system and land information;

(b) advise the department on the priority of land information, including data layers, to be developed;

(c) review the land information plan described in [section 4] and advise the department on any element of the plan;

(d) advise the department on the development and management of the granting process described in [section 4(1)(e)];

(e) advise the department on the management of and the distribution of funds in the account;

(f) assist in identifying, evaluating, and prioritizing requests received from state agencies, local governments, and Indian tribal government entities to provide development of and maintenance of services relating to the GIS and land information;

(g) promote coordination of programs, policies, technologies, and resources to maximize opportunities, minimize duplication of effort, and facilitate the documentation, distribution, and exchange of land information; and

(h) advocate for the development of consistent policies, standards, and guidelines for land information.

(2) The council functions in an advisory capacity, as defined in 2-15-102.

Section 7. Montana land information account. (1) There is established in the state special revenue fund a Montana land information account.

(2) All money received by the department of revenue pursuant to 7-4-2637(3)(a)(iii) must be deposited in the account.

(3) Funds in the account must be invested pursuant to Title 17, chapter 6, part 2. All interest and income earned on funds in the account accrue to and must be deposited in the account.

Section 8. Montana land information account — distribution of funds. (1) The department shall annually prepare a budget to carry out the department's responsibilities described in [section 4]. Money in the account may be used to fund all or a portion of the budget or to otherwise accomplish the purposes of [sections 1 through 10].

(2) A state agency, a local government, or an Indian tribal government entity may apply to the department for funds in the account for the purposes described in [sections 1 through 10].

(3) The department shall ensure that funds distributed under this section are managed by the recipient of the funds according to standards and practices established by the department to allow for the greatest use and sharing of the land information.

Section 9. Montana land information account — use of funds — action by department — hearing. (1) Money in the account may be used only for the purposes of [sections 1 through 10], including purchasing technology to assist in collecting, maintaining, or disseminating land information and funding the budget required under [section 8].

(2) If the department determines that a recipient of funds from the account has not used or is not using funds in the manner prescribed by the department, the department may, after notice and hearing as provided for in Title 2, chapter 4, suspend further payment to the recipient.

(3) A recipient to whom the department has suspended payments under this section is not eligible to receive further funds from the account until the department determines that the recipient is using funds in the manner prescribed by the department.

Section 10. Rulemaking. (1) The department shall adopt rules regarding:

(a) designing and implementing the process to develop the land information plan described in [section 4(1)(c)];

(b) the application and granting processes provided for in [section 4(1)(e)];

(c) the monitoring process provided for in [section 4(1)(g)]; and

(d) the process for coordinating technological standards for creating land information provided for in [section 4(1)(h)].

(2) The department may adopt other rules considered to be necessary for the effective administration of [sections 1 through 10].

Section 11. County land information account — creation — purposes — uses. (1) The governing board of each county shall establish a county land information account.

(2) The governing body of each county is responsible for deposits to and expenditures from the account.

(3) Subject to the provisions of subsection (4), a county may use the funds in the county land information account:

(a) for local geographic information system projects to meet the local operations needs of the county or a municipality within the county;

(b) for local land information data collection, maintenance, and dissemination projects;

(c) for intergovernmental or interagency geographic information system and land information data collection, maintenance, or dissemination projects with any other county, city, state, federal, or Indian tribal agency; or

(d) as matching funds for other state, federal, private, or other fund sources to accomplish the purposes of this section.

(4) (a) Except as provided in subsection (4)(b), use of funds in the county land information accounts must comply with applicable, existing state standards for the geographic information system and land information.

(b) A county may, upon approval of the county governing board, use funds in the county land information account for projects that collect, maintain, disseminate, or otherwise use the geographic information system or land information for which state standards do not exist.

(5) Funds deposited to and expended from the county land information account are subject to audit pursuant to Title 2, chapter 7, part 5.

Section 12. Section 7-4-2632, MCA, is amended to read:

“7-4-2632. Fee when recording done by mechanical means. ~~Where~~ Whenever recording is done by a photographic or similar process, the county clerk and recorder shall charge ~~the~~ \$7 for each page or fraction of a page of the instrument for recording.”

Section 13. Section 7-4-2637, MCA, is amended to read:

“7-4-2637. (Effective July 1, 2005) Fees for recording standard documents. (1) Except as provided in 7-4-2631 and subsection (2) of this section, the fee for recording a standard document that meets the requirements of 7-4-2636 is ~~the~~ \$7 for each page or fraction of a page.

(2) The fee for recording a document that does not meet the requirements of 7-4-2636 is ~~the~~ \$11 for each page or fraction of a page for the first five pages or fractions of the pages and \$7 for each subsequent page.

(3) (a) Of the fees collected under subsection (1):

(i) \$1 must be deposited in the records preservation fund, provided for in 7-4-2635;

(ii) 25 cents must be deposited in the county land information account provided for in [section 11];

(iii) 75 cents must be transmitted each month to the department of revenue in the manner prescribed by the department of revenue for deposit to the Montana land information account created in [section 7]; and

(iv) the remainder must be deposited as provided for in 7-4-2511.

(b) Of the fees collected under subsection (2) for nonstandard documents, each ~~\$6~~ \$7 amount for a page or fraction of a page must be deposited as provided for in subsection (3)(a). The remaining \$4 of each ~~\$10~~ \$11 charge for a page or fraction of a page must be deposited in the records preservation fund, provided for in 7-4-2635, and, notwithstanding 7-4-2635(3), each \$4 amount from a ~~\$10~~ *an* \$11 charge for a page or a fraction of a page may be used only for maintaining, upgrading, or installing systems to digitally record and retrieve documents.”

Section 14. 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 15. Codification instruction. (1) [Sections 1 through 10] are intended to be codified as an integral part of Title 90, chapter 1, and the provisions of Title 90 apply to [sections 1 through 10].

(2) [Section 11] is intended to be codified as an integral part of Title 7, chapter 6, part 22, and the provisions of Title 7, chapter 6, apply to [section 11].

Section 16. Effective date. [This act] is effective July 1, 2005.

Approved March 30, 2005

CHAPTER NO. 136

[SB 117]

AN ACT REVISING MORTGAGE BROKER LAWS; MODIFYING THE DEFINITION OF “MORTGAGE BROKER” TO INCLUDE A PERSON WHO LOANS MONEY THAT IS NOT SECURED BY PROPERTY PURCHASED WITH THE LOAN PROCEEDS; INCREASING FROM 5 PERCENT TO 10 PERCENT THE OWNERSHIP INTEREST IN A MORTGAGE BROKER ENTITY A PERSON MUST HAVE BEFORE THAT OWNERSHIP INTEREST MUST BE REPORTED TO THE DEPARTMENT OF ADMINISTRATION; REVISING INFORMATION INCLUDED IN ADVERTISING; AUTHORIZING THE DEPARTMENT TO SHARE INFORMATION WITH OTHER STATE REGULATORY AGENCIES AND THE MORTGAGE ASSET RESEARCH INSTITUTE, INC., AND OTHER SIMILAR ORGANIZATIONS; AND AMENDING SECTIONS 32-9-103, 32-9-115, 32-9-121, AND 32-9-130, MCA.

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

Section 1. Section 32-9-103, MCA, is amended to read:

“32-9-103. Definitions. As used in this part, the following definitions apply:

(1) “Bona fide third party” means a person or entity that provides services relative to residential mortgage loan transactions. The term includes but is not limited to real estate appraisers and credit reporting agencies.

(2) “Borrower” means an individual who is solicited to purchase or who purchases the services of a mortgage broker for other than commercial mortgage lending.

(3) “Department” means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

(4) "Designated manager" means a person employed by a mortgage broker entity, other than a sole proprietorship, as the person responsible for operating the business at the location where the person is employed. A designated manager must be licensed as a mortgage broker.

(5) "Entity" means a business organization, other than a sole proprietorship or an individual person, that provides mortgage broker services.

(6) "Lender" means an entity that funds or services a residential mortgage loan.

(7) "Loan originator" means a licensed individual employed by a mortgage broker to assist borrowers by originating a residential loan.

(8) "Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.

(9) "Mortgage banker" means a person or entity that makes, services, or buys and sells mortgage loans and that may be required to submit audited financial statements to the United States department of housing and urban development, the United States department of veterans affairs, the federal national mortgage association, the federal home loan mortgage corporation, or the government national mortgage association.

(10) "Mortgage broker" means a person or entity that provides services for a fee as an intermediary between a borrower and a lender in obtaining financing for the borrower that is to be secured by a residential dwelling for between one and four families located on real property purchased by the borrower with the loan provided by the lender.

(11) "Originate" means:

(a) to negotiate or arrange or to offer to negotiate or arrange a mortgage loan between a borrower and a person or entity that makes or funds mortgage loans;

(b) to issue a commitment for a mortgage loan to a borrower; or

(c) to place, assist in placing, or find a mortgage loan for a borrower.

(12) "Trust account" means a depository account with a financial institution that provides deposit insurance that is separate and distinct from any personal, business, or other account of the mortgage broker and that is maintained solely for the holding and payment of bona fide third-party fees."

Section 2. Section 32-9-115, MCA, is amended to read:

"32-9-115. Application for mortgage broker license. (1) An application for a mortgage broker license must include:

(a) the proposed location of the business, with a photograph of each location at which business will be transacted. If the business is to be conducted out of a residence, verification must be supplied concerning compliance with all zoning laws and regulations.

(b) (i) the name and address of the sole proprietor;

(ii) the name and address of each partner; or

(iii) the name and address of any person that owns ~~5%~~ 10% or more of a mortgage broker entity that is other than a sole proprietorship or partnership;

(c) evidence of an irrevocable letter of credit or surety bond required by 32-9-123;

(d) a statement as to whether the applicant or, to the best of the applicant's knowledge, any shareholder, member, partner, designated manager, or employee of the applicant is currently under investigation, has been convicted of or has pleaded guilty to any felony or criminal offense involving fraud or dishonesty, or has been subject to any adverse civil judgment for any conduct involving fraudulent or dishonest dealing; and

(e) evidence that the designated manager meets the requirements for licensure as a mortgage broker.

(2) The department shall investigate each individual applicant. The investigation shall include a criminal records check based on the fingerprints of each individual applicant and a civil records check. The department shall require each individual applicant to file a set of the applicant's fingerprints, taken by a law enforcement agency, and any other information necessary to complete a statewide and nationwide criminal check with the criminal investigation bureau of the department of justice for state processing and with the federal bureau of investigation for federal processing. All costs associated with the criminal history check are the responsibility of the applicant. Criminal history records provided to the department under this section are confidential, and the department may use the records only to determine if the applicant is eligible for licensure. If an investigation outside this state is necessary, the department may require the applicant to advance sufficient funds to pay the actual expenses of the investigation. The department may deny the application if the applicant's criminal history demonstrates any felony criminal convictions or other convictions involving fraud or dishonesty or if the applicant has had any adverse civil judgments involving fraudulent or dishonest dealings."

Section 3. Section 32-9-121, MCA, is amended to read:

"32-9-121. In-state office requirement — records maintenance — advertising requirement. (1) A person or entity licensed as a mortgage broker shall maintain at least one physical office located in this state either on its own accord or in conjunction with another licensed mortgage broker or regulated lender located in this state. Licensees shall maintain copies of residential mortgage loan files and trust account records at the Montana office location where services are provided. Each office location must have at least one phone line. Licensees shall pay state income tax on all income earned in Montana.

(2) A mortgage broker shall maintain a residential mortgage file for a minimum of 5 years from the date of the last activity pertaining to the file. A mortgage broker shall maintain trust account records for a minimum of 5 years.

(3) ~~(a) A licensee or licensed entity shall disclose in~~ *In any printed, published, televised, e-mail, or internet advertisement for the provision of services, the following information must be included:*

(i) a name, address, and license number for each mortgage broker or loan originator advertising as an individual; or

(ii) ~~the name and address of the licensee and the number designated on the license issued to the licensee or licensed entity by the department~~ the name, address, and license number only of the licensed entity when the licensed entity is advertising on its own behalf or as an entity with one or more mortgage brokers or loan originators also listed.

(b) For the purposes of this subsection (3), advertising does not include stationery or business forms but does include business cards. A business card

must include a mortgage broker's or loan originator's license number but is not required to list the entity's license number if the entity's name is listed."

Section 4. Section 32-9-130, MCA, is amended to read:

"32-9-130. Department authority — rulemaking. (1) The department shall adopt rules necessary to carry out the intent and purposes of this part. The rules adopted are binding on all licensees and enforceable through the power of suspension or revocation of licenses.

(2) The rules must address:

- (a) revocation or suspension of licenses for cause;
- (b) investigation of applicants and licensees and handling of complaints made by any person in connection with any business transacted by a licensee;
- (c) prescribing forms for applications;
- (d) developing or approving tests to be given as a prerequisite for licensure;
- (e) approval of programs for continuing education; and
- (f) establishing fees for testing, continuing education programs, and license renewals.

(3) The department may seek a writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part.

(4) (a) The department may at any time examine any mortgage broker transaction and may examine the residential mortgage loan files, trust account records, and other information related to mortgage loan transactions of a licensee.

(b) When conducting a financial examination or an audit of a licensee, the department may require the licensee to pay a fee of \$300 per day for each examiner performing the financial examination or audit.

(c) If any examination fees are not paid within 30 days of the department's mailing of an invoice, the license of the mortgage broker or designated manager for the mortgage broker entity may be suspended or revoked.

(5) (a) The department may:

(i) exchange information with federal *and state* regulatory agencies, the attorney general, the consumer protection office of the department, and the legislative auditor; *and*

(ii) *exchange information other than confidential information with the mortgage asset research institute, inc., and other similar organizations.*

(b) Except as provided in subsection (5)(a)(i), the department shall treat all confidential criminal justice information as confidential unless otherwise required by law.

(6) The department shall prepare, at least once each calendar year, a roster listing the name and locations for each mortgage broker and a roster of all loan originators and designated managers and the name of their employing brokers."

Approved March 30, 2005

CHAPTER NO. 137

[SB 166]

AN ACT REVISING METHAMPHETAMINE ENFORCEMENT LAWS; MAKING THEFT OF ANY AMOUNT OF ANHYDROUS AMMONIA FOR THE PURPOSE OF MANUFACTURING DANGEROUS DRUGS A FELONY; PROVIDING THAT POSSESSION OF ANHYDROUS AMMONIA WITH INTENT TO MANUFACTURE DANGEROUS DRUGS IS CRIMINAL POSSESSION OF PRECURSORS TO DANGEROUS DRUGS; AMENDING SECTIONS 45-6-301, 45-9-107, AND 45-9-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 45-6-301, MCA, is amended to read:

“45-6-301. Theft. (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when the person purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter 71 or 72, by means of:

- (a) a knowingly false statement, representation, or impersonation; or
- (b) deception or other fraudulent action.

(6) (a) A person commits the offense of theft when the person purposely or knowingly commits insurance fraud as provided in 33-1-1202 or 33-1-1302; or

(b) purposely or knowingly diverts or misappropriates insurance premiums as provided in 33-17-1102.

(7) A person commits the offense of theft of property by embezzlement when, with the purpose to deprive the owner of the property, the person:

(a) purposely or knowingly obtains or exerts unauthorized control over property of the person's employer or over property entrusted to the person; or

(b) purposely or knowingly obtains by deception control over property of the person's employer or over property entrusted to the person.

(8) (a) ~~A~~ *Except as provided in subsection (8)(b), a person convicted of the offense of theft of property not exceeding \$1,000 in value shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined \$1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.*

(b) *Except as provided in subsection (8)(c), a person convicted of the offense of theft of property exceeding \$1,000 in value, or theft of any commonly domesticated hoofed animal, or theft of any amount of anhydrous ammonia for the purpose of manufacturing dangerous drugs shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.*

(c) *A person convicted of the offense of theft of property exceeding \$10,000 in value by embezzlement shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years and may be fined an amount not to exceed \$50,000. The court may, in its discretion, place the person on probation with the requirement that restitution be made under terms set by the court. If the terms are not met, the required prison term may be ordered.*

(9) *Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."*

Section 2. Section 45-9-107, MCA, is amended to read:

"45-9-107. Criminal possession of precursors to dangerous drugs. (1)

A person commits the offense of criminal possession of precursors to dangerous drugs if:

(a) the person possesses any material, compound, mixture, or preparation that contains any combination of the following with intent to manufacture dangerous drugs:

- ~~(a)~~(i) phenyl-2-propanone (phenylacetone);
- ~~(b)~~(ii) piperidine in conjunction with cyclohexanone;
- ~~(c)~~(iii) ephedrine;
- ~~(d)~~(iv) lead acetate;
- ~~(e)~~(v) methylamine;

- ~~(f)~~(vi) methylformamide;
- ~~(g)~~(vii) n-methylephedrine;
- ~~(h)~~(viii) phenylpropanolamine;
- ~~(i)~~(ix) pseudoephedrine;
- ~~(j)~~(x) anhydrous ammonia;
- ~~(k)~~(xi) hydriodic acid;
- ~~(l)~~(xii) red phosphorus;
- ~~(m)~~(xiii) iodine in conjunction with ephedrine, pseudoephedrine, or red phosphorus;
- ~~(n)~~(xiv) lithium in conjunction with anhydrous ammonia; *or*
- (b) *the person knowingly possesses anhydrous ammonia for the purpose of manufacturing dangerous drugs.*

(2) A person convicted of criminal possession of precursors to dangerous drugs shall be imprisoned in the state prison for a term not less than 2 years or more than 20 years or be fined an amount not to exceed \$50,000, or both.”

Section 3. Section 45-9-131, MCA, is amended to read:

“45-9-131. Definitions. As used in 45-9-132 and this section, the following definitions apply:

(1) “Booby trap” means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of a person making contact with the device. “Booby trap” includes:

- (a) guns, ammunition, or explosive devices that are attached to trip wires or other triggering mechanisms;
- (b) sharpened stakes, nails, spikes, electrical devices, lines, or wires with hooks attached; and
- (c) devices for the production of toxic fumes or gases.

(2) “Equipment” or “laboratory equipment” means all products, components, or materials of any kind when used, intended for use, or designed for use in the manufacture, preparation, production, compounding, conversion, or processing of a dangerous drug as defined in 50-32-101. Equipment or laboratory equipment includes but is not limited to:

- (a) a reaction vessel;
- (b) a separatory funnel or its equivalent;
- (c) a glass condenser;
- (d) an analytical balance or scale; or
- (e) a heating mantle or other heat source.

(3) “Precursor to dangerous drugs” means ~~any material, compound, mixture, or preparation that contains any combination of the items listed in 45-9-107(1), except as exempted by 45-9-108, any material, compound, mixture, or preparation that contains any combination of the items listed in 45-9-107(1)(a) or anhydrous ammonia knowingly possessed for the purpose of manufacturing dangerous drugs.~~

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

Approved March 30, 2005

CHAPTER NO. 138

[SB 170]

AN ACT PROVIDING FLEXIBILITY TO SCHOOL DISTRICTS IN SETTING THEIR SCHOOL CALENDARS BY ELIMINATING THE REQUIREMENT THAT A SCHOOL DISTRICT CONDUCT AT LEAST 180 SCHOOL DAYS DURING EACH SCHOOL FISCAL YEAR; DEFINING "MINIMUM AGGREGATE HOURS"; REQUIRING A SCHOOL DISTRICT TO CONDUCT SCHOOL FOR A MINIMUM NUMBER OF AGGREGATE HOURS EACH SCHOOL YEAR; REQUIRING SCHOOL DISTRICT TRUSTEES TO SET THE LENGTH OF THE SCHOOL TERM, SCHOOL DAY, AND SCHOOL WEEK; MAKING THE REVISIONS NECESSARY TO REFLECT THE ELIMINATION OF THE REQUIREMENT FOR 180 SCHOOL DAYS; AMENDING SECTIONS 2-2-302, 20-1-101, 20-1-301, 20-1-302, 20-1-304, 20-2-115, 20-2-121, 20-3-324, 20-5-109, 20-6-209, 20-9-311, 20-9-801, 20-9-802, 20-9-805, AND 20-9-806, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Public School Renewal Commission in its final report to the Education and Local Government Interim Committee recommended by consensus that school districts be given more flexibility in setting their school calendars; and

WHEREAS, while the Education and Local Government Interim Committee fully endorsed the recommendation, the timing of the Commission's report failed to provide the Committee with sufficient time to prepare and sponsor legislation for the 2005 legislative session; and

WHEREAS, while the Committee was unable to request the legislation to implement the Commission's recommendation as a committee bill, this bill has the full support of the Committee.

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

Section 1. Section 2-2-302, MCA, is amended to read:

"2-2-302. Appointment of relative to office of trust or emolument unlawful — exceptions — publication of notice. (1) Except as provided in subsection (2), it is unlawful for a person or member of any board, bureau, or commission or employee at the head of a department of this state or any political subdivision of this state to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

(2) The provisions of this section and 2-2-303 do not apply to:

(a) a sheriff in the appointment of a person as a cook or an attendant;

(b) school district trustees if all the trustees, with the exception of any trustee who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a trustee;

(c) a school district in the employment of a person as a substitute teacher who is not employed as a substitute teacher for more than 30 consecutive school days *as defined by the trustees in 20-1-302*;

(d) the renewal of an employment contract of a person who was initially hired before the member of the board, bureau, or commission or the department head to whom the person is related assumed the duties of the office;

- (e) the employment of election judges; or
- (f) the employment of pages or temporary session staff by the legislature.

(3) Prior to the appointment of a person referred to in subsection (2), the school district trustees shall give written notice of the time and place of their intended action. The notice must be published at least 15 days prior to the trustees' intended action in a newspaper of general circulation in the county in which the school district is located."

Section 2. Section 20-1-101, MCA, is amended to read:

"20-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Agricultural experiment station" means the agricultural experiment station established at Montana state university-Bozeman.

(2) "Average number belonging" or "ANB" means the average number of regularly enrolled, full-time pupils attending the public schools of a district.

(3) "Board of public education" means the board created by Article X, section 9, subsection (3), of the Montana constitution and 2-15-1507.

(4) "Board of regents" means the board of regents of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

(5) "Commissioner" means the commissioner of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1506.

(6) "County superintendent" means the county government official who is the school officer of the county.

(7) "District superintendent" means a person who holds a valid class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(8) "K-12 career and vocational/technical education" means organized educational activities that have been approved by the office of public instruction and that:

(a) offer a sequence of courses that provide a pupil with the academic and technical knowledge and skills that the pupil needs to prepare for further education and for careers in the current or emerging employment sectors; and

(b) include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills of the pupil.

(9) (a) "*Minimum aggregate hours*" means the minimum hours of pupil instruction that must be conducted during the school fiscal year in accordance with 20-1-301 and includes passing time between classes.

(b) *The term does not include lunch time and periods of unstructured recess.*

~~(10)~~(10) "Principal" means a person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed

by a district as a principal. For the purposes of this title, any reference to a teacher must be construed as including a principal.

~~(10)~~(11) "Pupil" means a child who is 6 years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustees under 20-5-101(3) but has not yet reached 19 years of age and who is enrolled in a school established and maintained under the laws of the state at public expense. For purposes of calculating the average number belonging pursuant to 20-9-311, the definition of pupil includes a person who has not yet reached 19 years of age by September 10 of the year and is enrolled under 20-5-101(3) in a school established and maintained under the laws of the state at public expense.

~~(11)~~(12) "Pupil instruction" means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

~~(12)~~(13) "Regents" means the board of regents of higher education.

~~(13)~~(14) "School food services" means a service of providing food for the pupils of a district on a nonprofit basis and includes any food service financially assisted through funds or commodities provided by the United States government.

~~(14)~~(15) "State board of education" means the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1), of the Montana constitution.

~~(15)~~(16) "State university" means Montana state university-Bozeman.

~~(16)~~(17) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the Montana constitution.

~~(17)~~(18) "System" means the Montana university system.

~~(18)~~(19) "Teacher" means a person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher includes a person for whom an emergency authorization of employment has been issued under the provisions of 20-4-111.

~~(19)~~(20) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

~~(20)~~(21) "Textbook dealer" means a party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state.

~~(21)~~(22) "Trustees" means the governing board of a district.

~~(22)~~(23) "University" means the university of Montana-Missoula.

~~(23)~~(24) "Vocational-technical education" means vocational-technical education of vocational-technical students that is conducted by a unit of the Montana university system, a community college, or a tribally controlled community college, as designated by the board of regents."

Section 3. Section 20-1-301, MCA, is amended to read:

"20-1-301. School fiscal year. (1) The school fiscal year begins on July 1 and ends on June 30. At least ~~180 school days of pupil instruction and the~~

minimum aggregate hours defined in subsection (2) must be conducted during each school fiscal year, except that ~~175 days and~~ 1,050 aggregate hours of pupil instruction for graduating seniors may be sufficient or a minimum of ~~90 days and~~ 360 aggregate hours of pupil instruction must be conducted for a kindergarten program, as provided in 20-7-117.

(2) The minimum aggregate hours required by grade are:

(a) 720 hours for grades 1 through 3; and

(b) 1,080 hours for grades 4 through 12.

~~(3) To calculate the number of equivalent school days of pupil instruction when providing less than the minimum number of hours of instruction provided in subsections (1) and (2), a school district shall:~~

~~(a) determine the aggregate hours of pupil instruction by grade level;~~

~~(b) divide the aggregate hours of pupil instruction for each grade level by the minimum hours a day for that grade level provided in 20-1-302; and~~

~~(c) round the result down to the nearest whole number.~~

~~(4)(3) For any elementary or high school district that fails to provide for at least 180 school days of pupil instruction and the minimum aggregate hours, as defined listed in subsections (1) and (2), the superintendent of public instruction shall reduce the direct state aid for the district for that school year by 1/90th for each school day less than 180 school days as calculated in subsection (3) or by 1/90th for each calendar day less than the minimum school days required by subsection (1), whichever is greater two times an hourly rate, as calculated by the office of public instruction, for the aggregate hours missed."~~

Section 4. Section 20-1-302, MCA, is amended to read:

"20-1-302. School term, day, and week. (1) Subject to 20-1-301, 20-1-308, and any applicable collective bargaining agreement covering the employment of affected employees, a school day of pupil instruction must be at least 2 hours for kindergartens, at least 4 hours for grades 1 through 3, and at least 6 hours for grades 4 through 12. The number of hours in 1 school day may be reduced at the discretion of the trustees if the total number of pupil instruction hours in the school year is not less than the minimum aggregate hours required in 20-1-301 the trustees of a school district shall set the number of days in a school term, the length of the school day, and the number of school days in a school week and report them to the superintendent of public instruction.

(2) When proposing to adopt changes to a previously adopted school term, school week, or school day, the trustees shall:

(a) negotiate the changes with the recognized collective bargaining unit representing the employees affected by the changes;

(b) solicit input from the employees affected by the changes but not represented by a collective bargaining agreement; and

(c) solicit input from the people who live within the boundaries of the school district."

Section 5. Section 20-1-304, MCA, is amended to read:

"20-1-304. Pupil-instruction-related day. A pupil-instruction-related day is a day of teacher activities devoted to improving the quality of instruction. The activities may include but are not limited to inservice training, attending state meetings of teacher organizations, and conducting parent conferences. A

maximum of 7 pupil-instruction-related days may be conducted during a school year, with a minimum of 3 of the days for instructional and professional development meetings or other appropriate inservice training, if the days are planned in accordance with the policy adopted by the board of public education. The days may not be included as a part of the ~~required minimum of 180 days or the required minimum aggregate hours of pupil instruction.~~

Section 6. Section 20-2-115, MCA, is amended to read:

“20-2-115. Rules with substantial financial impact — fiscal note — effect without funding. (1) When developing rules, policies, and standards under 20-2-121~~(6)(5), (7) (6), (9) (8), and (11) (10)~~, the board of public education shall determine the financial impact of the rule, policy, or standard on school districts.

(2) The superintendent of public instruction shall prepare a fiscal note for submission to the board, using criteria and assumptions developed by the board. The fiscal note must be prepared within 30 days of a request unless the board agrees to a longer time. The board may also accept other testimony and exhibits on the financial impact to school districts before proceeding to rulemaking.

(3) If the financial impact of the proposed rule, policy, or standard is found by the board to be substantial, the board may not implement the rule until July 1 following the next regular legislative session and shall request the next legislature to fund implementation of the proposed rule, policy, or standard through the BASE funding program. A substantial financial impact is an amount that cannot be readily absorbed in the budget of an existing school district program.

(4) A proposed rule, policy, or standard not found by the board to have a substantial financial impact on school districts or funded by the legislature may be implemented at any time.”

Section 7. Section 20-2-121, MCA, is amended to read:

“20-2-121. Board of public education — powers and duties. The board of public education shall:

(1) effect an orderly and uniform system for teacher certification and specialist certification and for the issuance of an emergency authorization of employment by adopting the policies prescribed by 20-4-102 and 20-4-111;

(2) consider the suspension or revocation of teacher or specialist certificates and appeals from the denial of teacher or specialist certification in accordance with the provisions of 20-4-110;

(3) administer and order the distribution of BASE aid in accordance with the provisions of 20-9-344;

(4) adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of 20-10-111;

~~(5) approve or disapprove a reduction of the number of hours in a district’s school day in accordance with the provisions of 20-1-302;~~

~~(6)(5) adopt policies prescribing the conditions when school may be conducted on Saturday and the types of pupil-instruction-related days and approval procedure for such those days in accordance with the provisions of 20-1-303 and 20-1-304;~~

~~(7)~~(6) adopt standards of accreditation and establish the accreditation status of every school in accordance with the provisions of 20-7-101 and 20-7-102;

~~(8)~~(7) approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of 20-7-201;

~~(9)~~(8) adopt policies for the conduct of special education in accordance with the provisions of 20-7-402;

~~(10)~~(9) adopt rules for issuance of documents certifying equivalency of completion of secondary education in accordance with 20-7-131;

~~(11)~~(10) adopt policies for the conduct of programs for gifted and talented children in accordance with the provisions of 20-7-903 and 20-7-904;

~~(12)~~(11) adopt rules for student assessment in the public schools; and

~~(13)~~(12) perform any other duty prescribed from time to time by this title or any other act of the legislature.”

Section 8. Section 20-3-324, MCA, is amended to read:

“20-3-324. Powers and duties. As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers’ retirement system of the state of Montana in accordance with the provisions of the teachers’ retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) subject to 15-10-420, establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts

for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative agreement fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) set the length of the school term, school day, and school week in accordance with 20-1-302;

~~(17)~~(18) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special education parts of this title;

~~(18)~~(19) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

~~(19)~~(20) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

~~(20)~~(21) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

~~(21)~~(22) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

~~(22)~~(23) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

~~(23)~~(24) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided by a local civic group.

~~(24)~~(25) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110;

~~(25)~~(26) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education;

~~(26)~~(27) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in 20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution;

~~(27)~~(28) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303;

~~(28)~~(29) consider and, if advisable for a high school or K-12 district, establish a student financial institution, as defined in 32-1-115; and

~~(29)~~(30) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction.”

Section 9. Section 20-5-109, MCA, is amended to read:

“20-5-109. Nonpublic school requirements for compulsory enrollment exemption. To qualify its students for exemption from compulsory enrollment under 20-5-102, a nonpublic or home school shall:

(1) *shall* maintain records on pupil attendance and disease immunization and make the records available to the county superintendent of schools on request;

(2) *shall* provide at least ~~180 days~~ *the minimum aggregate hours* of pupil instruction ~~or the equivalent~~ in accordance with 20-1-301 and 20-1-302;

(3) *must* be housed in a building that complies with applicable local health and safety regulations;

(4) *shall* provide an organized course of study that includes instruction in the subjects required of public schools as a basic instructional program pursuant to 20-7-111; and

(5) in the case of home schools, *shall* notify the county superintendent of schools; of the county in which the home school is located; in each school fiscal year of the student’s attendance at the school.”

Section 10. Section 20-6-209, MCA, is amended to read:

“20-6-209. Elementary district abandonment. (1) The county superintendent shall declare an elementary district to be abandoned and order the attachment of the territory of the district to a contiguous district of the county when:

(a) a school has not been operated by a district for at least ~~180 days~~ *the minimum aggregate hours* under the provisions of 20-1-301 for each of 3 consecutive school fiscal years or a lesser number of ~~days~~ *aggregate hours* as approved by the board of trustees under the provisions of 20-9-806; or

(b) there is an insufficient number of residents who are qualified electors of the district that can serve as the trustees and clerk of the district so that a legal board of trustees can be organized.

(2) The county superintendent shall notify the elementary district that has not operated a school for 2 consecutive years before the first day of the third year that the failure to operate a school for ~~180 days~~ *the minimum aggregate hours* or a lesser number of ~~days~~ *aggregate hours* than approved by the board of trustees under the provisions of 20-9-806 during the ensuing school fiscal year constitutes grounds for abandonment of the district at the conclusion of the succeeding school fiscal year. Failure by the county superintendent to provide the notification does not constitute a waiver of the abandonment requirement prescribed in subsection (1)(a).

(3) Any abandonment under subsection (1)(a) becomes effective on July 1. Any abandonment of an elementary district under subsection (1)(b) becomes effective immediately on the date of the abandonment order.”

Section 11. Section 20-9-311, MCA, is amended to read:

“20-9-311. Calculation of average number belonging (ANB). (1) Average number belonging (ANB) must be computed as follows:

(a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the next school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of ~~the pupil-instruction 180~~ and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than ~~180 school days~~ *the minimum aggregate hours* under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must be counted as enrollment for one-half day.

(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment at a regular session of the program for at least 2 hours of either a morning or an afternoon session must be counted as one-half pupil for ANB purposes. The ANB for a kindergarten student may not exceed one-half for each kindergarten pupil.

(6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of prekindergarten pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time

pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more elementary districts consolidate or annex under the provisions of 20-6-203, 20-6-205, or 20-6-208, two or more high school districts consolidate or annex under the provisions of 20-6-315 or 20-6-317, or two or more K-12 districts consolidate or annex under Title 20, chapter 6, part 4, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

- (A) 75% of the basic entitlement for the fourth year;
- (B) 50% of the basic entitlement for the fifth year; and
- (C) 25% of the basic entitlement for the sixth year.

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) The district shall provide the superintendent of public instruction with semiannual reports of school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent.”

Section 12. Section 20-9-801, MCA, is amended to read:

“20-9-801. Purpose. This part governs a school district’s entitlement to state equalization apportionment funds for any school year during which the school district is unable to conduct the minimum number of school days and the minimum aggregate hours by grade required by 20-1-301 by reason of one or more unforeseen emergencies. The provisions of this part must be narrowly interpreted.”

Section 13. Section 20-9-802, MCA, is amended to read:

“20-9-802. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Declaration of emergency” means a declaration by a board of trustees that an unforeseen emergency has occurred in the district.

(2) “Reasonable effort” means the rescheduling or extension of the school district’s instructional calendar in an effort to attain the minimum ~~number of school days~~ *aggregate hours* required by law by:

(a) extending the school year ~~3 days~~ *12 hours for 1st through 3rd grades and 18 hours for 4th through 12th grades* and or the equivalent aggregate hours of pupil instruction beyond the last scheduled day; or

(b) the use of scheduled vacation days.

(3) “School day” means the school day ~~defined in~~ *set by the trustees as provided in 20-1-302.*

(4) “Unforeseen emergency” means a fire, flood, explosion, storm, earthquake, riot, insurrection, community disaster, or act of God or a combination of the foregoing that acts as a principal cause for a school district’s inability to conduct 1 or more scheduled school days.”

Section 14. Section 20-9-805, MCA, is amended to read:

“20-9-805. Rate of reduction in annual apportionment entitlement.

(1) ~~For~~ *Except as provided in 20-9-806(2), for each school-day hour* short of the minimum number of ~~school days~~ *aggregate hours* required by law that a school district fails to conduct by reason of one or more unforeseen emergencies ~~as defined in 20-9-802~~, the superintendent of public instruction shall reduce the equalization apportionment and entitlement of the district for that school year by ~~1/180th~~ *a proportionate amount.*

(2) Kindergarten, *grade 1 through 3*, and grade ~~1~~ *4* through 12 programs ~~shall~~ *must* be considered separately for the purpose of computing compliance with minimum ~~school-day~~ *aggregate hour* requirements and any loss of apportionment.”

Section 15. Section 20-9-806, MCA, is amended to read:

“20-9-806. School closure by declaration of emergency. (1) (a) ~~If~~ *Except as provided in subsection (2), if* a school is closed by reason of an unforeseen emergency that results in a declaration of emergency by the board of trustees, the trustees may later adopt a resolution that a reasonable effort has been made to reschedule the pupil-instruction time lost because of the unforeseen emergency. If the trustees adopt the resolution, the pupil-instruction time lost during the closure need not be rescheduled to meet the minimum requirement for ~~pupil-instruction days~~ *aggregate hours* that a school district must conduct during the school year in order to be entitled to full annual equalization apportionment.

~~(2)(b)~~ At least 3 school days or the equivalent aggregate hours must have been made up before the trustees can declare that a reasonable effort has been made.

(2) *The board of trustees may close school for 1 school day each school year because of an unforeseen emergency and may not be required to reschedule the pupil-instruction time lost because of the unforeseen emergency.”*

Section 16. Effective date. [This act] is effective July 1, 2005.

Approved March 30, 2005

CHAPTER NO. 139

[SB 171]

AN ACT AUTHORIZING THE PRESIDENTS OF THE UNITS OF THE UNIVERSITY SYSTEM TO OFFER MULTIYEAR CONTRACTS TO ATHLETIC COACHES; AND AMENDING SECTIONS 20-25-305 AND 28-2-722, MCA.

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

Section 1. Section 20-25-305, MCA, is amended to read:

“20-25-305. President — powers and duties. Subject to the supervision of the regents, the president of each of the units of the system ~~shall~~:

(1) ~~have~~ *is responsible for* the immediate direction, management, and control of the respective units, including instruction, practical affairs, and scientific investigations;

(2) ~~be~~ *is* the president of the general faculty and of the special faculties of the departments or colleges and the executive head of the unit in all its departments;

(3) ~~have~~ *has* the duties of one of the professorships as long as the interests of the unit require it;

(4) *shall* perform the duties of corresponding secretary for the unit;

(5) *may offer multiyear contracts to athletic coaches;*

~~(5)~~(6) *shall* make an annual report to the regents containing ~~such~~ *any* information ~~as~~ *that* they may request; and

~~(6)~~(7) *shall* furnish any special report on request of the regents or the legislature.”

Section 2. Section 28-2-722, MCA, is amended to read:

“28-2-722. Contracts for personal services limited to two years — exception. ~~A~~ *Except as provided in 20-25-305, a contract to* ~~render~~ *provide* personal services cannot be enforced against the employee beyond the term of 2 years from the commencement of service under ~~it, but if~~ *the contract. If* the employee voluntarily continues ~~his~~ *service under* ~~it~~ *the contract* beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.”

Approved March 30, 2005

CHAPTER NO. 140

[SB 188]

AN ACT DISTINGUISHING CLAIMS ADJUSTERS UNDER THE MONTANA INSURANCE CODE FROM CLAIMS EXAMINERS UNDER THE WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE ACTS; EXEMPTING CLAIMS EXAMINERS FROM THE LICENSURE REQUIREMENTS OF

TITLE 33; DEFINING "CLAIMS EXAMINER" FOR PURPOSES OF THE WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE ACTS; AMENDING SECTIONS 33-17-102, 39-71-107, 39-71-116, 39-71-225, 39-71-307, AND 39-72-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 33-17-102, MCA, is amended to read:

"33-17-102. Definitions. As used in this title, the following definitions apply:

(1) (a) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of an independent contractor or for a fee or commission investigates and negotiates the settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer.

(b) The term does not include a:

(i) licensed attorney who is qualified to practice law in this state;

(ii) salaried employee of an insurer or of a managing general agent;

(iii) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies issued by the insurer; ~~or~~

(iv) licensed third-party administrator who adjusts or assists in adjustment of losses arising under policies issued by the insurer; *or*

(v) *claims examiner as defined in 39-71-116.*

(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster.

(3) (a) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on these coverages.

(b) The term does not include:

(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;

(ii) a union on behalf of its members;

(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer is authorized to transact insurance; or

(B) a health service corporation as defined in 33-30-101;

(iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

(x) a company that issues credit cards and that advances for and collects premiums or charges from its credit card holders who have authorized it to do so, if the company does not adjust or settle claims;

(xi) a person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities; or

(xii) a person appointed as a managing general agent in this state whose activities are limited exclusively to those described in 33-2-1501(10) and Title 33, chapter 2, part 16.

(4) "Administrator license" means a document issued by the commissioner that authorizes a person to act as an administrator.

(5) (a) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(b) The term does not include an individual.

(6) "Consultant" means a person who for a fee examines, appraises, reviews, or evaluates an insurance policy, annuity, or pension contract, plan, or program or who makes recommendations or gives advice on an insurance policy, annuity, or pension contract, plan, or program.

(7) "Consultant license" means a document issued by the commissioner that authorizes a person to act as an insurance consultant.

(8) "Individual" means a natural person.

(9) "Insurance producer", except as provided in 33-17-103, means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

(10) "Lapse" means the expiration of the license for failure to renew by the biennial renewal date.

(11) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

(12) "Limited line credit insurance" includes credit life insurance, credit disability insurance, credit property insurance, credit unemployment insurance, involuntary unemployment insurance, mortgage life insurance, mortgage guaranty insurance, mortgage disability insurance, gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit obligation and that the commissioner determines should be designated as a form of limited line credit insurance.

(13) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

(14) "Limited lines insurance" means those lines of insurance that the commissioner finds necessary to recognize for the purposes of complying with 33-17-401(3).

(15) "Limited lines producer" means a person authorized by the commissioner to sell, solicit, or negotiate limited lines insurance.

(16) "Lines of authority" means any kind of insurance as defined in Title 33.

(17) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract if the person engaged in negotiation either sells insurance or obtains insurance from insurers for purchasers.

(18) "Person" means an individual or a business entity.

(19) "Public adjuster" means an adjuster employed by and representing the interests of the insured.

(20) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(21) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance.

(22) "Suspend" means to bar the use of a person's license for a period of time.

(23) "Uniform application" means the national association of insurance commissioners' uniform application for resident and nonresident insurance producer licensing.

(24) "Uniform business entity application" means the national association of insurance commissioners uniform business entity application for resident and nonresident business entities."

Section 2. Section 39-71-107, MCA, is amended to read:

"39-71-107. Insurers to act promptly on claims — in-state adjusters claims examiners. (1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to injured workers, to employers, and to providers who are the customers of the workers' compensation system.

(2) All workers' compensation and occupational disease claims filed pursuant to the Workers' Compensation Act and the Occupational Disease Act of Montana must be ~~adjusted~~ *examined* by a ~~person~~ *claims examiner* in Montana. For a claim to be considered as ~~adjusted~~ *examined* by a ~~person~~ *claims examiner* in Montana, the ~~person-adjusting~~ *claims examiner* examining the claim is required to determine the entitlement to benefits, authorize payment of all benefits due, manage the claim, have authority to settle the claim, maintain an office located in Montana, and ~~adjust~~ *examine* Montana claims from that office. Use of a mailbox or maildrop in Montana does not constitute maintaining an office in Montana.

(3) An insurer shall maintain the documents related to each claim filed with the insurer under the Workers' Compensation Act and the Occupational Disease Act of Montana at the Montana office of the ~~person-adjusting~~ *claims examiner* examining the claim in Montana until the claim is settled. The documents may be either original documents or duplicates of the original documents and must be maintained in a manner that allows the documents to be retrieved from that office and copied at the request of the claimant or the

department. Settled claim files stored outside of the ~~adjuster's claims examiner's~~ office must be made available within 48 hours of a request for the file. Electronic or optically imaged documents are permitted.

(4) An insurer shall provide to the claimant:

(a) a written statement of the reasons that a claim is being denied at the time of denial;

(b) whenever benefits requested by a claimant are denied, a written explanation of how the claimant may appeal an insurer's decision; and

(c) a written explanation of the amount of wage loss benefits being paid to the claimant, along with an explanation of the calculation used to compute those benefits. The explanation must be sent within 7 days of the initial payment of the benefit.

(5) An insurer shall:

(a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying benefits and specifies the information needed; and

(b) pay settlements within 30 days of the date the department issues an order approving the settlement.

(6) An insurer may not make payments pursuant to 39-71-608 or any other reservation of rights for more than 90 days without:

(a) written consent of the claimant; or

(b) approval of the department.

(7) The department may adopt rules to implement this section.

(8) For purposes of this section, "settled claim" means a department-approved or court-ordered compromise of benefits between a claimant and an insurer or a claim that was paid in full. The term does not include a claim in which there has been only a lump-sum advance of benefits."

Section 3. 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 and the Occupational Disease Act of Montana 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) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department. It is established at the nearest whole dollar number and must be adopted by the department before July 1 of each year.

(5) "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 (5)(a) through (5)(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 (5)(a) through (5)(e), does not exist.

(6) "Business partner" means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.

(7) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.

(8) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(9) (a) "Claims examiner" means an individual who, as a paid employee of the department, of a plan 1, 2, or 3 insurer, or of an administrator licensed under Title 33, chapter 17, examines claims under chapters 71 and 72 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)~~(10) (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.

~~(11)~~(11) "Days" means calendar days, unless otherwise specified.

~~(12)~~(12) "Department" means the department of labor and industry.

~~(13)~~(13) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

~~(13)~~(14) (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, ~~but~~

(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)~~(15) "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)~~(16) "Invalid" means one who is physically or mentally incapacitated.

~~(16)~~(17) "Limited liability company" is as defined in 35-8-102.

~~(17)~~(18) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

~~(18)~~(19) "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)~~(20) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

~~(20)~~(21) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

~~(21)~~(22) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

~~(22)~~(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.

~~(23)~~(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.

~~(24)~~(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.

~~(25)~~(26) The “plant of the employer” includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer’s usual trade, business, or occupation.

~~(26)~~(27) “Primary medical services” means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

~~(27)~~(28) “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)~~(29) “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)~~(30) “Reasonably safe tools and 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)~~(31) (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)~~ (31), “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)~~(32) “Sole proprietor” means the person who has the exclusive legal right or title to or ownership of a business enterprise.

~~(32)~~(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.

~~(33)~~(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.

~~(34)~~(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.

~~(35)~~(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.

~~(36)~~(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-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a treating physician, as provided for in subsection ~~(36)(a)~~ (37)(a), in the area where the physician assistant-certified 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 ~~(36)(a)~~ (37)(a) through ~~(36)(e)~~ (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 ~~(36)(a)~~ (37)(a), in the area in which the advanced practice registered nurse is located.

~~(37)~~(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.

~~(38)~~(39) “Year”, unless otherwise specified, means calendar year.”

Section 4. Section 39-71-225, MCA, is amended to read:

“39-71-225. Workers’ compensation database system. (1) The department shall develop a workers’ compensation database system to generate management information about Montana’s workers’ compensation system. The database system must be used to collect and compile information from insurers, employers, medical providers, claimants, ~~adjusters~~ *claims examiners*, rehabilitation providers, and the legal profession.

(2) Data collected must be used to provide:

(a) management information to the legislative and executive branches for the purpose of making policy and management decisions, including but not limited to:

(i) performance information to enable the state to enact remedial efforts to ensure quality, control abuse, and enhance cost control;

(ii) information on medical, indemnity, and rehabilitation costs, utilization, and trends;

(iii) information on litigation and attorney involvement for the purpose of identifying trends, problem areas, and the costs of legal involvement;

(b) current and prior claim information to any insurer that is at risk on a claim, or that is alleged to be at risk in any administrative or judicial proceeding, to determine claims liability or for fraud investigation. The department may release information only upon written request by the insurer and may disclose only the claimant's name, claimant's identification number, prior claim number, date of injury, body part involved, and name and address of the insurer and ~~claim adjuster~~ *claims examiner* on each claim filed. Information obtained by an insurer pursuant to this section must remain confidential and may not be disclosed to a third party except to the extent necessary for determining claim liability or for fraud investigation; and

(c) current and prior claim information to law enforcement agencies for purposes of fraud investigation or prosecution.

(3) The department is authorized to collect from insurers, employers, medical providers, the legal profession, and others the information necessary to generate the workers' compensation database system.

(4) The workers' compensation database system must be designed in accordance with the following principles:

(a) avoidance of duplication and inconsistency;

(b) reasonable availability of data elements;

(c) value of information collected to be commensurate with the cost of retrieving the collected information;

(d) uniformity to permit efficiency of collection and to allow interstate comparisons;

(e) a workable mechanism to ensure the accuracy of the data collected and to protect the confidentiality of collected data;

(f) reasonable availability of the data at a fair cost to the user;

(g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;

(h) compatibility with electronic data reporting;

(i) reporting procedures that can be handled through private data collection systems that adhere to the provisions of subsections (4)(a) through (4)(h);

(j) implementation of reporting requirements that allow reasonable lead time for compliance.

(5) The department shall publish an annual report on the information compiled.

(6) Users of information obtained from the workers' compensation database under this section are liable for damages arising from misuse or unlawful dissemination of database information.

(7) ~~Beginning July 1, 2000, an~~ An insurer or a third-party administrator who submitted 50 or more "first reports of injury" to the department in the preceding calendar year shall electronically submit the reports and any other reports related to the reported claims in a nationally recognized format specified by department rule.

(8) The department may adopt rules to implement this section."

Section 5. Section 39-71-307, MCA, is amended to read:

"39-71-307. Employers and insurers to file reports of accidents — penalty. (1) Every employer and every insurer is required to file with the

department, under department rules, a full and complete report of every accident to an employee arising out of or in the course of employment and resulting in loss of life or injury to the employee. The reports must be furnished to the department in the form and detail as the department prescribes and must provide specific answers to all questions required by the department under its rules. However, if an employer is unable to answer a question, the employer shall state the reason for the employer's inability to answer.

(2) Every insurer transacting business under this chapter shall, at the time and in the manner prescribed by the department, make and file with the department the reports of accidents as the department requires.

(3) An employer, insurer, or ~~adjuster~~ *claims examiner* who refuses or neglects to submit to the department reports necessary for the proper filing and review of a claim, as provided in subsection (1), shall be assessed a penalty of not less than \$200 or more than \$500 for each offense. The department shall assess and collect the penalty. An insurer may contest a penalty assessment in a hearing conducted according to department rules."

Section 6. Section 39-72-102, MCA, is amended to read:

"39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 39-71-116.

(2) "Child" is as defined in 39-71-116.

(3) "*Claims examiner*" is as defined in 39-71-116.

~~(3)~~(4) "Department" means the department of labor and industry.

~~(4)~~(5) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing work in the worker's job pool. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "permanent partial disability".

~~(5)~~(6) "Employee" is as defined in 39-71-118.

~~(6)~~(7) "Employer" is as defined in 39-71-117.

~~(7)~~(8) "Independent contractor" is as defined in 39-71-120.

~~(8)~~(9) "Insurer" is as defined in 39-71-116.

~~(9)~~(10) "Invalid" is as defined in 39-71-116.

~~(10)~~(11) "Occupational disease" means harm, damage, or death as set forth in 39-71-119(1) arising out of or contracted in the course and scope of employment and caused by events occurring on more than a single day or work shift. The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.

~~(11)~~(12) "Order" is as defined in 39-71-116.

~~(12)~~(13) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

~~(13)~~(14) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO₂) and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs,

causing the characteristic x-ray pattern, and by other variable clinical manifestations.

~~(14)~~(15) "Wages" is as defined in 39-71-123.

~~(15)~~(16) "Year" is as defined in 39-71-116."

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

Approved March 30, 2005

CHAPTER NO. 141

[SB 189]

AN ACT CLARIFYING THAT THE IMPAIRMENT MEDICAL EVALUATION PROCEDURES FOR WORKERS' COMPENSATION APPLY TO IMPAIRMENT RATING DISPUTES; AMENDING SECTIONS 39-71-605 AND 39-71-711, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 39-71-605, MCA, is amended to read:

"39-71-605. Examination of employee by physician — effect of refusal to submit to examination — report and testimony of physician — cost. (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, the employee shall, upon the written request of the insurer, submit from time to time to examination by a physician, psychologist, or panel that must be provided and paid for by the insurer and shall likewise submit to examination from time to time by any physician, psychologist, or panel selected by the department or as ordered by the workers' compensation judge.

(b) The request or order for an examination must fix a time and place for the examination, with regard for the employee's convenience, physical condition, and ability to attend at the time and place that is as close to the employee's residence as is practical. An examination that is conducted by a physician, psychologist, or panel licensed in another state is not precluded under this section. The employee is entitled to have a physician present at any examination. If the employee, after written request, fails or refuses to submit to the examination or in any way obstructs the examination, the employee's right to compensation must be suspended and is subject to the provisions of 39-71-607. Any physician, psychologist, or panel employed by the insurer or the department who makes or is present at any examination may be required to testify as to the results of the examination.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department or the workers' compensation judge, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to an examination as it considers desirable by a physician, psychologist, or panel within the state or elsewhere that has had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician, psychologist, or panel making the examination shall file a written report of findings with the claimant and insurer for their use in the

determination of the controversy involved. The requesting party shall pay the physician, psychologist, or panel for the examination.

(3) As used in this section, a panel includes a practitioner having substantial experience in the field of medicine concerned with the matters presented by the dispute and whose licensure would qualify the practitioner to act as a treating physician, as defined in 39-71-116, and may include a psychologist.

(4) A claimant is required, upon a written request of an insurer, to submit to a functional capacities evaluation conducted by a licensed physical or occupational therapist.

~~(5) This section does not apply to impairment evaluations provided for in 39-71-711."~~

Section 2. Section 39-71-711, MCA, is amended to read:

"39-71-711. Impairment evaluation — ratings. (1) An impairment rating:

(a) is a purely medical determination and must be determined by an impairment evaluator after a claimant has reached maximum healing;

(b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment published by the American medical association;

(c) must be expressed as a percentage of the whole person; and

(d) must be established by objective medical findings.

(2) A claimant or insurer, or both, may obtain an impairment rating from an evaluator who is a medical doctor or from an evaluator who is a chiropractor if the injury falls within the scope of chiropractic practice. If the claimant and insurer cannot agree upon the rating, the mediation procedure in part 24 of this chapter must be followed.

(3) An evaluator must be a physician licensed under Title 37, chapter 3, except if the claimant's treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an evaluator under chapter 12.

(4) Disputes over impairment ratings are ~~not~~ subject to *the provisions of* 39-71-605."

Section 3. Effective date — applicability. [This act] is effective on passage and approval and applies to impairment evaluations completed on or after [the effective date of this act].

Approved March 30, 2005

CHAPTER NO. 142

[SB 235]

AN ACT MODIFYING THE DEFINITION OF "FACILITY" UNDER THE MONTANA MAJOR FACILITY SITING ACT AS IT RELATES TO TRANSMISSION SUBSTATIONS, SWITCH YARDS, VOLTAGE SUPPORT, OR OTHER CONTROL EQUIPMENT AND UPGRADING TRANSMISSION LINES WITHIN AN EXISTING RIGHT-OF-WAY; DEFINING THE TERM "UPGRADE"; AMENDING SECTION 75-20-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

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

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

(1) “Addition thereto” means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) “Application” means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) (a) “Associated facilities” includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, ~~transmission substations,~~ storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility; ~~except that the.~~

(b) *The term does not include a transmission substation, a switch yard, 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; ~~and~~

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

(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 switch yard, 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.*

~~(11)~~(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."

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

Approved March 30, 2005

CHAPTER NO. 143

[SB 243]

AN ACT PROVIDING THAT A BEER WHOLESALER MAY HAVE MORE THAN ONE SUBWAREHOUSE; PROVIDING THAT A BEER WHOLESALER THAT IS ALSO A LICENSED TABLE WINE DISTRIBUTOR MAY STORE WINE IN ANY WAREHOUSE OR SUBWAREHOUSE OF THE BEER WHOLESALER; AMENDING SECTION 16-4-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 16-4-103, MCA, is amended to read:

"16-4-103. Wholesalers' licenses — application for and issuance — subwarehouses — imported beer handled through warehouse or subwarehouse — wine storage. (1) Any person desiring to sell and distribute beer as a wholesaler ~~under the provisions of this code~~ shall apply to the department for a license ~~to do so~~ and tender with ~~his~~ *the* application the *required* license fee. ~~provided for, and the~~ *The* department is ~~hereby empowered, authorized, and directed to~~ *shall* issue wholesale licenses to qualified applicants in accordance with the provisions of this code. ~~Such~~ *A* license ~~shall must be at all times~~ prominently displayed *at all times* in the place of business of ~~such~~ *the* wholesaler.

(2) An applicant shall ~~have~~ *maintain* a fixed place of business, sufficient capital, *and* the facilities, storehouse, receiving house, or warehouse for the receiving of, storage, handling, and moving of beer in large and jobbing quantities for distribution and sale in original packages to other licensed wholesalers or licensed retailers. Each wholesaler is entitled to only one wholesale license, which license ~~shall must be~~ issued for ~~his~~ *the* wholesaler's principal place of business in Montana. ~~A duplicate license~~ *Duplicate licenses* may be issued for ~~one subwarehouse only~~ *the wholesaler's subwarehouses*; in Montana, ~~for each wholesale licensee.~~ The duplicate license ~~shall at all times~~ *licenses must* be prominently displayed *at all times* at ~~said subwarehouse~~ *the subwarehouses*.

(3) If the applicant is a foreign corporation, the corporation must be authorized to do business in Montana.

(4) *A wholesaler that is also licensed as a table wine distributor may store wine in any of the wholesaler's warehouses or subwarehouses.*

~~(4)~~(5) As used in subsection (1), "distribute" has the meaning ~~given to it~~ provided in 16-3-218."

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

Approved March 30, 2005

CHAPTER NO. 144

[SB 356]

AN ACT ELIMINATING THE PUBLIC SERVICE COMMISSION'S 90-DAY PERIOD FOR WITHHOLDING RECORDS AND REPORTS FROM THE PUBLIC; EXPANDING THE SCOPE OF PROTECTIVE ORDERS TO INCLUDE INFORMATION THAT MUST BE PROTECTED UNDER LAW; AND AMENDING SECTION 69-3-105, MCA.

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

Section 1. Section 69-3-105, MCA, is amended to read:

“69-3-105. Access to commission records and reports — protective order. (1) Except as provided in subsection (2), the reports, records, accounts, files, papers, and memoranda of every nature in the possession of the commission are open to the public at reasonable times *during regular business hours, as defined in 2-16-117*, ~~subject to the exception that when the commission considers it necessary, in the interest of the public, it may withhold from the public any facts or information in its possession for a period of not more than 90 days after the acquisition of the facts or information.~~

(2) The commission may issue a protective order when necessary to preserve trade secrets, as defined in 30-14-402, *or other information that must be protected under law, as required to carry out its regulatory functions.*”

Approved March 30, 2005

CHAPTER NO. 145

[SB 16]

AN ACT PROHIBITING THE USE OF STATE FUNDS FOR PUBLIC SERVICE ANNOUNCEMENTS FEATURING A CANDIDATE FOR OFFICE; AND AMENDING SECTION 2-2-121, MCA.

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

Section 1. Section 2-2-121, MCA, is amended to read:

“2-2-121. Rules of conduct for public officers and public employees.

(1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either

has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) (a) A public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(4) A candidate, as defined in 13-1-101(6)(a), may not use or permit the use of state funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the candidate's name, picture, or voice except in the case of a state or national emergency and then only if the announcement is reasonably necessary to the candidate's official functions.

~~(4)~~(5) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

~~(5)~~(6) A public officer or public employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

~~(6)~~(7) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

(7)(8) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(8)(9) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act."

Approved March 30, 2005

CHAPTER NO. 146

[SB 187]

AN ACT PROVIDING THAT UNDER THE TERMS OF THE JOINT AGREEMENT BETWEEN THE STATE AND THE CONFEDERATED SALISH AND KOOTENAI TRIBES, JUDGMENTS FOR FISH AND GAME VIOLATIONS IN CONFEDERATED SALISH AND KOOTENAI TRIBAL COURTS ARE ENTITLED TO FULL FAITH AND CREDIT IN MONTANA COURTS; AMENDING SECTION 87-1-228, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-1-228, MCA, is amended to read:

"87-1-228. Agreement with Indians concerning hunting and fishing — Indian treaty of 1855. (1) Whereas, by treaty of July 16, 1855, between the United States of America and the confederated tribes of the Flathead, Kootenai, and Upper Pend Oreille Indians, the tribes have certain rights to fish and hunt; and whereas, it appears to be to the common advantage of the state and Indian tribes to cooperate in matters involving hunting and fishing. Therefore, the department may negotiate and conclude an agreement with the council of the Confederated Salish and Kootenai tribes of the Flathead Indian reservation for the purpose of:

(a) authorizing individuals to serve on a state-tribal cooperative board to develop hunting and fishing regulations and reimbursing those individuals' expenses pursuant to 2-18-501 through 2-18-503;

(b) doing what in its judgment is necessary by way of granting to tribal Indians state permits to hunt and fish off reservation on open and unclaimed lands, to be issued without charge to the Indians, or allowing Indians to hunt without licenses, permits, or stamps;

(c) issuing jointly with the council hunting and fishing licenses, permits, and stamps under terms established by mutual agreement and recognized as valid for hunting and fishing throughout the state. These joint licensing and permit requirements supersede the general licensing and permit requirements set forth in this title.

(d) authorizing all ~~revenues~~ *revenue* collected from sale of joint licenses, permits, and stamps to be remitted to the council for the purpose of a fish and wildlife program;

(e) transferring to the council an amount equal to all fines and restitution collected in state court for fish and wildlife violations within reservation boundaries for use in a fish and wildlife program;

(f) policing Indian and other lands for the protection of fish and game and providing responsibility for redress of fish and game violations to state or tribal courts; and

(g) in general carrying out the purposes of this section.

(2) Any agreement entered into under subsection (1) must also satisfy the requirements of Title 18, chapter 11.

(3) *Any tribal court judgment for a fish and game violation arising out of an agreement under this section is entitled to full faith and credit in the courts of Montana.*

~~(3)~~(4) Prior to concluding any agreement under this section, the department shall hold public meetings, after proper public notice of the meetings has been given and the proposed agreement has been made available for public review, to afford an opportunity to comment on the contents of the agreement.”

Section 2. Notification to tribal government. The secretary of state shall send a copy of [this act] to the Confederated Salish and Kootenai tribal government.

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

Approved March 30, 2005

CHAPTER NO. 147

[HB 16]

AN ACT INCREASING THE PER STUDENT DISTRIBUTION LIMIT FOR RESIDENT NONBENEFICIARY STUDENTS ATTENDING TRIBALLY CONTROLLED COMMUNITY COLLEGES IN MONTANA TO \$3,024; LIMITING THE FINANCIAL ASSISTANCE TO NONBENEFICIARY STUDENTS ENROLLED IN COURSES FOR WHICH CREDIT IS TRANSFERABLE TO ANOTHER MONTANA COLLEGE OR UNIVERSITY, EXCEPT FOR COURSES DIRECTLY RELATED TO A VOCATIONAL DEGREE PROGRAM OR TO A 2- TO 4-YEAR DEGREE PROGRAM OR CERTIFICATE PROGRAM; ELIMINATING THE REQUIREMENT TO SUBTRACT THE AMOUNT GIVEN IN INDIAN FEE WAIVERS PRIOR TO DISTRIBUTION OF MONEY FOR NONBENEFICIARY WAIVERS; AMENDING SECTION 20-25-428, MCA; AND PROVIDING AN 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 ~~shall~~ *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 ~~\$1,500~~ \$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 colleges;

(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; ~~and~~

(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:

~~(a)~~ 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; ~~and~~

~~(b) subtract the costs of resident nonbeneficiary fee waivers granted under subsection (6)(a) from the total amount of prorated money to be distributed.~~

(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 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 July 1, 2005.

Approved April 8, 2005

CHAPTER NO. 148

[HB 17]

AN ACT REQUIRING THAT ALL MONEY RECEIVED BY THE MONTANA HISTORICAL SOCIETY THROUGH DONATION, GIFT, BEQUEST, OR LEGACY BE USED FOR THE GENERAL OPERATION OF THE SOCIETY UNLESS OTHERWISE PROVIDED BY THE DONOR; AMENDING SECTIONS 22-3-107 AND 22-3-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 22-3-107, MCA, is amended to read:

“22-3-107. Authority of board. The powers and duties of the trustees are as follows:

(1) to elect annually from among their number a president, a vice president, and a secretary;

(2) to adopt bylaws for their own government and to make rules, not inconsistent with law, for the proper administration of the society in the interests of preserving the rich heritage of this state and its people;

(3) to appoint a director, fix the director’s salary, and prescribe the director’s duties and responsibilities;

(4) to create classes of memberships in the society as they consider desirable, to determine the qualifications for any class of membership, and to set the fees to be paid for memberships;

(5) to sell or exchange publications and other museum or art objects and use the money arising from sales for the operation of the society and for the acquisition of historical materials and objects of art;

(6) to sell or exchange surplus or duplicate books, surplus museum or art objects, or artifacts not pertinent to the region encompassed by the Montana historical society mission and to use the money arising from the sales exclusively for acquisitions of library, art, and museum artifacts;

(7) to see that the collections and properties of the society are maintained in good order and repair;

(8) to report to the governor and, as provided in 5-11-210, the legislature biennially. The report must include a statement of all important transactions and acquisitions, with suggestions and recommendations for the better realization of the purposes of the society and the improvement of its collections and services.

(9) to accept, receive, and administer in the name of the society any gifts, donations, properties, securities, bequests, and legacies that may be made to the society. Money in the amount of less than \$500 received by donation, gift, bequest, or legacy, unless otherwise provided by the donor, must be deposited in the state treasury and used for the general operation of the society. ~~Unless otherwise provided by donor, donations, gifts, bequests, or legacies in the amount of \$500 or more must be deposited in the acquisitions trust established in 22-3-113.~~

(10) to collect, assemble, preserve, and display, when appropriate, all obtainable books, pamphlets, maps, charts, manuscripts, journals, diaries, papers, business records, paintings, drawings, engravings, photographs,

statuary, models, relics, and all other materials illustrative of the history of Montana in particular and generally of the Pacific Northwest, Northern Rocky Mountain, and Northern Great Plains regions and of the United States of America when pertinent;

(11) to procure from pioneers, early settlers, and others narratives of the events relative to the early settlement of Montana, the Indian occupancy, Indian and other wars, overland travel and immigration to the territories of the west, and all other related documents of Montana's history, development, and society;

(12) to gather contemporary information, specimens, and all other materials that exhibit faithfully the distinctive historical and contemporary characteristics of the area, with particular attention to Indian, military, and pioneer artifacts and implements;

(13) to collect and preserve such natural history objects as fossils, plants, minerals, and animals;

(14) to collect and preserve books, maps, manuscripts, and other materials as will tend to facilitate historical, scientific, and antiquarian research;

(15) to promote the study of Montana history by lectures and publications;

(16) to publish a roadside history of Montana, with maps, photographs, and text that will enable tourists, citizens, and students to understand the history of the countryside seen from the state's main roads;

(17) to generally foster and encourage the fine arts and cultural activities in Montana;

(18) to receive for and on behalf of the state, by donation or otherwise, art objects of any kind and description and to exhibit and circulate the objects in Montana and elsewhere;

(19) to microfilm papers or documents in danger of disappearance or injury; and

(20) to coordinate the administration of the historic records network established in 22-3-211."

Section 2. Section 22-3-114, MCA, is amended to read:

"22-3-114. Use of acquisitions trust funds — principal nonexpendable — investment of principal — reversion of unspent revenue. (1) The principal of the acquisitions trust established in 22-3-113 is intended to be a permanent fund subject to investment by the board of investments in accordance with investment principles established for the investment of state funds in Title 17, chapter 6, part 2.

(2) ~~Unless otherwise provided by the donor, donations of \$500 or more received pursuant to 22-3-107(9) and revenue~~ *Revenue* earned by the Montana historical society from sales provided for by 22-3-107(6) must be placed in the acquisitions trust.

(3) Interest earned on the principal of the acquisitions trust may be used only for the purpose of acquiring society library, museum, archive, and photoarchive items or collections.

(4) Revenue that is not expended on appropriate acquisitions authorized in subsection (3) and that remains at the end of each fiscal year reverts to the principal of the acquisitions trust for investment as provided in subsection (1).

(5) The provisions of 17-2-108 that require the expenditure of nongeneral fund money prior to the expenditure of general fund money do not apply to the expenditure of revenue made available to the society from the acquisitions trust.”

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

Approved April 7, 2005

CHAPTER NO. 149

[HB 32]

AN ACT ELIMINATING CONFLICTS IN VITAL RECORDS STATUTES; ELIMINATING THE REQUIREMENT THAT LOCAL REGISTRARS RETAIN CERTIFICATE COPIES IF CERTIFICATES ARE FILED ELECTRONICALLY; ALLOWING A NEW BIRTH CERTIFICATE TO BE ISSUED FOR A FOREIGN PERSON ADOPTED IN MONTANA REGARDLESS OF CITIZENSHIP; AMENDING SECTIONS 50-15-109, 50-15-223, AND 50-15-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 50-15-109, MCA, is amended to read:

“50-15-109. Certificates. (1) All certificates ~~shall~~ *must* include information required by the department.

(2) Local registrars shall forward original certificates to the department, file a duplicate copy with the county clerk and recorder, and, *unless the certificate is filed electronically*, retain a triplicate copy.

(3) Local registrars ~~shall~~ *may* not issue certified copies of certificates.

(4) Certificates filed within ~~6 months~~ *1 year* after the time prescribed by the department ~~shall be~~ *are* prima facie evidence of the facts stated in the certificates. Data pertaining to the father of a child is prima facie evidence only if the alleged father is the husband of the mother. If the alleged father is not the husband of the mother, data pertaining to the alleged father is not evidence in any proceedings adverse to ~~his~~ *the alleged father's* interests, ~~his~~ heirs, next of kin, devisees, legatees, or other successors in interest.”

Section 2. Section 50-15-223, MCA, is amended to read:

“50-15-223. Certificates of birth following adoption, legitimation, or determination or acknowledgment of paternity. (1) The department shall establish a new certificate of birth for a person born in this state when the department receives the following:

(a) a certificate of adoption, as provided in 50-15-311, a certificate of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; or

(b) a request that a new certificate be established if the request shows that:

(i) a district court, court of appropriate jurisdiction in another state, or administrative agency in this state or another state with appropriate

jurisdiction has determined the paternity of the person and information necessary to identify the original certificate of birth is provided; or

(ii) both parents have acknowledged the paternity of the person and request that the surname be changed from that shown on the original certificate.

(2) The date of birth and the city and county of birth must be stated in the newly established certificate of birth. The department shall substitute the new certificate of birth for the original certificate of birth in the files. The original certificate of birth and the evidence of adoption, legitimation, court determination of paternity, or paternity acknowledgment are only subject to inspection, except upon order of a district court, as provided by rule, as provided in Title 42, chapter 6, part 1, or as otherwise provided by state law.

(3) Upon receipt of a report of an amended decree of adoption, the department shall amend the certificate of birth as provided in rules adopted by the department.

(4) Upon receipt of a report or decree of annulment of adoption, the department shall restore the original certificate of birth issued before the adoption to its place in the files and the certificate of birth issued upon adoption and evidence pertaining to the adoption proceeding may not be open to inspection, except upon order of a district court or as provided by rule adopted by the department.

(5) Upon written request of both parents and receipt of a sworn acknowledgment and other credible evidence of paternity signed by both parents of a child born outside of marriage, the department shall reflect the paternity on the child's certificate of birth if paternity is not already shown on the certificate of birth.

(6) If a certificate of birth is not on file for the adopted child for whom a new certificate of birth is to be established under this section and the date and place of birth have not been determined in the adoption or paternity proceedings pertaining to the child, a delayed certificate of birth must be filed with the department, as provided in 50-15-204, before a new certificate of birth may be established. The new certificate of birth must be prepared on a form prescribed by the department.

(7) When a new certificate of birth is established by the department, the department ~~may~~ shall direct that all copies of the original certificate of birth in the custody of any other custodian of vital records in this state ~~either be sealed from inspection or be forwarded immediately to the department for sealing from inspection.~~

(8) (a) The department shall, upon request of the adopting parents, prepare and register a certificate of birth in this state for a person *who was* born in a foreign country ~~who is not a citizen of the United States and who was adopted through a district court in this state.~~

(b) The certificate of birth must be established by the department upon receipt of a certificate of adoption, conforming to the requirements of 50-15-311, from the court that reflects entry of an order of adoption, proof of the date and place of the child's birth, and a request for the establishment of a certificate of birth from the court, the adopting parents, or the adopted person, if the person is 18 years of age or older.

(c) The certificate of birth must be labeled "Certificate of Foreign Birth" and must contain the actual country of birth. A statement must be included on the

certificate indicating that it is not evidence of United States citizenship for the child for whom it is issued.

(d) After registration of the certificate of birth in the new name of the adopted person, the department shall seal and file the certificate of adoption, which is not subject to inspection, except upon order of the district court, as provided by rule, or as otherwise provided by state law.

(9) The department may promulgate rules necessary to implement this section.”

Section 3. Section 50-15-304, MCA, is amended to read:

“50-15-304. Substitute birth certificate for person adopted. (1) The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is as follows:

(a) Before the 16th day of the month following the order of adoption, the clerk of the district court shall forward a certified copy of the final order of adoption to the department or the department may accept a certified copy of a final order of adoption from a court of competent jurisdiction of another state of the United States or a tribal court of competent jurisdiction.

(b) The department shall prepare a substitute certificate containing:

(i) the new name of the adopted person;

(ii) the true date and place of birth and the sex of the adopted person;

(iii) statistical facts concerning the adoptive parents in place of the natural parents;

(iv) the words “department of public health and human services” substituted for the words “attendant’s own signature”; and

(v) dates of recording as shown on the original birth certificate.

(2) The procedure for recording a substitute birth certificate for a person born in Montana and adopted is as follows:

(a) The department shall send copies of the substitute birth certificate to the local registrar and to the county clerk and recorder.

(b) The local registrar and county clerk and recorder shall immediately enter the substitute birth certificate in their files and forward copies of the original birth record to the department.

(c) The department shall seal original birth records and open them only ~~on~~ *order of a court as provided in 50-15-223(2)*.

(3) On receipt of a certified copy of a court order annulling an adoption, the department shall restore the original birth certificate to its place in its files and notify the local registrar and county clerk and recorder.”

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

Approved April 8, 2005

CHAPTER NO. 150

[HB 34]

AN ACT ALLOWING NONRESIDENTS WHO HOLD CERTAIN HUNTING LICENSES TO PURCHASE A NONRESIDENT WILD TURKEY TAG AT A

DISCOUNTED FEE; AMENDING SECTION 87-2-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-2-403, MCA, is amended to read:

“87-2-403. (Temporary) Wild turkey tags and fee. (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or nonresident wildlife conservation license or as set out in subsection (3). Each tag entitles the holder to hunt one wild turkey and possess the carcass of the turkey, during times and places that the commission authorizes an open season on wild turkey.

(2) The fee for a wild turkey tag is \$5 for a resident and \$115 for a nonresident, *except that a nonresident holder of a valid Class B-1, Class B-10, or Class B-11 license may purchase a wild turkey tag for \$55.* Turkey tags must be issued either by a drawing system or in unlimited number as authorized by department rules.

(3) Subject to the provisions of subsection (2), a person who is 62 years of age or older as provided in 87-2-801, certified as disabled under 87-2-803, or a resident minor as described in 87-2-805 may purchase a wild turkey tag upon presentation of that person’s wildlife conservation license. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)

87-2-403. (Effective March 1, 2006) Wild turkey tags and fee. (1) The department may issue wild turkey tags to the holder of a valid Class A-1 or nonresident wildlife conservation license or as set out in subsection (3). Each tag entitles the holder to hunt one wild turkey and possess the carcass of the turkey, during times and places that the commission authorizes an open season on wild turkey.

(2) The fee for a wild turkey tag is \$5 for a resident and \$105 for a nonresident, *except that a nonresident holder of a valid Class B-1, Class B-10, or Class B-11 license may purchase a wild turkey tag for \$55.* Turkey tags must be issued either by a drawing system or in unlimited number as authorized by department rules.

(3) Subject to the provisions of subsection (2), a person who is 62 years of age or older as provided in 87-2-801, certified as disabled under 87-2-803, or a resident minor as described in 87-2-805 may purchase a wild turkey tag upon presentation of that person’s wildlife conservation license.”

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

Approved April 8, 2005

CHAPTER NO. 151

[HB 44]

AN ACT EXEMPTING REVENUE RECEIVED BY THE MONTANA SCHOOL FOR THE DEAF AND BLIND FOR THE ADMISSION OF NONRESIDENT CHILDREN FROM THE REQUIREMENT TO SPEND NONGENERAL FUND MONEY BEFORE GENERAL FUND MONEY; AMENDING SECTIONS 17-2-108 AND 20-8-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 17-2-108, MCA, is amended to read:

“17-2-108. Expenditure of nongeneral fund money first. (1) Except for the exemptions applicable to the Montana historical society in 22-3-114(5), the Montana state library in 22-1-226(5), *the Montana school for the deaf and blind in 20-8-107(5)*, and the department of public health and human services in 53-1-612, an office or entity of the executive, legislative, or judicial branch of state government shall apply expenditures against appropriated nongeneral fund money whenever possible before using general fund appropriations.

(2) Except as provided in 53-1-612, the approving authority, as defined in 17-7-102, shall authorize the decrease of the general fund appropriation of an agency by the amount of money received from federal sources in excess of the appropriation in an appropriation act unless the decrease is contrary to federal law, federal rule, or a contract or unless the approving authority certifies that the services to be funded by the additional money are significantly different than those for which the agency received the general fund appropriation. If directed by an appropriation act, the approving authority shall decrease the general fund appropriation of an agency by the amount of money received from nonfederal sources in excess of the appropriation unless the decrease is contrary to state law, state rule, or a contract or unless the approving authority certifies that the services to be funded by the additional money are significantly different than those for which the agency received the general fund appropriation. If the general fund appropriation of an agency is decreased pursuant to this section, the appropriation for the fund in which the money is received is increased in the amount of the general fund decrease.

(3) If directed by an appropriation act, the approving authority may decrease a state special revenue, proprietary, or other fund appropriation of an agency by the amount of money received from federal sources in excess of the appropriation unless the decrease is contrary to state or federal law or federal rule. The appropriation for the fund in which the money is received is decreased by the amount of the federal special revenue increase allowed by law, rule, or contract and approved for the purpose.”

Section 2. Section 20-8-107, MCA, is amended to read:

“20-8-107. Admission of nonresident children and advance payment of cost — Indian children. (1) Hearing impaired or visually impaired children who are not residents of the state of Montana may be admitted to the Montana school for the deaf and blind after proper application for admission, subject to all eligibility requirements prescribed for children who are residents of the state if:

(a) the school is paid in advance a sum of money for each child equal to an estimate of the whole per capita cost of maintaining the school during the year immediately preceding the date of the application; and

(b) the full capacity of the school is not required for children who are residents of the state.

(2) The Montana school for the deaf and blind is authorized to negotiate with an out-of-state educational institution to place a student at the school. If a group of out-of-state students attends the Montana school for the deaf and blind, the educational institution of the other state shall pay in advance to the Montana school for the deaf and blind an amount of money for each student determined as a result of a negotiated agreement between the superintendent of the Montana school for the deaf and blind and the out-of-state educational institution. The agreement must be approved by the board of public education.

(3) Indian children who are Montana residents are eligible for admission and must be admitted to the school on the same terms as residents.

(4) The money paid by an out-of-state institution must be deposited in a state special revenue account and is statutorily appropriated, pursuant to 17-7-502, to the Montana school for the deaf and blind for educational purposes.

(5) *The provisions of 17-2-108 that require the expenditure of nongeneral fund money prior to the expenditure of general fund money do not apply to the expenditure of revenue made available to the Montana school for the deaf and blind from the negotiated agreements described in subsection (2) of this section and through the statutory appropriation provided for in subsection (4) of this section.*

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

Approved April 8, 2005

CHAPTER NO. 152

[HB 88]

AN ACT REPEALING THE REQUIREMENT FOR A SIMPLIFIED APPLICATION FORM FOR DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES PROGRAMS THAT PROVIDE CHILDREN'S HEALTH CARE; REPEALING SECTION 53-4-1006, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Repealer. Section 53-4-1006, MCA, is repealed.

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

Approved April 8, 2005

CHAPTER NO. 153

[HB 100]

AN ACT REQUIRING PERSONS AT SEARCHED PREMISES TO BE RESTRAINED IN THE LEAST RESTRICTIVE MANNER CONSISTENT WITH THE SAFETY OF THE PERSON OR PERSONS PERFORMING THE SEARCH; AND AMENDING SECTION 46-5-228, MCA.

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

Section 1. Section 46-5-228, MCA, is amended to read:

“46-5-228. Procedures assisting in execution of service of search warrant. (1) All necessary and reasonable force may be used to serve a search warrant or to effect an entry into any building, property, or object to serve a search warrant, *but any restraint or detention of the person served must be in the least restrictive manner that is consistent with the safety of the person serving the warrant and anyone assisting that person.*”

(2) The person serving the search warrant may reasonably detain and search any person on the premises being searched at the time of the search, *but must do so in the least restrictive manner that is consistent with the safety of the*

person serving the warrant and anyone assisting that person. The search of persons on the premises is:

(a) for ~~self-protection~~ *protection of the person serving the warrant and anyone assisting that person;* or

(b) to prevent the disposal or concealment of any evidence, contraband, or persons particularly described in the warrant.”

Approved April 7, 2005

CHAPTER NO. 154

[HB 103]

AN ACT PROVIDING THAT A CITY ATTORNEY SHALL, WITHIN 10 DAYS, SERVE UPON THE ATTORNEY GENERAL A COPY OF ANY NOTICE OF APPEAL THAT THE CITY ATTORNEY FILES OR RECEIVES IN A CRIMINAL PROCEEDING; AND AMENDING SECTION 7-4-4604, MCA.

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

Section 1. Section 7-4-4604, MCA, is amended to read:

~~“7-4-4604. Duties. It shall be the duty of the~~ *The city attorney to attend shall:*

(1) ~~appear~~ *appear* before the city court and other courts ~~of the city and the district court~~ and prosecute on behalf of the city;

(2) *serve upon the attorney general within 10 days of the filing or receipt a copy of any notice of appeal that the city attorney files or receives in a criminal proceeding;*

(3) ~~He shall~~ *draw, draft* for the use of the city council; contracts and ordinances for the government of the city;

(4) ~~and~~ *and*, when required, give to the mayor or city council written opinions on questions pertaining to the duties and the rights, liabilities, and powers of the ~~corporation~~ *city; and*

(5) ~~He shall~~ *perform such other duties as that* perform such other duties ~~as that~~ *as that* the city council ~~may prescribe~~ *prescribes* by resolution.”

Approved April 7, 2005

CHAPTER NO. 155

[HB 113]

AN ACT REQUIRING ALL FELONS TO SUBMIT A DNA SAMPLE; AUTHORIZING THE USE OF PREVIOUSLY COLLECTED SAMPLES; AMENDING SECTION 44-6-101, 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 44-6-101, MCA, is amended to read:

“44-6-101. Definitions. As used in this part, the following definitions apply:

(1) "Biological sample" means cheek cells removed by using a buccal swab of a type authorized by the department or a vial or other container of blood.

(2) "Department" means the department of justice provided for in 2-15-2001.

(3) "DNA" means deoxyribonucleic acid.

(4) "DNA identification index" means the DNA identification record system established under 44-6-102.

(5) "DNA record" means DNA identification information stored in the DNA identification index for purposes of establishing identification in connection with law enforcement investigations or supporting statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form of the results of a DNA analysis, such as the numerical representation of DNA fragment lengths, autoradiographs and the digital image of autoradiographs, and discrete allele assignment numbers.

(6) "DNA testing" means DNA analysis of materials derived from the human body for the purposes of identification consistent with this part.

(7) "Felony offense" means any offense under ~~Title 45, chapter 5 or 9, the Montana Code Annotated~~ for which the maximum potential sentence under statute is death or imprisonment in a state prison for a term exceeding 1 year ~~or burglary or aggravated burglary under 45-6-204.~~

(8) "Forensic DNA laboratory" means any laboratory operated by state government that performs DNA analysis on materials derived from the human body for use as evidence in a criminal proceeding or for purposes of identification.

(9) "Marker" means a method of describing individuals by genetic profile, such as blood or DNA type, and has the specific meaning given to the word by department rule, which must take into account the meaning generally given to the word for forensic typing by DNA technologists.

(10) "Sexual offense" means the offenses contained in the definition of that term in 46-23-502.

(11) "Violent offense" has the meaning contained in 46-23-502."

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 biological samples collected prior to [the effective date of this act].

Approved April 7, 2005

CHAPTER NO. 156

[HB 162]

AN ACT REQUIRING A SCHOOL DISTRICT TO RETAIN CERTIFIED COPIES OF IMMUNIZATION RECORDS OF CHILDREN WHO HAVE TRANSFERRED TO ANOTHER SCHOOL DISTRICT; AND AMENDING SECTION 20-5-403, MCA.

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

Section 1. Section 20-5-403, MCA, is amended to read:

“20-5-403. Immunization required — release and acceptance of immunization records. (1) The governing authority of any school other than a postsecondary school may not allow ~~any a~~ person to ~~commence attendance attend~~ as a pupil unless the person:

(a) has been immunized against diphtheria, pertussis, tetanus, poliomyelitis, rubella, mumps, and measles (rubeola) in the manner and with immunizing agents approved by the department, except that pertussis vaccination is not required for a person 7 years of age or older;

(b) has been immunized against Haemophilus influenza type “b” before enrolling in a preschool if under 5 years of age;

(c) qualifies for conditional attendance; or

(d) files for an exemption.

(2) (a) The governing authority of a postsecondary school may not allow ~~any a~~ person to ~~commence attendance attend~~ as a pupil unless the person:

(i) has been immunized against rubella and measles (rubeola) in the manner and with immunizing agents approved by the department; or

(ii) files for an exemption.

(b) The governing authority of a postsecondary school may impose immunization requirements as a condition of attendance that are more stringent than those required by this part.

(3) A pupil who transfers from one school district to another may photocopy immunization records in the possession of the school of origin. The school district to which a pupil transfers shall accept the photocopy as evidence of immunization. Within 30 days after a transferring pupil ceases attendance at the school of origin, the school shall *retain a certified copy for the permanent record and* send the original immunization records for the pupil to the school district to which the pupil transfers.”

Approved April 8, 2005

CHAPTER NO. 157

[HB 174]

AN ACT PROVIDING THAT A PRIVATE FISH POND LICENSE IS VALID FOR 10 YEARS; PROVIDING FOR A \$10 APPLICATION AND RENEWAL FEE; PROVIDING FOR THE TRANSFER OF A PRIVATE FISH POND LICENSE IN CERTAIN INSTANCES; AMENDING SECTION 87-4-606, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 87-4-606, MCA, is amended to read:

“87-4-606. Term of license — fees — site inspections — license not transferable — exception for transfer. (1) *Except as provided in subsections (3) and (4), a private fish pond license is valid for 10 years.*

(2) *There is a \$10 application fee and a \$10 renewal fee for each private fish pond license.*

(3) (a) *Except as provided in subsections (3)(b), (3)(c), and (4), a private fish pond license expires on February 28 of the 10th year succeeding the year of issuance or renewal.*

(b) *A private fish pond licensee who sells fish or eggs under 87-4-603 shall renew the license annually. The license expires on ~~January 31~~ February 28 of the year succeeding the year of issuance.*

(c) *For a license that has been in effect for more than 10 years as of [the effective date of this act], the license holder shall apply for renewal within 1 year of [the effective date of this act].*

(d) ~~Application~~ *An application for renewal must be made before a license expires. The department shall renew the license if the licensee has not violated any condition upon which the license was granted and if the licensee has met all of the requirements governing private fish ponds in 87-4-603 and this section.*

~~(2)(4)~~ *A licensee who does not sell fish or eggs is not required to renew his license. However, a new license is required when a licensee proposes to plant a new species or stock a pond not designated in the original license.*

~~(3)(5)~~ (a) ~~A~~ *Except as provided in subsection (5)(b), a private fish pond license granted under 87-4-603 is not transferable.*

(b) *If ownership or control of the private fish pond changes, the new owner or operator shall apply to the department for a license transfer. The transfer must be approved by the department before the new owner or operator may continue operation of the private fish pond.*

(c) *A transferred license retains the remaining portion of the original license's term."*

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

Section 3. Applicability. [This act] applies to any private fish pond license application pending review and approval by the department on [the effective date of this act] and applies prospectively to any fish pond license as of [the effective date of this act].

Approved April 8, 2005

CHAPTER NO. 158

[HB 191]

AN ACT CLARIFYING THAT SPOUSAL PRIVILEGE APPLIES ONLY TO COMMUNICATIONS MADE BETWEEN SPOUSES DURING THE MARRIAGE; CLARIFYING EXCEPTIONS; AMENDING SECTION 26-1-802, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 26-1-802, MCA, is amended to read:

~~"26-1-802. Spousal privilege. A husband cannot be examined for or against his wife without her consent or a wife for or against her husband without his consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception~~ *Neither spouse may, without the consent of the other, testify during or after the marriage concerning any communication made by one to the other during their marriage. The privilege is*

restricted to communications made during the existence of the marriage relationship and does not extend to communications made prior to the marriage or to communications made after the marriage is dissolved. The privilege does not apply to a civil action or proceeding by one spouse against the other or to a criminal action or proceeding for a crime committed by one spouse against the other or against a child of either spouse."

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

Approved April 8, 2005

CHAPTER NO. 159

[HB 196]

AN ACT DELINEATING THE FIDUCIARY RESPONSIBILITY OF AN AGENT TO A PRINCIPAL IN THE STATUTORY FORM POWER OF ATTORNEY; ALLOWING FOR AN AGENT'S SIGNATURE; AND AMENDING SECTION 72-31-201, MCA.

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

Section 1. Section 72-31-201, MCA, is amended to read:

"72-31-201. Statutory form of power of attorney. (1) The following statutory form of power of attorney is legally sufficient:

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THIS PART. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I (insert your name and address) appoint (insert the name and address of the person appointed) as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

INITIAL

..... (A) real property transactions;

..... (B) tangible personal property transactions;

..... (C) stock and bond transactions;

..... (D) commodity and option transactions;

..... (E) banking and other financial institution transactions;

..... (F) business operating transactions;

- (G) insurance and annuity transactions;
- (H) estate, trust, and other beneficiary transactions;
- (I) claims and litigation;
- (J) personal and family maintenance;
- (K) benefits from social security, medicare, medicaid, or other governmental programs or from military service;
- (L) retirement plan transactions;
- (M) tax matters;
- (N) ALL OF THE POWERS LISTED ABOVE. YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

ON THE FOLLOWING LINES, YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

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UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

This power of attorney revokes all previous powers of attorney signed by me. STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO REVOKE ALL PREVIOUS POWERS OF ATTORNEY SIGNED BY YOU.

IF YOU DO WANT THIS POWER OF ATTORNEY TO REVOKE ALL PREVIOUS POWERS OF ATTORNEY SIGNED BY YOU, YOU SHOULD READ THOSE POWERS OF ATTORNEY AND SATISFY THEIR PROVISIONS CONCERNING REVOCATION. THIRD PARTIES WHO RECEIVED COPIES OF THOSE POWERS OF ATTORNEY SHOULD BE NOTIFIED.

This power of attorney will continue to be effective if I become disabled, incapacitated, or incompetent.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO CONTINUE IF YOU BECOME DISABLED, INCAPACITATED, OR INCOMPETENT.

If it becomes necessary to appoint a conservator of my estate or guardian of my person, I nominate my agent.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT TO NOMINATE YOUR AGENT AS CONSERVATOR OR GUARDIAN.

If any agent named by me dies, becomes incompetent, resigns or refuses to accept the office of agent, I name the following (each to act alone and successively, in the order named) as successor(s) to the agent:

- 1.
- 2.
- 3.

For purposes of this subsection, a person is considered to be incompetent if and while: (1) the person is a minor; (2) the person is an adjudicated incompetent or disabled person; (3) a conservator has been appointed to act for the person; (4) a guardian has been appointed to act for the person; or (5) the person is unable to give prompt and intelligent consideration to business matters as certified by a licensed physician.

I agree that any third party who receives a copy of this document may act under it. I may revoke this power of attorney by a written document that expressly indicates my intent to revoke. Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this day of, 20...

.....
(Your Signature)

.....
~~(Your Social Security Number)~~

State of

(County) of

This document was acknowledged before me on

.....
(Date) by

.....
(Name of Principal)

.....
(Signature of Notarial Officer)

(Seal, if any)

.....
(Title (and Rank))

[My commission expires:.....]

BY SIGNING, ACCEPTING, OR ACTING UNDER THE APPOINTMENT, ~~THE AGENT ASSUMES~~ THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT. THE AGENT WORKS EXCLUSIVELY FOR THE BENEFIT OF THE PRINCIPAL. THE FOREMOST DUTY AS THE AGENT IS THAT OF LOYALTY TO AND PROTECTION OF THE BEST INTERESTS OF THE PRINCIPAL. THE AGENT SHALL DIRECT ANY BENEFITS DERIVED FROM THE POWER OF ATTORNEY TO THE PRINCIPAL. THE AGENT HAS A DUTY TO AVOID CONFLICTS OF INTEREST AND TO USE ORDINARY SKILL AND PRUDENCE IN THE EXERCISE OF THESE DUTIES.

.....

(Signature of Agent)

Signed this day of, 20...

(2) A statutory power of attorney is legally sufficient under this part if the wording of the form substantially complies with subsection (1), the form is properly completed, and the signature of the principal is acknowledged. *The agent's signature is not necessary if the agent accepts or acts under the appointment.*

(3) If the line in front of (N) of the form under subsection (1) is initialed, an initial on the line in front of any other power does not limit the powers granted by line (N)."

Approved April 7, 2005

CHAPTER NO. 160

[HB 201]

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 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, for the purpose of conducting the natural resource damage assessment and litigation and pursuing the state of Montana's natural resource damage claims and any appeals through the natural resource damage litigation program; and

WHEREAS, less than \$200,000 of this loan has been expended through January 1, 2005.

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 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, 2007, for the purposes as set forth in Chapter 283, Laws of 2003.

Section 2. Loan agreement. The board of investments and the department of justice shall amend the existing contract pledging the amount recovered in the 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] but may not modify any other terms and conditions of the contract, which incorporates the requirements of Chapter 283, Laws of 2003. The continuing loan authorized in [section 1] may not be made for expenditures incurred after June 30, 2005, 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, 2005.

Approved April 8, 2005

CHAPTER NO. 161

[HB 206]

AN ACT RELATING TO THE DESIGNATION AND OPERATION OF CONTROLLED GROUND WATER AREAS PROVIDED FOR UNDER THE WATER USE LAWS; CLARIFYING HOW GROUND WATER MAY BE APPROPRIATED IN CONTROLLED GROUND WATER AREAS; PROVIDING FOR AN ADDITIONAL 2 YEARS TO STUDY TEMPORARY CONTROLLED GROUND WATER AREAS; REQUIRING THAT GROUND WATER STUDIES ARE UNDER DIRECTION AND CONTROL OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS 85-2-113, 85-2-306, 85-2-322, 85-2-507, AND 85-2-508, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Definition. As used in this part, “perennial flowing stream” means a stream that historically has flowed continuously during all seasons of the year, during dry as well as wet years.

Section 2. Section 85-2-113, MCA, is amended to read:

“85-2-113. Department powers and duties. (1) The department may prescribe fees or service charges for any public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates, for rulemaking hearings under 85-2-319, for administrative hearings conducted under this chapter, for investigations concerning permit revocation, for field verification of issued and completed permits, and for all change approvals. There may not be fees for any action taken by the department at the request of the water judge or for the issuance of certificates of existing rights.

(2) The department may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, except that the department may not require a meter on a water well outside of a controlled ground water area or proposed controlled ground water area unless the

maximum appropriation of the well is in excess of the limitation contained in 85-2-306(1);

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of ground water.

(3) The department shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property.

(4) (a) The department shall adopt rules to require the owner or operator of an appropriation facility on a watercourse or portions of a watercourse identified as chronically dewatered by the department under 85-2-150 to acquire, install, and maintain a suitable controlling and measuring device no later than 2 years after designation of the watercourse or portions of the watercourse as chronically dewatered, except that when the department specifically finds that the installation of measuring devices along the entire watercourse or portions of the watercourse is not practicable within the 2-year deadline, it may establish a later deadline.

(b) For the purposes of subsection (4), an appropriation facility includes but is not limited to any method used to divert, impound, or withdraw water from a watercourse. Hydroelectric facilities that are using recognized methods of flow measurement, as determined by the department, are in compliance with subsection (4).”

Section 3. Section 85-2-306, MCA, is amended to read:

“85-2-306. Exceptions to permit requirements. (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, with the written consent of the person with those property rights. If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person’s intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) *Inside the boundaries of a controlled ground water area, ground water may be appropriated only:*

(a) *according to a permit received pursuant to 85-2-508; or*

(b) *according to the requirements of an order issued pursuant to 85-2-507.*

(3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.

(b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiled a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification as necessary under ~~this~~ subsection (1). The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

~~(2)~~(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection ~~(1)~~ (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection ~~(1)~~ (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under ~~this~~ subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

~~(3)~~(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

(a) the maximum capacity of the impoundment or pit is less than 15 acre-feet; ~~and~~

(b) the appropriation is less than 30 acre-feet a year; ~~and~~

(c) *the appropriation* is from a source other than a perennial flowing stream; and

(d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. ~~As used in this subsection, "perennial flowing stream" means a stream that historically has flowed continuously during all seasons of the year, during dry as well as wet years. However, within~~

(7) *Within* 60 days after constructing ~~the~~ *an* impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall ~~then~~ automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(4)(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113.”

Section 4. Section 85-2-322, MCA, is amended to read:

“85-2-322. Hearing — order. (1) The department shall conduct a hearing on the proposed suspension or closure, or both. Notice of the 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 source is located. The department shall serve by mail a copy of the notice and proposal not less than 30 days before the hearing upon each person or public agency known from the examination of the records of the department to be a claimant, appropriator, or permitholder of water in the source.

(2) The department may by order suspend action on and shall close the source and refuse to accept a class of applications if it finds on the basis of the hearing that there is substantial evidence in support of the allegations required by 85-2-321 to be contained in the proposal.

(3) As part of fulfilling the requirements of 2-4-623, the order must define the source and must state the class of applications to which the suspension or closure, or both, applies.

(4) Upon adoption of the order, the department shall refuse to accept any application for a permit under this part for the class of application for which closure is ordered under ~~this section and~~ 85-2-321 *and this section*. If the order suspends action on pending applications, the department shall notify the applicant that action on ~~his~~ *the applicant's* application is suspended.

(5) Upon notice under 85-2-307 of intent to combine the hearings under 85-2-309 with the hearings under this section, the department may suspend action on pending applications of the class until the hearing is conducted under this section and, as part of its final order, may grant, deny, or condition the applications under 85-2-306(2), 85-2-310, and 85-2-311 or continue the suspension under this section.”

Section 5. Section 85-2-507, MCA, is amended to read:

“85-2-507. Limiting withdrawals — modification of order. (1) At the time set for the hearing, the department shall proceed to hear oral and written evidence relevant to the designation or modification of the controlled ground water area presented by the bureau, the department, and any other interested party. A full record must be kept of all evidence taken at the hearing. The procedure must secure a full, fair, and orderly proceeding and permit all relevant evidence to be received. The common-law and statutory rules of evidence apply only upon stipulation of all parties.

(2) After the conclusion of the hearing, the department shall make written findings and an order. The department shall by order declare the area in

question to be a controlled ground water area if the department finds on the basis of the hearing that:

(a) the public health, safety, or welfare requires a corrective control to be adopted; and

(b) (i) there is a wasteful use of water from existing wells or undue interference with existing wells;

(ii) any proposed use or well will impair or substantially interfere with existing rights to appropriate surface water or ground water by others; or

(iii) the facts alleged in the petition, as required by 85-2-506(2), are true.

(3) The order must define the boundary of the controlled ground water area and must indicate which of the ground water aquifers located within the area in question are included within the controlled ground water area. Any number of ground water aquifers ~~which~~ *that* wholly or partially overlie one another may be included in the same controlled ground water area.

(4) The order may include *but is not limited to* the following corrective control provisions:

(a) a provision closing the controlled ground water area to further appropriation of ground water, in which event the department shall refuse to accept any applications for beneficial water use permits to appropriate ground water located within the controlled area;

(b) a provision determining a permissible total withdrawal of ground water in the controlled area by day, month, or year and permitting the department to apportion the permissible total withdrawal among the appropriators holding valid rights to the ground water in the controlled area in accordance with the relative dates of priority of the rights;

(c) a provision according preference, without reference to relative priorities, to withdrawals of ground water in the controlled area for domestic and livestock purposes first and then to withdrawals for other beneficial purposes, including but not limited to agricultural, industrial, municipal (other than domestic), and recreational purposes, in the order that the department considers advisable under the circumstances;

(d) a provision reducing the permissible withdrawal of ground water by any appropriator or well in the controlled area;

(e) when two or more wells in the controlled area are used by the same appropriator, a provision adjusting the total permissible withdrawal of ground water by the appropriator or a provision forbidding the use of one or more of the wells;

(f) a provision requiring and specifying a system of rotation of use of ground water in the controlled area;

(g) *provisions for well spacing requirements, well construction constraints, and prior department approval before well drilling, unless the well is regulated pursuant to Title 82, chapter 11;*

~~(g)~~(h) provisions making any additional requirements that are necessary to protect the public health, safety, and welfare in accordance with the intent, purposes, and requirements of this part and the laws of the state.

(5) (a) If at the conclusion of the hearing the department finds that sufficient facts are not available to designate or modify a permanent controlled ground water area, the department may by order designate the area in question to be a

temporary controlled ground water area. The order may include the corrective control provisions contained in subsection (4). A temporary controlled ground water area must be designated as such for a period not to exceed 2 years from the date of the order designating the temporary controlled ground water area. The department may, for sufficient cause, extend the time period for an additional ~~2~~ 4 years. *The time period for an extension must be in 2-year increments. The department shall find sufficient cause for each extension. For each extension in time, and in this case,* all ground water appropriators in the controlled ground water area must be notified of the extension.

(b) During the 2-year period, *and any extensions of the time period,* ~~the department shall commence~~ studies necessary to obtain the facts needed to assist in the designation or modification of a permanent controlled ground water area *must be commenced under the supervision and control of the department.* - Facts gathered during the study period must be presented at a hearing prior to the designation or modification of a permanent controlled ground water area. All parties appearing at the first hearing must be served notice of this hearing by mail at least 30 days prior to the date set for the hearing. The service is complete upon deposit of the notice at the post office, postage prepaid, addressed to each person on whom service is to be made. Mailing of the notice, when completed, is considered to be sufficient notice of the hearing to all persons directly affected. The department shall file in its records proof of service by its own affidavit. The hearing must be conducted by the department in the manner of the first hearing, and the department shall make written findings of fact and conclusions of law and issue an order according to the provisions set forth in subsections (1) through (4). In the event that the department does not complete the necessary study in the 2-year period or extension of the period, the temporary controlled ground water area designation will terminate at the end of the 2-year period or extension.

(6) The department may enforce the order and bring an action for an injunction in a district court of a district in which all or part of the area affected is located, in addition to all other remedies.

(7) The order of the department must be published and mailed by the department in the manner and for the length of time as prescribed by 85-2-506 for the publication and mailing of the notice of hearing, except that a copy of the written findings and order of the department must be mailed instead of a copy of the proposal and, except further, that a copy of the order, together with a copy of the written findings, must be mailed to each petitioner at the petitioner's last-known address. The department shall file a copy of the order with the county clerk of each county within which any part of the controlled ground water area lies, and the county clerk shall record the order without fee. The department shall file in its records proof of service by its own affidavit of service. Upon publication and mailing of the order as prescribed in this section, the order is final and conclusive unless an appeal from the order is taken.

(8) The department may by order suspend, modify, or revoke any order made as provided in this section upon the notice and in the manner that is reasonable under the circumstances. A copy of each suspension, modification, or revocation must be served or filed and recorded as provided for orders in subsection (7).

(9) While a matter is pending, the department may restrict further development of the subarea."

Section 6. Section 85-2-508, MCA, is amended to read:

“85-2-508. Controlled ground water areas — permits to appropriate.

(1) A person may appropriate ground water in a controlled *ground water* area ~~only~~ by:

(a) applying for and receiving a permit from the department in accordance with part 3 of this chapter; *or*

(b) *following the requirements of an order issued pursuant to 85-2-507.*

(2) The department may not grant a permit if the withdrawal would be beyond the capacity of the aquifer or aquifers in the ground water area to yield ground water within a reasonable or feasible pumping lift, (in the case of pumping developments), or within a reasonable or feasible reduction of pressure, (in the case of artesian developments).”

Section 7. Codification instruction. [Section 1] is 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 [section 1].

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

Approved April 7, 2005

CHAPTER NO. 162

[HB 212]

AN ACT AUTHORIZING CERTAIN LOCAL GOVERNMENTS TO ENTER INTO ENERGY PERFORMANCE CONTRACTS; PROVIDING PROCEDURES AND CRITERIA FOR SOLICITING AND AWARDED ENERGY PERFORMANCE CONTRACTS; SETTING THE TERM OF ENERGY PERFORMANCE CONTRACTS; REQUIRING MONITORING AND REPORTING OF CONSERVATION MEASURES; PROVIDING THAT LOCAL GOVERNMENT STATUTORY PROCUREMENT REQUIREMENTS DO NOT APPLY TO THE PROCUREMENT OF AN ENERGY PERFORMANCE CONTRACT; PROVIDING THAT ENERGY PERFORMANCE CONTRACTS ARE NOT A GENERAL OBLIGATION OF A LOCAL GOVERNMENT UNIT; AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO QUALIFY ENERGY PERFORMANCE CONTRACTORS AND PROVIDE ASSISTANCE TO LOCAL GOVERNMENTS; AMENDING SECTIONS 20-9-204 AND 20-15-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Legislative findings and policy. (1) The legislature finds that:

(a) conserving energy in local government buildings and vehicles will have a beneficial effect on the overall supply of energy and can result in cost savings for taxpayers;

(b) conserving water can result in cost savings for taxpayers; and

(c) energy performance contracts are a means by which local government units can achieve energy and water conservation without an initial capital outlay.

(2) It is the policy of the state of Montana to promote efficient use of energy and water resources in local government buildings and energy conservation in

vehicles by authorizing local government units to enter into energy performance contracts.

Section 2. Definitions. As used in [sections 1 through 9], the following definitions apply:

(1) "Conservation measure" means a study, audit, improvement, equipment, alternative energy system, or change in operating practices that is designed to provide energy, water, or operational cost savings at least equivalent to the amount expended by a local government unit for the study, audit, improvement, or equipment.

(2) "Conservation-related cost savings" means cost savings in the operating budget of a local government unit that are a direct result of conservation measures implemented pursuant to an energy performance contract.

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

(4) "Energy performance contract" means a contract between a local government unit and a qualified provider for evaluation, recommendation, and implementation of one or more conservation measures, evaluation of conservation-related cost savings, and a guarantee of cost savings.

(5) "Investment grade energy audit" means a comprehensive building energy systems audit, performed by a professional engineer licensed in the state of Montana, for the purpose of identifying and documenting conservation measures, cost savings factors, and estimated conservation-related cost savings from the conservation measures identified.

(6) "Local government unit" means a county, an incorporated city or town, a city-county consolidated government, a school district, a special district, or a community college district.

(7) "Person" means an individual, corporation, partnership, firm, association, cooperative, limited liability company, limited liability partnership, or any other similar entity.

(8) "Qualified provider" means a person that:

(a) is experienced in the design, implementation, and installation of conservation measures and building improvement measures;

(b) has the technical capabilities to ensure that the conservation measures and building improvement measures generate conservation-related cost savings; and

(c) has the financial ability to guarantee performance.

Section 3. Authority to enter into energy performance contracts. (1) A local government unit may enter into an energy performance contract with a qualified provider under the procedures provided in [section 4 or 5].

(2) Nothing in [sections 1 through 9] prevents a local government unit from contracting for conservation measures under any other legal authority.

Section 4. Selection of qualified providers for energy performance contracts. (1) A local government unit may solicit submissions of qualifications to enter into an energy performance contract and proposals for investment grade energy audits. The local government unit shall give at least 14 days' public notice of a request for qualifications and proposals. The notice must be published at least once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the local government unit intends to institute the

conservation measures, and requests for proposals must be sent to at least three vendors known to be offering energy performance contracts. The notice must invite qualified providers to submit qualifications and proposals for investment grade energy audits.

(2) The local government unit shall evaluate qualifications and proposals according to the following capabilities and criteria:

(a) knowledge of design, engineering, installation, maintenance, and repairs associated with energy performance contracts;

(b) experience in postinstallation project monitoring, data collection, and reporting of savings;

(c) ability to guarantee conservation savings;

(d) management capability;

(e) ability to arrange long-term financing or to integrate existing financial resources, such as utility rebates and intercap loans, into projects; and

(f) experience with projects of similar size and scope.

(3) The local government unit shall negotiate a contract with the most qualified provider at a price that the local government unit determines fair and reasonable, taking into account the scope of the services rendered. If the local government unit is unable to negotiate a satisfactory contract with the most qualified provider, negotiations with that firm must be formally terminated and the local government unit shall select the next most qualified provider until an agreement is reached or the process is terminated.

Section 5. Alternative selection process. The department may solicit requests for qualifications and proposals for qualified providers to offer energy performance contracts to local government units. The department shall give at least 14 days' public notice of a request for qualifications and proposals. The notice must be published at least once a week for 2 consecutive weeks in at least two major daily newspapers in Montana, posted on the department's website, and sent to vendors known by the department to be offering energy performance contracts. The department shall evaluate the qualifications on the basis of the capabilities and criteria contained in [section 4(2)]. The department may then select qualified providers and negotiate energy performance contract terms with each qualified provider that may be used by a local government unit as the basis for its energy performance contract with that qualified provider without following the process provided in [section 4].

Section 6. Award of energy performance contracts. (1) A local government unit may select and negotiate with a qualified provider identified through the processes provided in [section 4 or 5].

(2) Upon selection of a qualified provider, the local government unit shall enter into a contract with the qualified provider. If this qualified provider does not employ a professional engineer licensed in the state of Montana, the qualified provider shall hire one to prepare an investment grade energy audit. The investment grade energy audit serves as the basis for the terms of an energy performance contract. The investment grade energy audit becomes the property of the local government unit.

(3) If the local government unit determines that the investment grade energy audit does not provide sufficient conservation-related cost savings, it shall pay the cost of the investment grade energy audit and decline to enter into the energy performance contract.

(4) If the local government unit determines that the investment grade energy audit provides sufficient conservation-related cost savings, it shall notify the qualified provider. The qualified provider shall provide the local government unit with plans for the proposed conservation measures that have been prepared by an engineer licensed to practice in Montana and that comply with applicable building and safety codes.

(5) Upon receipt of the information required by subsection (4), the local government unit may negotiate the conservation measures to be included in the energy performance contract and enter into the energy performance contract. The energy performance contract may include the option of payment of the costs of the investment grade energy audit and plans provided pursuant to subsection (4) through project financing.

Section 7. Term and conditions of energy performance contracts. (1) The term of an energy performance contract must be a minimum of 3 years and may be up to the useful life of the conservation measures or 20 years, whichever is less.

(2) An energy performance contract must require the qualified provider to:

(a) guarantee the conservation-related cost savings to the extent necessary to pay for the conservation measures, including financing charges incurred over the life of the contract;

(b) monitor the reductions in energy consumption and the cost savings attributable to the conservation measures installed pursuant to the energy performance contract; and

(c) annually prepare and provide a report to the local government unit, documenting the performance of the conservation measures.

Section 8. Assistance to local governments. The department may develop model documents and provide technical assistance to local government units in the procurement of energy performance contracts and related services.

Section 9. Contracts and agreements not general obligation of local government unit. Payment obligations of a local government unit pursuant to an energy performance contract are not general obligations of the local government unit and are collectible only from conservation-related cost savings provided in the energy performance contract and other revenue, if any, pledged in the energy performance contract.

Section 10. Section 20-9-204, MCA, is amended to read:

“20-9-204. Conflicts of interests, letting contracts, and calling for bids. (1) It is unlawful for a trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by the trustee while acting in that official capacity or by the board of trustees of which the trustee is a member; or

(b) be employed in any capacity by the trustee’s own school district.

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

(a) “pecuniary interest” does not include holding an interest of 10% or less in a corporation; *and*

(b) “contract” does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions that are in the business of loaning or receiving money when the investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services, other than salaried services, or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of the lack of availability are entered in the minutes of the board meeting at which the contract is considered.

(3) Except for district needs that must be met because of an unforeseen emergency, as defined in 20-3-322(5), or as provided in ~~subsection~~ *subsections* (4) and (7) of this section, whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of \$25,000, the work done or the purchase made must be by contract. Each contract must be let to the lowest responsible bidder after advertisement for bids. The advertisement must be published in the newspaper that will give notice to the largest number of people of the district as determined by the trustees. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section is void. The bidding requirements applicable to services performed for the benefit of the district under this section do not apply to:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an attorney;

(d) a consulting actuary;

(e) a private investigator licensed by any jurisdiction;

(f) a claims adjuster; or

(g) an accountant licensed under Title 37, chapter 50.

(4) A district may enter into a cooperative purchasing contract for the procurement of supplies or services with one or more districts. The award of a contract to a successful bidder must comply with the requirements of subsection (5). The request for bids must be advertised in a daily newspaper of general circulation in each county in which a district participating in the cooperative purchasing contract is located. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids.

(5) Whenever bidding is required, the contract must be awarded to the lowest responsible bidder, except that all bids may be rejected.

(6) This section may not require the board of trustees to let a contract for any routine and regularly performed maintenance or repair project or service that can be accomplished by district staff whose regular employment with the school district is related to the routine performance of maintenance for the district.

(7) *Subsection (3) does not apply to the solicitation or award of a contract for an investment grade energy audit or an energy performance contract pursuant to*

[sections 1 through 9], including construction and installation of conservation measures pursuant to the energy performance contract.”

Section 11. Section 20-15-104, MCA, is amended to read:

“20-15-104. Pecuniary interest and letting contracts. (1) It ~~shall be~~ *is* unlawful for any community college district trustee to:

(a) have ~~any~~ a pecuniary interest, either directly or indirectly, in the erection of any community college building in ~~his~~ *the trustee's* district; ~~or~~

(b) *have a pecuniary interest, either directly or indirectly,* in furnishing or repairing ~~the same~~ *a community college building;* ~~or~~

(c) be in any manner connected with the furnishing of supplies for the maintenance of the college; ~~or~~

(d) receive or accept any compensation or reward for services rendered as trustee, except as ~~herein~~ *provided in this section.*

(2) ~~The~~ *Except for the letting of an investment grade energy audit or energy performance contract pursuant to [sections 1 through 9], including construction or installation of conservation measures pursuant to an energy performance contract,* the board of trustees shall let contracts for building, furnishing, repairing, or other work or supplies for the benefit of the district according to the following rules and procedures:

(a) The board of trustees need not meet requirements relating to advertising or bidding if a proposed contract for building, furnishing, repairing or other work or supplies is for less than \$5,000.

(b) Whenever the proposed contract costs are less than \$25,000 but more than \$5,000, the board of trustees shall procure at least three informal bids, if reasonably available, from contractors licensed in Montana.

(c) Whenever the proposed contract costs are more than \$25,000, the board of trustees shall solicit formal bids and advertise once each week for at least 2 weeks in a newspaper published in each county ~~wherein~~ *in which* the area of the district lies, calling for bids to perform ~~such~~ *the* work or furnish ~~such~~ *the* supplies. If advertising is required, the board shall award the contract to the lowest responsible bidder. However, the board of trustees has the right to reject any ~~and all~~ bids.”

Section 12. Energy performance contracts exempt. This part does not apply to solicitation and award of an investment grade energy audit or energy performance contract pursuant to [sections 1 through 9] or to the construction or installation of conservation measures pursuant to the energy performance contract.

Section 13. Codification instruction. (1) [Sections 1 through 9] 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 9].

(2) [Section 12] is intended to be codified as an integral part of Title 7, chapter 5, part 23, Title 7, chapter 5, part 43, Title 7, chapter 12, part 21, Title 7, chapter 12, part 41, and Title 18, chapter 8, part 2, and the provisions of Title 7, chapter 5, part 23, Title 7, chapter 5, part 43, Title 7, chapter 12, part 21, Title 7, chapter 12, part 41, and Title 18, chapter 8, part 2, apply, respectively, to [section 12].

Section 14. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2005

CHAPTER NO. 163

[HB 223]

AN ACT ELIMINATING THE AUTHORITY FOR AND PROVISIONS GOVERNING THE OPERATION OF A FOREIGN CAPITAL DEPOSITORY; AMENDING SECTIONS 15-1-501, 15-1-121, 15-31-101, 15-31-102, 25-9-506, 25-9-603, 25-9-609, 31-1-704, 31-1-802, 32-1-101, 32-1-102, 32-1-202, 32-1-301, 32-1-446, 32-1-461, 32-1-462, 32-1-464, 32-1-468, 32-1-473, 32-1-491, 32-1-492, AND 32-1-501, MCA; AND REPEALING SECTIONS 15-30-192, 15-31-801, 15-31-802, 15-31-803, 15-31-804, 15-31-805, 15-31-806, 15-31-807, 15-31-808, 25-9-801, 25-9-802, 25-9-803, 25-9-804, 25-9-805, 25-9-806, 25-9-807, 25-9-808, 25-9-809, 32-8-101, 32-8-102, 32-8-103, 32-8-104, 32-8-105, 32-8-106, 32-8-107, 32-8-201, 32-8-202, 32-8-203, 32-8-204, 32-8-205, 32-8-301, 32-8-302, 32-8-303, 32-8-304, 32-8-306, 32-8-308, 32-8-309, 32-8-311, 32-8-312, 32-8-314, 32-8-315, 32-8-316, 32-8-401, 32-8-402, 32-8-403, 32-8-404, 32-8-501, 32-8-502, 32-8-503, 32-8-504, 32-8-505, 32-8-506, 32-8-507, 32-8-508, 32-8-509, 32-8-510, 32-8-515, 32-8-516, 32-8-517, 32-8-518, 32-8-521, 32-8-522, 32-8-523, 32-8-524, 32-8-601, 32-8-602, 32-8-603, AND 70-9-701, MCA.

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

Section 1. Section 15-1-501, MCA, is amended to read:

“15-1-501. Disposition of money from certain designated license and other taxes. (1) Except as provided in subsection (5), the state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

- (a) income taxes, interest, and penalties collected under chapter 30;
- (b) except as provided in 15-31-121, all taxes, interest, and penalties collected under chapter 31;
- (c) oil and natural gas production taxes distributed to the general fund under 15-36-331;
- (d) electrical energy producer’s license taxes under chapter 51;
- (e) the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;
- (f) liquor license taxes under Title 16;
- (g) fees from driver’s licenses, motorcycle endorsements, and duplicate driver’s licenses as provided in 61-5-121; *and*
- (h) estate taxes under Title 72, chapter 16; ~~and~~
- ~~(i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.~~

(2) The department shall also deposit to the credit of the state general fund all money received from the collection of license taxes and all net revenue and receipts from all sources, other than certain fees, under Title 16, chapters 1 through 4 and 6.

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as

prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded.

(5) The administrative assessment provided for in 15-1-141 must be deposited in an account in the state special revenue fund to the credit of the department.”

Section 2. Section 15-1-121, MCA, is amended to read:

“15-1-121. Entitlement share payment — appropriation. (1) The amount calculated pursuant to this subsection is each local government’s base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle and boat taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-317;

(v) 61-3-321;

(vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001;

(vii) Title 61, chapter 3, part 7;

(viii) 5% of the fees collected under 61-10-122;

(ix) 61-10-130;

(x) 61-10-148; and

(xi) 67-3-205;

(c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);

(d) district court fees pursuant to:

(i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);

(ii) 25-1-202;

(iii) 25-1-1103;

(iv) 25-9-506;

~~(v) 25-9-804;~~ and

~~(vi)~~(v) 27-9-103;

(e) certificate of title fees for manufactured homes pursuant to 15-1-116;

(f) financial institution taxes pursuant to Title 15, chapter 31, part 7;

(g) coal severance taxes allocated for county land planning pursuant to 15-35-108;

(h) all beer, liquor, and wine taxes pursuant to:

(i) 16-1-404;

(ii) 16-1-406; and

(iii) 16-1-411;

(i) late filing fees pursuant to 61-3-220;

(j) title and registration fees pursuant to 61-3-203;

(k) veterans' cemetery license plate fees pursuant to 61-3-459;

(l) county personalized license plate fees pursuant to 61-3-406;

(m) special mobile equipment fees pursuant to 61-3-431;

(n) single movement permit fees pursuant to 61-4-310;

(o) state aeronautics fees pursuant to 67-3-101; and

(p) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.

(3) (a) ~~Beginning with fiscal year 2002 and in each succeeding fiscal year, the~~ *The* base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. ~~For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments. Beginning with calendar year 2002, by~~ *By* October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

(i) ~~Before applying the growth rate for fiscal year 2004 to determine the fiscal year 2004 entitlement share pool, the department shall add to the fiscal year 2003 entitlement share pool the fiscal year 2003 amount of revenue actually distributed to the county from the 25 cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b).~~

(ii)(i) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection ~~(3)(a)(ii)(A)~~ *(3)(a)(i)(A)*.

~~(iii)~~(ii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection ~~(3)(a)(iii)(A)~~ (3)(a)(ii)(A).

(b) (i) ~~For fiscal year 2004 and subsequent fiscal years, the~~ *The* entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections ~~(3)(a)(ii)(B)~~ (3)(a)(i)(B) and ~~(3)(a)(iii)(B)~~ (3)(a)(ii)(B):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections ~~(3)(a)(ii)(A)~~ (3)(a)(i)(A) and ~~(3)(a)(iii)(A)~~ (3)(a)(ii)(A):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis beginning September 15, 2001.

(b) (i) ~~For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component. For fiscal year 2003 and each succeeding fiscal year, the~~ *The* growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero. The growth factor in the entitlement share must be calculated separately for:

(A) counties;

- (B) consolidated local governments; and
- (C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the base year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the base year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the base year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

~~(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.~~

~~(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool.~~

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to

subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

| | | |
|-----------------|------------------------|-----------|
| Cascade | Great Falls - downtown | \$468,966 |
| Deer Lodge | TIF District 1 | 3,148 |
| Deer Lodge | TIF District 2 | 3,126 |
| Flathead | Kalispell - District 1 | 758,359 |
| Flathead | Kalispell - District 2 | 5,153 |
| Flathead | Kalispell - District 3 | 41,368 |
| Flathead | Whitefish District | 164,660 |
| Gallatin | Bozeman - downtown | 34,620 |
| Lewis and Clark | Helena - #2 | 731,614 |
| Missoula | Missoula - 1-1B & 1-1C | 1,100,507 |
| Missoula | Missoula - 4-1C | 33,343 |
| Silver Bow | Butte - uptown | 283,801 |
| Yellowstone | Billings | 436,815 |

~~(c) The entitlement share for industrial tax increment financing districts is as follows:~~

~~(i) for fiscal years 2002 and 2003:~~

| | | |
|----------------------------|-------------------------------|---------------------|
| Missoula County | Airport Industrial | \$4,812 |
| Silver Bow | Ramsay Industrial | 597,594; |

~~(ii) for fiscal years 2004 and 2005:~~

| | | |
|----------------------------|-------------------------------|-------------------------|
| Missoula County | Airport Industrial | \$2,406 |
| Silver Bow | Ramsay Industrial | 298,797; and |

~~(iii) \$0 for all succeeding fiscal years.~~

~~(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.~~

~~(e) One half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year.~~

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants or from countywide retirement block grants.

~~(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001.~~

(9)(8) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(p) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection ~~(9)(a)~~ (8)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

~~(10)~~(9) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

~~(11)~~(10) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

~~(12)~~(11) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

~~(13)~~(12) A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1."

Section 3. Section 15-31-101, MCA, is amended to read:

"15-31-101. Organizations subject to tax. (1) The term "corporation" includes an association, joint-stock company, common-law trust or business trust that does business in an organized capacity, all other corporations whether created, organized, or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States, and any limited liability company, limited liability partnership, partnership, or other entity that is treated as an association for federal income tax purposes and that is not a disregarded entity.

(2) The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(3) Except as provided in 15-31-103 or 33-2-705(4) or as may be otherwise specifically provided, every corporation engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state the percentage or percentages of its total net income for the preceding taxable year at the rate set forth in this chapter. In the case of corporations having income from business activity which is taxable both within and outside of this state, the license fee must be measured by the net income derived from or attributable to Montana sources as determined under part 3. Except as provided in 15-31-502, this tax is due and payable on the 15th day of the 5th month following the close of the taxable year of the corporation. However, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.

(4) Every bank organized under the laws of the state of Montana, of any other state, or of the United States and every savings and loan association organized under the laws of this state or of the United States is subject to the Montana corporation license tax provided for under this chapter. ~~A foreign capital depository chartered under the laws of Montana is not subject to the Montana corporation license tax provided for under this chapter until October 1,~~

~~2012.~~ For taxable years beginning on and after January 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548).”

Section 4. Section 15-31-102, MCA, is amended to read:

“15-31-102. Organizations exempt from tax — unrelated business income not exempt. (1) Except as provided in subsection (3), there may not be taxed under this title any income received by any:

- (a) labor, agricultural, or horticultural organization;
- (b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of the society, order, or association or their dependents;
- (c) cemetery company owned and operated exclusively for the benefit of its members;
- (d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;
- (e) business league, chamber of commerce, or board of trade not organized for profit, no part of the net income of which inures to the benefit of any private stockholder or individual;
- (f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;
- (g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;
- (h) farmers’ or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or similar organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;
- (i) cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;
- (j) corporations or associations organized for the exclusive purpose of holding title to property, collecting income from the property, and turning over the entire amount of the income, less expenses, to an organization that itself is exempt from the tax imposed by this title;
- (k) wool and sheep pool, which is an association owned and operated by agricultural producers organized to market association members’ wool and sheep, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose, does not include expenses and money distributed to members contributing wool and sheep.
- (l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions of section 991, et seq., of the Internal Revenue Code, 26 U.S.C. 991, et seq., and that has in effect for the entire taxable year a valid election under federal law to be treated as a DISC. If a corporation makes that election under federal law, each person who at any time is a shareholder of

the corporation is subject to taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by federal law for all periods for which the election is effective.

(m) farmers' market association not organized for profit, no part of the net income of which inures to the benefit of any member, but that is organized for the sole purpose of providing for retail distribution of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller;

(n) common trust fund as defined in section 584(a) of the Internal Revenue Code, 26 U.S.C. 584(a);

~~(o) foreign capital depository chartered under the provisions of 32-8-104, 32-8-201, and 32-8-202.~~

(2) In determining the license fee to be paid under this part, there may not be included any earnings derived from any public utility managed or operated by any subdivision of the state or from the exercise of any governmental function.

(3) Any unrelated business taxable income, as defined by section 512 of the Internal Revenue Code, 26 U.S.C. 512, as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability of more than \$100 must be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section shall file a copy of its federal exempt organization business income tax return on which it reports its unrelated business income with the department of revenue."

Section 5. Section 25-9-506, MCA, is amended to read:

"25-9-506. Fees. (1) Except as provided for in subsection (2), a person filing a foreign judgment shall pay to the clerk of court a fee of \$60.

~~(2) A person filing a judgment against a customer of a foreign capital depository, as defined in 32-8-103, shall pay to the clerk of court a fee of \$2,500.~~

~~(3)~~(2) Fees for docketing, transcription, or other enforcement proceedings must be as provided for judgments of the district court.

~~(4)~~(3) Fees collected by the clerk of district court must be forwarded to the department of revenue for deposit in the state general fund."

Section 6. Section 25-9-603, MCA, is amended to read:

"25-9-603. Applicability. This part applies to any foreign judgment, ~~other than a judgment obtained against a customer of a foreign capital depository, as defined in 32-8-103,~~ that is final and conclusive and enforceable where rendered even though an appeal from the judgment is pending or it is subject to appeal."

Section 7. Section 25-9-609, MCA, is amended to read:

"25-9-609. Uniformity of interpretation. ~~Except for the provisions in part 8 of this chapter pertaining to a customer of a foreign capital depository, as defined in 32-8-103,~~ this *This* part must be construed to effectuate the general purpose to make uniform the law of those states that enact it."

Section 8. Section 31-1-704, MCA, is amended to read:

"31-1-704. Scope. (1) This part applies to deferred deposit lenders and to persons who facilitate, enable, or act as a conduit for persons making deferred deposit loans.

(2) This part does not apply to:

~~(a) financial institutions as defined in 32-8-502;~~

~~(b)(a)~~ retail sellers who cash checks incidental to or independent of a sale and who do not charge more than \$2 a check for the service; or

~~(e)(b)~~ a collection agency doing business in this state that has entered into an agreement with a deferred deposit lender for the collection of claims owed or due or asserted to be owed or due the deferred deposit lender.”

Section 9. Section 31-1-802, MCA, is amended to read:

“31-1-802. Purpose — rules — scope — 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) This part does not apply to ~~financial institutions, as defined in 32-8-502,~~ ~~or~~ pawnbrokers.

(4) This part may not be construed as affecting in any way the method of perfecting security interests on personal property provided for elsewhere in law.

(5) Fees collected under this part must be deposited in an account in the state special revenue fund to be used by the department in carrying out its supervisory functions under this part.”

Section 10. Section 32-1-101, MCA, is amended to read:

“32-1-101. Short title — application — purpose. (1) Parts 1 through 5 of this chapter may be known as the “Bank Act”.

(2) The Bank Act is applicable to:

(a) all corporations and persons specified in 32-1-102;

(b) corporations that subject themselves to the Bank Act; *and*

(c) persons, partnerships, or corporations who by violating the Bank Act become subject to the penalties provided in the Bank Act; ~~and~~

~~(d) foreign capital depositories, but only to the extent that the provisions of the Montana Foreign Capital Depository Act, chapter 8, specifically require foreign capital depositories to be subject to provisions of the Bank Act.~~

(3) (a) The purpose of the Bank Act is to provide Montana with a sound system of state-chartered banks by providing for and encouraging the development of state-chartered banks while restricting their activities to the extent necessary to protect the interests of depositors. The purpose includes:

(i) the sound conduct of the business of banks;

(ii) the conservation of bank assets;

(iii) the maintenance of adequate reserves against deposits;

(iv) the opportunity for banks to compete with other businesses, including but not limited to other financial organizations existing under the laws of this state, other states, the United States, and foreign countries;

(v) the opportunity for banks to serve the citizens of this state;

(vi) the opportunity for banks to participate in and promote the economic progress of Montana and the United States;

(vii) the opportunity for the management of banks to exercise business judgment in conducting the affairs of their institutions; and

(viii) modernization and simplification of the law governing banking by providing that banks have all the rights and powers granted corporations, except as otherwise provided in this chapter.

(b) The Bank Act does not restrict the activities of banks for the purpose of protecting any person from competition from banks and does not confer any right or cause of action upon any competitor.

(c) The purpose contained in this subsection (3) constitutes the standards to be observed by the commissioner of banking and financial institutions in the exercise of authority under the Bank Act and provides guidelines in the construction and application of the Bank Act.”

Section 11. Section 32-1-102, MCA, is amended to read:

“32-1-102. Institutions to which chapter is applicable. (1) The word “bank” as used in this chapter means any corporation, ~~other than a foreign capital depository, as defined in 32-8-103,~~ that has been incorporated to conduct the business of receiving money on deposit or transacting a trust or investment business, as defined in this chapter.

(2) The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business is doing a commercial or savings bank business, ~~except for the operations of a foreign capital depository,~~ whether the deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, or other receipt. This section does not apply to or include money or its equivalent left in escrow or left with an agent pending investment in real estate or securities for or on account of the agent’s principal.

(3) It is unlawful for any corporation, partnership, firm, or individual to engage in or transact a banking business within this state except by means of a corporation duly organized for that purpose.

(4) Banks are divided into the following classes:

(a) commercial banks;

(b) savings banks;

(c) trust companies;

(d) investment companies.

(5) This chapter does not apply to any investment company or corporation established prior to March 8, 1927, under authority of the law of Montana not accepting, receiving, or holding money on deposit.

~~(6) Except for the provisions listed in 32-8-106, this chapter does not apply to foreign capital depositories.~~

~~(7)~~(6) This chapter does not apply to a student financial institution, as defined in 32-1-115.”

Section 12. Section 32-1-202, MCA, is amended to read:

“32-1-202. Powers and duties of board. The board shall:

(1) make final determinations upon applications for certificates of authorization for ~~foreign capital depositories and~~ new banks;

(2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise to the department as the duties and powers relate to banking and to the regulation of foreign capital depositories;

(3) upon request of an applicant or the department, review a decision of the department on an application for the formation or closure of branch banks, sales of branch banks, or the consolidation, merger, or relocation of banks and branch banks; and

(4) conduct hearings as provided in 32-1-204.”

Section 13. Section 32-1-301, MCA, is amended to read:

“32-1-301. Organization and incorporation — articles of incorporation. (1) A person desiring to organize a banking corporation ~~or a foreign capital depository~~ shall make and file articles of incorporation with the department and, upon approval by the department, may file the articles with the secretary of state as provided in Title 35, chapter 1. The articles of incorporation must set forth:

(a) the information required by 35-1-216(1);

(b) the name of the city or town and county in which the principal office of the corporation ~~or foreign capital depository~~ is to be located;

(c) the names and places of residence of the initial shareholders and the number of shares subscribed by each;

(d) the number of the board of directors and the names of those agreed upon for the first year; and

(e) the purpose for which the banking corporation ~~or foreign capital depository~~ is formed, which may be set forth by the use of the general terms defined in this chapter, with reference to each line of business in which the proposed corporation ~~or foreign capital depository~~ desires to engage.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions set forth in 35-1-216(2).

(3) A banking corporation ~~or foreign capital depository~~ may not adopt or use the name of any other banking corporation or association ~~or foreign capital depository~~, and the corporation name must comply with 35-1-308(2) through (4).

(4) A banking corporation ~~or a foreign capital depository~~ may not be organized or incorporated until the articles of incorporation have been submitted to and have been approved by the department and until it has obtained a certificate from the board authorizing the proposed corporation ~~or foreign capital depository~~ to transact the business specified in the articles of incorporation within this state.

(5) A banking corporation ~~or a foreign capital depository~~ may not amend or restate its articles of incorporation until its articles of amendment or articles of restatement have been submitted to and have been approved by the department and until it has obtained approval from the department authorizing the proposed amendment or restatement.

(6) For banks organized before October 1, 1993, articles of agreement are considered articles of incorporation.”

Section 14. Section 32-1-446, MCA, is amended to read:

“32-1-446. Safe deposit department. A bank ~~or a foreign capital depository~~ may conduct a safe deposit department. The liability of any bank ~~or~~

~~foreign capital depository~~ for the safekeeping and protection of the contents of safety deposit boxes is determined by the contract endorsed on the receipt delivered to the renter of a box at the time of the rental. However, the obligation of the bank ~~or foreign capital depository~~ is limited to the exercise of ordinary diligence and care to protect the contents of the box from loss or damage by fire, theft, or other causes.”

Section 15. Section 32-1-461, MCA, is amended to read:

“32-1-461. Bonding of employees. (1) The board of directors of a bank ~~or foreign capital depository~~ shall require bonding for all officers and employees of the bank ~~or foreign capital depository~~ whose duty includes the handling of money, notes, bonds, credits, and cash items and whose duties include bookkeeping or the making of entries in relation to the business of the bank and its customers.

(2) The board of directors shall by order entered upon the minute books of the board designate the officers and employees to be bonded and the amount of bonds to be given. Action as to the personnel, the amount of bonds, and the surety company or sureties is subject to approval by the department, and the bonds must be in a form provided or approved by the department.

(3) The bonds must be approved by the president of the bank ~~or the chief executive officer of the foreign capital depository~~, and the president’s or executive officer’s action must be reported to the board of directors.

(4) All bonds required by this section must be kept in the custody of the bank ~~or foreign capital depository~~ subject to inspection by examiners from the department. However, as far as possible, they may not be placed in the custody of the officer or employee for whom the bond is given.”

Section 16. Section 32-1-462, MCA, is amended to read:

“32-1-462. Persons previously convicted under banking laws — bank ~~or depository~~ employment. It is unlawful for a person who has been convicted of a violation of the banking laws of any state or nation to accept employment in a bank ~~or a foreign capital depository~~ in this state without first stating the relevant facts to the directors of the bank ~~or foreign capital depository~~. A person who has been convicted of a banking law violation may not be employed in a bank ~~or a foreign capital depository~~ without the approval of the department, granted in writing after a full consideration of the facts.”

Section 17. Section 32-1-464, MCA, is amended to read:

“32-1-464. Fraud by director, officer, agent, or employee. A director, executive officer, agent, or employee of a bank ~~or a foreign capital depository~~ is guilty of a felony if that person:

(1) knowingly receives or takes possession of any bank ~~or foreign capital depository~~ property, except in payment for a just demand, and with intent to defraud:

(a) fails to make or to cause or direct to be made a full and true entry of the receipt or possession in its books and account; or

(b) concurs in failing to make any material entry in its books and account;

(2) knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement that is false; or

(3) having the custody or control of its books, willfully refuses or neglects to make a proper entry in the books of that bank ~~or foreign capital depository~~ as required by law, to exhibit them, or allow them to be inspected and extracts to be taken from them by the department.”

Section 18. Section 32-1-468, MCA, is amended to read:

“32-1-468. Removal of directors, officers, or employees. A director, officer, or employee of a bank ~~or foreign capital depository~~ who is found by the department, after examination, to be negligent, dishonest, reckless, or incompetent must be removed from office by the board of directors of the bank ~~or depository~~ on the written order of the department. If the directors neglect or refuse to remove the director, officer, or employee and any losses accrue to the bank by reason of the negligence, dishonesty, recklessness, or incompetency of the director, officer, or employee, the written order of the department is conclusive evidence of the negligence of the directors failing to act as provided in this section in any action brought against them by a depositor or creditor for recovery of losses.”

Section 19. Section 32-1-473, MCA, is amended to read:

“32-1-473. Theft of funds by directors, officers, or employees. A director, officer, or employee of a bank ~~or foreign capital depository~~ who fraudulently appropriates or abstracts or misapplies any of the money, funds, credits, or property of the bank ~~or depository~~ when owned by it or held in trust or who issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree with intent to injure or defraud the bank ~~or depository~~ or any person or corporation or to deceive any officer of the bank ~~or depository~~, any other person, or anyone appointed to examine the affairs of the bank ~~or depository~~ or any other person who with like intent, aids or abets any director, officer, or employee in the violation of this section is guilty of theft and upon conviction shall be imprisoned in the state prison for a period of not to exceed 20 years or be fined an amount not to exceed \$50,000, or both.”

Section 20. Section 32-1-491, MCA, is amended to read:

“32-1-491. Destruction of records. (1) Banks ~~and foreign capital depositories~~ are required to preserve or keep their records of customer accounts for at least 8 years after January 1 of the year following the time that the records are made. However, records showing unpaid balances in favor of depositors of a bank ~~or foreign capital depository~~ may not be destroyed. Liability may not accrue against a bank ~~or depository~~ destroying any records, (except records of which destruction is forbidden by this section), after the expiration of the time provided in this section.

(2) The department shall adopt rules providing for retention schedules for bank records other than those records listed in subsection (1).”

Section 21. Section 32-1-492, MCA, is amended to read:

“32-1-492. Definitions — reproduction of bank records — admissibility in evidence — cost recovery. (1) (a) For the purposes of this section, “bank records” includes any document, paper, letter, book, map, photograph, sound or video recording, magnetic tape, electronic-storage medium, or other information- recording medium used in a bank’s normal course of business.

(b) (i) For the purposes of this section, “electronic storage” means the recording, storage, retention, maintenance, and reproduction of documents

using microfilm, microfiche, data processing, computers, or other electronic process that correctly and legibly stores and reproduces documents.

(ii) A photographic, photostatic, miniature photographic copy, or reproduction of any kind, including electronic or computer-generated data that has been electronically stored and is capable of being converted into written form, must be considered an original record for all purposes and must be treated as an original record in all courts and administrative agencies for the purposes of admissibility in evidence.

(iii) A facsimile, exemplification, or certified copy of any reproduction referred to in subsection (1)(b)(ii) must, for all purposes, be considered a facsimile, exemplification, or certified copy of the original record.

(2) Except as provided in subsection (6), banks are authorized to make, at any time, photographic or photostatic copies or microfilm reproductions of any records or documents, including photographic enlargements and prints of microfilms, to be preserved, stored, used, and employed in carrying on business.

(3) In an action or proceeding in which bank records may be called in question or be demanded of a bank or any officer or employee of a bank, a showing that the records have been destroyed in the regular course of business is a sufficient excuse for the failure to produce the records.

(4) Upon the showing required in subsection (3), secondary evidence of the form, text, and contents of the original records, including photostatic, photographic, or microfilm reproductions, photographic enlargements, and prints of microfilm reproductions, when made in the regular course of business, is admissible in evidence in any court of competent jurisdiction or in any administrative proceeding.

(5) Any photostatic, photographic, or microfilm reproductions, including enlargements of the microfilm reproductions, made in the regular course of business of any original files, records, books, cards, tickets, deposit slips, or memoranda that were in existence on July 1, 1951, are admissible in evidence as proof of the form, text, and content of the originals that were destroyed in the regular course of business.

~~(6) The reproduction of records of a foreign capital depository is subject to the provisions of Title 32, chapter 8, part 5.~~

~~(7)~~(6) A bank may, as a condition of providing bank records to a third party in response to a subpoena or to another legal procedure or request, charge and collect the actual costs incurred in locating, reproducing, and providing the bank records.”

Section 22. Section 32-1-501, MCA, is amended to read:

“32-1-501. Dissolution and disincorporation. Commercial banks, savings banks, trust companies, *and* investment companies, ~~and foreign capital depositories~~ may be dissolved in the manner provided by the laws of this state applicable to the dissolution of other corporations. However, a bank, *or* trust company, ~~or foreign capital depository~~ may, upon a vote of two-thirds of its stockholders at a special meeting called for that purpose in accordance with its bylaws, voluntarily quit business and liquidate upon the payment of its debts, exclusive of liability to stockholders, or upon agreement with all of its creditors to a plan of liquidation. A bank, *or* trust company, ~~or foreign capital depository~~ that wishes to voluntarily liquidate shall apply to the department for permission to liquidate and, in addition to complying with the laws of this state governing the liquidation of corporations, shall comply in all respects with the

requirements or rules of the department governing voluntary dissolution. The board of directors of a bank, *or* trust company, ~~or foreign capital depository~~ whose stockholders have voted to place it in voluntary liquidation shall appoint a liquidating agent to wind up the affairs of the bank, *or* trust company, ~~or foreign capital depository~~. The liquidating agent, on authority of the board of directors, may execute deeds for the transfer of real property and do all things necessary to carry out the proper liquidation of the bank, *or* trust company, ~~or foreign capital depository~~. Nothing in this section prevents the department from taking charge at any time when in its opinion the interest of creditors or stockholders is not being protected. The decision of the department in these matters is controlling.”

Section 23. Repealer. Sections 15-30-192, 15-31-801, 15-31-802, 15-31-803, 15-31-804, 15-31-805, 15-31-806, 15-31-807, 15-31-808, 25-9-801, 25-9-802, 25-9-803, 25-9-804, 25-9-805, 25-9-806, 25-9-807, 25-9-808, 25-9-809, 32-8-101, 32-8-102, 32-8-103, 32-8-104, 32-8-105, 32-8-106, 32-8-107, 32-8-201, 32-8-202, 32-8-203, 32-8-204, 32-8-205, 32-8-301, 32-8-302, 32-8-303, 32-8-304, 32-8-306, 32-8-308, 32-8-309, 32-8-311, 32-8-312, 32-8-314, 32-8-315, 32-8-316, 32-8-401, 32-8-402, 32-8-403, 32-8-404, 32-8-501, 32-8-502, 32-8-503, 32-8-504, 32-8-505, 32-8-506, 32-8-507, 32-8-508, 32-8-509, 32-8-510, 32-8-515, 32-8-516, 32-8-517, 32-8-518, 32-8-521, 32-8-522, 32-8-523, 32-8-524, 32-8-601, 32-8-602, 32-8-603, and 70-9-701 MCA, are repealed.

Approved April 7, 2005

CHAPTER NO. 164

[HB 225]

AN ACT CLARIFYING THE LAWFUL METHOD OF HUNTING BY A LANDOWNER AND A LANDOWNER'S GUESTS AND LESSEES ON THE LANDOWNER'S PRIVATE PROPERTY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Montanans cherish the rights that have been reserved to them in the Montana Constitution; and

WHEREAS, among those cherished rights are the right to acquire and possess property in all lawful ways and the opportunity to harvest wild game animals.

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

Section 1. Lawful method of hunting on landowner's private property. In recognition of the inalienable right of persons to acquire and possess property in all lawful ways contained in Article II, section 3, of the Montana constitution and of the heritage of individual citizens to harvest wild game animals contained in Article IX, section 7, of the Montana constitution, a landowner and a landowner's guests and lessees may hunt on the landowner's private property as long as the hunting is conducted in the manner provided by law and is consistent with regulations.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 1, and the provisions of Title 87, chapter 2, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.
Approved April 7, 2005

CHAPTER NO. 165

[HB 234]

AN ACT PROVIDING THAT A MILITARY DISCHARGE CERTIFICATE INADVERTENTLY FILED WITH A COUNTY CLERK MUST BE RETURNED UPON REQUEST; CLARIFYING THAT IT IS NOT THE CLERK'S DUTY TO FILE A DISCHARGE CERTIFICATE; PROVIDING DEFINITIONS; AMENDING SECTION 7-4-2614, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-4-2614, MCA, is amended to read:

"7-4-2614. Records of certificates of discharge from military service.

(1) It is the duty of the county clerk of any county of this state to record, without charge and in a book kept for that purpose, the certificate of discharge of an honorably discharged person, ~~regardless of sex~~, who served with the United States forces *upon that person's request. It is not the clerk's duty to file the certificate.*

(2) ~~Military discharge certificates are~~ *A record of a military discharge certificate is* confidential and are exempt from the provisions of Title 2, chapter 6. A military discharge certificate may be disclosed only to:

- (a) the service member ~~who filed for whom~~ the certificate *was recorded*;
- (b) if the service member is deceased, the next of kin of the service member or a mortuary, as defined in 10-2-111, for the purposes of securing the burial benefits to which the service member is entitled;
- (c) a veterans' service officer or a veterans' service organization, as defined in 10-2-111;
- (d) the veterans' affairs division of the Montana department of military affairs; or
- (e) any person with written authorization from the service member or from the next of kin of the service member, if the service member is deceased.

(3) *If an original discharge certificate was inadvertently filed and the county clerk still retains the certificate in its original form, upon the written request of the service member or of the service member's next of kin if the service member is deceased, the clerk shall return the filed certificate to the service member or to the service member's next of kin if the service member is deceased.*

(4) *For purposes of this section:*

- (a) "file" means to store in original form; and
- (b) "record" means to make and keep a copy from which a certified original copy can be reproduced."

Section 2. Effective date. [This act] is effective on passage and approval.
Approved April 7, 2005

CHAPTER NO. 166

[HB 257]

AN ACT REMOVING THE DURATIONAL LIMIT OF PERSONAL SERVICES CONTRACTS; AND REPEALING SECTION 28-2-722, MCA.

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

Section 1. Repealer. Section 28-2-722, MCA, is repealed.

Approved April 8, 2005

CHAPTER NO. 167

[HB 262]

AN ACT PROVIDING FOR MULTIPLE MUNICIPAL COURT SESSIONS AND DEPARTMENTS AND FOR A CHIEF MUNICIPAL COURT JUDGE WHEN THERE IS MORE THAN ONE JUDGE; PROVIDING FOR THE DUTIES OF A CHIEF MUNICIPAL COURT JUDGE; PROVIDING FOR A PART-TIME ASSISTANT JUDGE FOR EACH MUNICIPAL COURT JUDGE; REVISING THE QUALIFICATIONS OF A REPLACEMENT FOR A DISQUALIFIED OR SICK JUDGE; AND AMENDING SECTIONS 3-6-106, 3-6-201, AND 3-6-204, MCA.

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

Section 1. Section 3-6-106, MCA, is amended to read:

“3-6-106. Sessions of the court — departments. (1) The municipal court ~~shall~~ *must* be in continuous session from 9 a.m. to noon and from 1 p.m. to 4 p.m. on every day except nonjudicial days. The judge may designate additional hours as ~~he, in his discretion, sees fit~~ *the judge believes necessary. If there is more than one judge, each judge may hold a session of the court and may designate additional hours as the judge believes necessary.*

(2) *If there is more than one judge, the chief municipal court judge shall divide the court into departments, make rules for the government of the court, and describe the order of the court’s business. Each department must be numbered, and a judge must be assigned to each department.”*

Section 2. Section 3-6-201, MCA, is amended to read:

“3-6-201. Number of judges — election — term of office — chief judge — duties of chief judge — assistant judge. (1) The governing body of a city shall determine by ordinance the number of judges required to operate the municipal court.

(2) A municipal court judge *who is not a part-time assistant judge appointed under subsection (6)* must be elected at the general election, as provided in 13-1-104(2). The judge’s term commences on the first Monday in January following the election. The judge shall hold office for the term of 4 years and until ~~his~~ *a successor is elected and qualified.*

(3) Except as provided in subsection (2), all elections of municipal court judges are governed by the laws applicable to the election of district court judges.

(4) *If there is more than one municipal court judge, the judges shall adopt a procedure by which they either select a chief municipal court judge at the*

beginning of each calendar year or by which the position of chief municipal court judge rotates among the judges in order of seniority at the beginning of each calendar year, with the most senior judge serving during the first year of the rotation.

(5) The chief municipal court judge shall provide for the efficient management of the court, in cooperation with the other judge or judges, if any, and shall:

(a) maintain a central docket of the court's cases;

(b) provide for the distribution of cases from the central docket among the judges, if there is more than one judge, in order to equalize the work of the judges;

(c) request the jurors needed for cases set for jury trial;

(d) if there is more than one judge, temporarily reassign or substitute judges among the departments as necessary to carry out the business of the court; and

(e) supervise and control the court's personnel and the administration of the court.

(6) A municipal court judge may, with the approval of the governing body of the city, appoint a part-time assistant judge, who must have the same qualifications as a judge pro tempore under 3-6-204, to serve during the municipal court judge's term of office. An order by a part-time assistant judge has the same force and effect as an order of a municipal court judge."

Section 3. Section 3-6-204, MCA, is amended to read:

"3-6-204. Disqualification — judge pro tempore. When a judge of a municipal court has been disqualified or is sick or unable to act, the judge shall call in a ~~justice of the peace for a justice's court established as a court of record provided for in 3-10-101, another municipal court judge, a retired justice of the peace for a justice's court established as a court of record, a retired municipal court judge sitting or retired judge of a court of record, or an attorney of the county in which the court is located who has been a member of the state bar of Montana for 5 or more years, to act as a judge pro tempore. The judge pro tempore has the same power and authority as the municipal court judge."~~

Approved April 7, 2005

CHAPTER NO. 168

[HB 269]

AN ACT CLARIFYING THAT A STATE OR COUNTY HIGHWAY, ROAD, OR RIGHT-OF-WAY THAT PROVIDES EXISTING LEGAL ACCESS TO PUBLIC LAND OR WATERS, INCLUDING ACCESS FOR PUBLIC RECREATIONAL USE, MAY BE ABANDONED ONLY IF ANOTHER PUBLIC HIGHWAY, ROAD, OR RIGHT-OF-WAY PROVIDES SUBSTANTIALLY THE SAME ACCESS; AMENDING SECTIONS 7-14-2615 AND 60-2-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-14-2615, MCA, is amended to read:

"7-14-2615. Abandonment or vacation of county roads. (1) All county roads once established must continue to be county roads until abandoned or vacated by:

- (a) operation of law;
- (b) judgment of a court of competent jurisdiction; or
- (c) the order of the board.

(2) An order to abandon a county road is not valid unless preceded by notice and public hearing.

(3) The board may not abandon a county road or right-of-way used to *provide existing legal access to public land or waters, including access for public recreational use as defined in 23-2-301 and as permitted in 23-2-302*, unless another public road or right-of-way provides substantially the same access.

(4) The board may not abandon a county road or right-of-way used to access private land if the access benefits two or more landowners unless all of the landowners agree to the abandonment.”

Section 2. Section 60-2-107, MCA, is amended to read:

“60-2-107. Abandonment of highways — exchange of roadways — public notice required. (1) The commission may abandon highways on the federal-aid systems and state highways.

(2) Before abandoning or discontinuing maintenance on a highway, the commission shall hold a public hearing in the county or counties affected by the abandonment. The commission may elect to offer to transfer the liability for and the maintenance of a highway to another agency or agencies that may in turn elect to take responsibility for the highway. The commission shall notify the board of county commissioners in writing of its intent to abandon a highway and hold a public hearing. The commission shall publish for 3 consecutive weeks in local newspapers within the county the notice of abandonment and public hearing.

(3) The commission may enter into an agreement with a unit of local government, on mutually beneficial terms, to exchange property interests or responsibilities, including maintenance, on any portion of a federal-aid or state highway and on any portion of a county road or city street.

(4) The commission may not abandon a highway, road, or right-of-way used to *provide existing legal access to public land or waters, including access for public recreational use as defined in 23-2-301 and as permitted in 23-2-302*, unless another highway, road, or right-of-way provides substantially the same access.

(5) The commission may not abandon a highway, road, or right-of-way used to access private land if the access benefits two or more landowners unless all the landowners agree to the abandonment.”

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

Approved April 7, 2005

CHAPTER NO. 169

[HB 270]

AN ACT REVISING THE PRIMARY SECTOR BUSINESS WORKFORCE TRAINING PROGRAM; TRANSFERRING ADMINISTRATION OF THE PROGRAM FROM THE GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT TO THE DEPARTMENT OF COMMERCE; REVISING THE

FUNDING MECHANISM; AMENDING SECTIONS 39-11-103, 39-11-201, AND 39-11-202, MCA, AND SECTION 10, CHAPTER 567, LAWS OF 2003; REPEALING SECTIONS 39-11-203 AND 39-11-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 39-11-103, MCA, is amended to read:

“39-11-103. ~~(Temporary)~~ (Temporary) Definitions. As used in this chapter, the following definitions apply:

(1) “Average weekly wage” has the meaning provided in 39-71-116.

(2) *“Department” means the department of commerce established in 2-15-1801.*

~~(2)~~(3) “Eligible training provider” means:

(a) a unit of the university system, as defined in 20-25-201;

(b) a community college district, as defined in 20-15-101;

(c) an accredited, tribally controlled community college located in the state of Montana; or

(d) an entity approved to provide workforce training that is included on the eligible training provider list.

~~(3)~~(4) “Eligible training provider list” means the list maintained by the department of labor and industry of those eligible training providers who may be used to provide workforce training under a grant authorized in 39-11-202.

~~(4)~~(5) “Employee” means the individual employed in a new job.

~~(5)~~(6) “Employer” means the individual, corporation, partnership, or association providing new jobs and entering into a grant contract.

~~(6)~~(7) “Full-time job” means a predominantly year-round position requiring an average of 35 hours of work each week.

~~(7)~~(8) (a) “New job” means a newly created full-time job in an eligible business.

(b) The term does not include:

(i) jobs for recalled employees returning to positions held previously, for replacement employees, or for employees newly hired as a result of a labor dispute, part-time or seasonal jobs, or other jobs that previously existed within the employment of the employer in the state; or

(ii) jobs created by an employer as the result of an acquisition of a Montana company or entity if those jobs previously existed in the state of Montana in the acquired company or entity unless it is demonstrated that the jobs:

(A) are substantially different as a result of the acquisition; and

(B) will require new training for the employee to meet new job requirements.

~~(8) “New jobs credit” means the credit provided in 39-11-203.~~

~~(9) “Office of economic development” means the office of economic development established in 2-15-218.~~

~~(10)~~(9) “Primary sector business” means an employer engaged in *establishing or* expanding operations within Montana that through the employment of knowledge or labor adds value to a product, process, or export service that results in the creation of new wealth and:

(a) for which at least 50% of the sales of the employer occur outside of Montana ~~or~~;

(b) the employer is a manufacturing company with at least 50% of its sales to other Montana companies that have 50% of their sales occurring outside of Montana; or

(c) *the employer is a new business that provides, as determined by the committee provided for in 39-11-201, a product or a service that is not available in Montana or a substantially similar product or service that is not available in Montana, which results in state residents leaving the state to purchase the product or service.*

~~(11)~~(10) “Primary sector business training program” or “program” means the grant provided to employers for the purpose of working with eligible training providers to provide employees with education and training required for jobs in new or expanding primary sector businesses in the state.

~~(12)~~(11) (a) “Program costs” means all necessary and incidental costs of providing program services.

(b) The term does not include the cost of ~~purchase of~~ equipment to be owned or ~~utilized~~ used by the eligible training provider.

~~(13)~~(12) “Program services” means training and education specifically directed to the new jobs, including:

- (a) all direct training costs, such as:
 - (i) program promotion;
 - (ii) instructor wages, per diem, and travel;
 - (iii) curriculum development and training materials;
 - (iv) lease of training equipment and training space;
 - (v) miscellaneous direct training costs;
 - (vi) administrative costs; and
 - (vii) assessment and testing;
- (b) in-house or on-the-job training; and

(c) subcontracted services with eligible training providers. ~~(Terminates June 30, 2007—sec. 10, Ch. 567, L. 2003.)~~ *(Terminates June 30, 2009.)*

Section 2. Section 39-11-201, MCA, is amended to read:

“39-11-201. ~~(Temporary)~~ (Temporary) Grant review committee — appointment — powers and duties — rulemaking authority. (1) There is a seven-member ~~lean grant~~ review committee, as follows:

(a) two representatives from the private sector representing economic development, ~~appointed by the governor,~~ *appointed by the governor*;

(b) two representatives from the ~~business~~ *business commercial banking* community; ~~one appointed by the president of the senate and one appointed by the speaker of the house,~~ *one appointed by the president of the senate and one appointed by the speaker of the house,* one of whom serves on a local workforce investment board;

(c) one representative from ~~the governor’s office,~~ *appointed by the governor* a 2-year postsecondary institution, as defined in 20-9-706, *appointed by the governor*;

(d) one representative from the department of revenue, ~~appointed by the governor, appointed by the governor;~~ and

(e) one representative from the department of labor and industry, ~~appointed by the governor, appointed by the governor.~~

(2) ~~The~~ Subject to appropriation by the legislature and 39-11-202(4)(d), the committee shall award training grants to a primary sector business qualified under 39-11-202 after a determination that the primary sector business:

(a) has prospects for achieving commercial success and for creating new jobs in the state;

(b) has prospects for collaboration between the public and private sectors of the state's economy;

(c) has potential for commercial success related to the specific product, process, or business development methodology proposed; *and*

(d) can provide matching funds; ~~and~~

~~(e) can be reasonably expected to provide an economic return within a reasonable period of time.~~

(3) A committee member may not personally apply for or receive a primary sector business workforce training grant. If an organization with which a member is affiliated applies for a grant, the member shall disclose the nature of the affiliation and, if the committee member is a board member or officer of the organization, may not participate in the decision of the committee regarding the grant application.

(4) The committee shall adopt rules to:

(a) provide for grant application procedures;

(b) develop procedures for awarding grants pursuant to the criteria provided in 39-11-202; and

(c) develop independent review and audit procedures to ensure that grants ~~made are~~ *have been* used for the purposes identified in the grant contracts.

(5) All decisions of the committee are final and are not subject to the contested case provisions of Title 2, chapter 4.

(6) The committee is allocated to the ~~office of economic development department~~ for administrative purposes only as provided in 2-15-121. ~~(Terminates June 30, 2007—sec. 10, Ch. 567, L. 2003.) (Terminates June 30, 2009.)~~

Section 3. Section 39-11-202, MCA, is amended to read:

“39-11-202. (Temporary) (Temporary) Primary sector business workforce training grants — eligibility. (1) ~~The~~ Subject to appropriation by the legislature, the grant review committee provided for in 39-11-201 may award workforce training grants to primary sector businesses that provide education or skills-based training, through eligible training providers from the eligible training provider list, for employees in new jobs.

(2) To be eligible for a grant, an applicant shall demonstrate that at least 50% of the applicant's sales will be from outside of Montana or that the applicant is a manufacturing company with 50% of its sales from companies that have 50% of their sales outside of Montana and must meet at least one of the following criteria:

(a) be a value-adding business as defined by the Montana board of investments;

(b) demonstrate a significant positive economic impact to the region and state beyond the job creation involved;

(c) provide a service or function that is essential to the locality or the state; or

(d) be a for-profit or a nonprofit hospital or medical center providing a variety of medical services for the community or region.

(3) An applicant shall also provide a match of at least \$1 for every \$3 requested. The match:

(a) must be from new, unexpended funds available at the time of application;

(b) may include new loans and investments and expenditures for direct project-related costs such as new equipment and buildings. The committee may consider recent purchases of fixed assets directly related to the proposal on a case-by-case basis. A purchase of fixed assets directly related to the proposed training activities that have been made within 90 days after submission of the application may be considered eligible by the ~~department~~ committee.

(4) (a) Except as provided in subsection (4)(c), a grant provided under this section may not exceed \$5,000 for each full-time position for which an employee is being trained. A grant may be provided only for a new job that has an average weekly wage that meets or exceeds the lesser of Montana's current average weekly wage; *or* the current average weekly wage of the county in which the employees are to be principally employed, ~~or for jobs that will be principally located on a reservation, the current average weekly wage of the reservation.~~

(b) The ~~office of economic development~~ *department* may consider the value of employee benefits in calculating the expected annual wage.

(c) The committee may, in exceptional circumstances, consider a higher grant ceiling for jobs that will pay significantly higher wages and benefits if the need for higher training costs is documented in the application.

(d) A grant provided under this section ~~may not exceed an amount greater than the present value of expected incremental tax receipts, as described in 39-11-203, that are expected over the 10-year period immediately following the grant award. The committee shall consider the loan rate established by the board of investments pursuant to the Municipal Finance Consolidation Act of 1983 that is in effect at the time of the grant and the state personal income tax rates in effect or those rates scheduled to take effect in calculating the maximum grant amount must be proportional to the number of jobs provided, the expected average annual wage of all jobs provided, and the underlying economic indicators of the region where the majority of the jobs will be created.~~

(5) A primary sector business workforce training program must involve at least 10 new jobs unless unique circumstances are documented that indicate a significant, positive, secondary impact to the local economy. Funding ceilings ~~will~~ *must* be determined by the availability of funding, the cost for each job, ~~and~~ the quality of the primary sector business proposal, ~~and whether training will be provided in Montana.~~

(6) The grant application, at a minimum, must contain:

(a) a business plan containing information that is sufficient for the committee to obtain an adequate understanding of the business to be assisted, including the products or services offered, estimated market potential, management experience of principals, current financial position, and details of

the proposed venture. In lieu of a business plan, the committee may consider a copy of the current loan application to entities such as the Montana board of investments, the federal business and industry guarantee program, or the small business administration.

(b) financial statements and projections for the 2 most recent years of operation and projections for each of the 2 years following the grant, including but not limited to balance sheets, profit and loss statements, and cash flow statements. A business operating for less than 2 years shall provide all available financial statements.

(c) a hiring and training plan, which must include:

(i) a breakdown of the jobs to be created or retained, including the number and type of jobs that are full-time, part-time, skilled, semiskilled, or unskilled positions;

(ii) a timetable for creating the positions and the total number of employees to be hired;

(iii) an assurance that the business will comply with the equal opportunity and nondiscrimination laws;

(iv) procedures for outreach, recruitment, screening, training, and placement of employees;

(v) a description of the training curriculum and resources;

(vi) written commitments from any agency or organization participating in the implementation of the hiring plan; and

(vii) a description of the type and method of training to be provided to employees, the starting wage and wage to be paid after training for each position, the job benefits to be paid or provided, and any payment to eligible training providers.

(7) If the committee determines that an applicant meets the criteria established in this section and has complied with the applicable procedures and review processes established by the committee, the committee may award a primary sector business workforce development grant to the employer and authorize the disbursement of funds *under contract* to the primary sector business.

(8) (a) A contract with a grant recipient must contain provisions:

(i) certifying that the ~~full~~ amount of the grant *already expended* will be reimbursed in the event that the primary sector business ceases operation *in the state of Montana* within ~~12 months from the time that the grant is awarded~~ *contract period, which may be up to 2 years*;

(ii) ~~requiring the employer receiving the grant to repay any shortfall in the personal income tax revenues to the state, as calculated in 39-11-203, that are the result of the company failing to meet the number of jobs or pay level of those jobs described in the final grant application. A shortfall in any fiscal year must be assessed against and paid by the company in the next fiscal year specifying that the employer may receive grant funds over the contract period only upon documenting the creation of eligible jobs, the hiring of employees for the jobs, or the incurring of eligible training expenses;~~ and

(iii) providing the department with annual reports and a final closeout report that documents the higher wages paid to an employee upon completion of the training.

(b) The contract must be signed by the person in the primary sector business who is assigned the duties and responsibilities for training and the overall success of the program and by the primary sector business's chief executive. ~~(Terminates June 30, 2007—see. 10, Ch. 567, L. 2003.)~~ *(Terminates June 30, 2009.)*

Section 4. Section 10, Chapter 567, Laws of 2003, is amended to read:

“Section 10. Termination. [This act] terminates June 30, ~~2007~~ 2009.”

Section 5. Repealer. Sections 39-11-203 and 39-11-204, MCA, are repealed.

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

Approved April 8, 2005

CHAPTER NO. 170

[HB 271]

AN ACT APPROPRIATING MONEY FROM THE STATE GENERAL FUND TO THE OFFICE OF ECONOMIC DEVELOPMENT FOR WORKFORCE TRAINING GRANTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Appropriation. There is appropriated \$2,170,000 from the state general fund for fiscal year 2005 to the office of economic development established in 2-15-218 for workforce training grants as provided in 39-11-201.

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

Approved April 8, 2005

CHAPTER NO. 171

[HB 275]

AN ACT REQUIRING THAT THE VALUE OF A VEHICLE BE DETERMINED BY THE APPLICANT FOR A CERTIFICATE OF TITLE WHEN THE APPLICANT PROVIDES A BOND IN THE AMOUNT OF THE VALUE OF THE VEHICLE; AND AMENDING SECTION 61-3-208, MCA.

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

Section 1. Section 61-3-208, MCA, is amended to read:

“61-3-208. Affidavit and bond for certificate of title. (1) If an applicant for a certificate of title cannot provide the department with the certificate of title that assigns the prior owner's interest in the vehicle to the applicant, the department may issue a certificate of title if subsection (2) is complied with.

(2) (a) The applicant shall submit an affidavit in a form prescribed by the department that must be signed and sworn to before an officer authorized to administer oaths and affirmations. The affidavit must accompany the application for the certificate of title and must:

(i) include the facts and circumstances through which the applicant acquired ownership and possession of the vehicle;

(ii) disclose security interests, liens, or encumbrances that are known to the applicant and that are outstanding against the vehicle;

(iii) state that the applicant has the right to have a certificate of title issued.

(b) The application must satisfy one of the following conditions:

(i) The vehicle for which the application is being made must be a boat, personal watercraft, sailboat 12 feet in length or longer, or snowmobile, and the loss of the certificate of title must be established by the applicant to the department's satisfaction.

(ii) The applicant shall certify in the affidavit that the value of the vehicle for which the application is made is \$500 or less as indicated by the average trade-in or wholesale value of the vehicle as determined by the applicable national appraisal guide for the vehicle as of January 1 for the year in which the application is made or, if a national appraisal guide is not available for a vehicle, according to the applicant's knowledge and belief.

(iii) The applicant shall provide a bond, in a form prescribed by the department, issued by a surety company authorized to do business in this state, in an amount equal to the value of the vehicle for which the application is being made; as determined by the ~~surety company~~ *applicant, based on information from the applicable national appraisal guide for the vehicle as of January 1 for the year in which the application is made or, if a national appraisal guide is not available for a vehicle, according to the applicant's knowledge and belief.* The bond is conditioned to indemnify a prior owner, lienholder, subsequent purchaser, secured creditor, or encumbrancer of the motor vehicle and any respective successors in interest against expenses, losses, or damages, including reasonable attorney fees, caused by the issuance of the certificate of title or by a defect in or undisclosed security interest upon the right, title, and interest of the applicant in the vehicle.

(3) Any interested person has a right of action to recover on the bond furnished under this section for a breach of its conditions, but the aggregate liability of the surety to all persons may not exceed the amount of the bond.

(4) Unless the department has been notified of a pending action to recover the bond furnished under this section, the department shall return the bond at the earlier of:

(a) 3 years from the date of issuance of the certificate of title; or

(b) the date of surrender of the valid certificate of title to the department if the vehicle is no longer required to have a certificate of title in this state."

Approved April 7, 2005

CHAPTER NO. 172

[HB 281]

AN ACT CLARIFYING THAT A GUIDE OR PROFESSIONAL GUIDE MAY QUALIFY FOR LICENSURE ACCORDING TO STANDARDS ADOPTED BY THE BOARD OF OUTFITTERS IN LIEU OF AN ENDORSEMENT AND RECOMMENDATION BY A LICENSED OUTFITTER; AND AMENDING SECTION 37-47-303, MCA.

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

Section 1. Section 37-47-303, MCA, is amended to read:

“37-47-303. Guide’s and professional guide’s qualifications. (1) An applicant for a guide’s or professional guide’s license must meet the following qualifications:

(a) be 18 years of age or older and be physically capable and mentally competent to perform the duties of a guide or professional guide;

(b) be endorsed and recommended by an outfitter with a valid license, *unless otherwise qualified under guide or professional guide standards established by the board pursuant to 37-47-201(4)*; and

(c) have been issued a valid wildlife conservation license.

(2) In addition to the requirements listed in subsection (1), an applicant for licensure as a professional guide must meet additional experience requirements, to be set by board rule, and may be required to show proof of training or pass a qualifying examination when required by board rule.”

Approved April 8, 2005

CHAPTER NO. 173

[HB 306]

AN ACT REQUIRING THE DEPARTMENT OF COMMERCE TO PROVIDE AN ELECTRONIC DIRECTORY OF MONTANA PRODUCTS; PROVIDING RULEMAKING AND CONTRACTING AUTHORITY; ALLOWING AN EXEMPTION OF PUBLIC EMPLOYEE CONDUCT STANDARDS; AND AMENDING SECTION 2-2-121, MCA.

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

Section 1. Electronic directory of Montana products. (1) (a) The department of commerce shall provide an electronic directory on the internet or world wide web of Montana businesses that market products qualifying as made in Montana or grown in Montana, as described in subsection (5).

(b) The department may make a decision on the appropriateness of listing a business on the electronic directory based upon the content or use of the products offered by the business.

(2) (a) The electronic directory may be compiled from eligible businesses that have contacted the department of commerce and that have agreed to be listed electronically on the internet or world wide web. Agreement by a company also means that the company grants permission for inclusion on a mailing list pursuant to 2-6-109(1).

(b) The department of commerce is not responsible for listing a company if that company has not contacted the department, has not agreed to a listing pursuant to subsection (2), or does not qualify as having products made in Montana or grown in Montana.

(3) The electronic directory may contain information allowing a potential customer to access directly a business listed in the directory by telephone, mail, or electronic links if the business works with the department of commerce to facilitate and maintain direct access.

(4) The department of commerce may not process orders for a business listed in the electronic directory and is not responsible for handling customer questions or complaints on behalf of a business listed in the electronic directory.

(5) For the purposes of this section, a product is considered made in Montana or grown in Montana if the product has 50% or greater value-added within the state.

(6) For the purposes of this section, "value-added" means a finished product that has been created, made, produced, or enhanced in Montana by Montana residents resulting in a 50% or greater value-added product.

Section 2. Rules — contract — conduct of public officers and employees. (1) The department of commerce may adopt rules necessary for the creation, maintenance, and updating of the electronic directory provided for in [section 1]. The rules may include requirements for the design of a website, information that may be contained in the electronic directory, the format of the electronic directory, information that may be provided to potential customers, and requirements for updating material contained in the electronic directory.

(2) The department of commerce may contract with the department of administration or a private vendor for the creation, maintenance, and updating of the electronic directory and website provided for in [section 1].

(3) Public officers or employees who outside of their work for a public agency are involved in the creation of products that qualify for inclusion in the electronic directory provided for in [section 1] may list their products in the electronic directory without being in violation of the provisions of 2-2-121.

Section 3. Section 2-2-121, MCA, is amended to read:

"2-2-121. Rules of conduct for public officers and public employees.

(1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) *subject to subsection (6)*, use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) (a) A public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to

any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(4) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

(5) A public officer or public employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

(6) A listing by a public officer or a public employee in the electronic directory provided for in [section 1] of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this section. The public officer or public employee may not make arrangements for the listing in the electronic directory during work hours.

~~(6)~~(7) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

~~(7)~~(8) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

~~(8)~~(9) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act."

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 30, and the provisions of Title 30 apply to [sections 1 and 2].

Approved April 8, 2005

CHAPTER NO. 174

[HB 318]

AN ACT AMENDING THE HEALTH INSURANCE LIMITED COVERAGE DEMONSTRATION PROJECT LAW TO ALLOW ISSUANCE OF LIMITED COVERAGE HEALTH INSURANCE PLANS TO ADDITIONAL UNINSURED MONTANA RESIDENTS AND TO ALLOW PLANS TO EXCLUDE COVERAGE FOR CERTAIN DIABETIC BENEFITS AND FOR INBORN ERRORS OF METABOLISM; AMENDING SECTION 33-22-262, 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 33-22-262, MCA, is amended to read:

“33-22-262. (Temporary) Limited coverage individual health benefit plan or managed care plan — demonstration project — criteria — rulemaking. (1) The commissioner of insurance may approve a 12-month demonstration project that allows a health insurance issuer to offer a limited coverage individual health benefit plan or managed care plan. The criteria for approval of a 12-month demonstration project include but are not limited to the following:

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

(b) the plan may be offered only to residents of Montana who have been uninsured for 90 days or longer, *except that at the discretion of the health insurance issuer, the plan may be offered to residents of Montana if the applicant:*

(i) *lost eligibility for a health plan because of age; or*

(ii) *lost coverage under a federally funded health insurance program, such as medicare, medicaid, or the Montana children’s health insurance program, because of age or failure to meet financial guidelines; and*

(c) the commissioner may adopt rules that describe additional criteria to be used to determine approval of demonstration projects. Additional criteria must relate to the purpose as stated in 33-22-261(2).

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

(3) Subject to subsection (4), if specifically listed as a limitation or an exclusion of coverage in the proposal, a demonstration project may limit or

exclude the following health services from its health benefit plan or managed care plan:

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

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

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

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

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

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

(g) *coverage for diabetic education, treatment, services, and supplies, as provided in 33-22-129; or*

(h) *coverage for treatment of inborn errors of metabolism, as provided in 33-22-131.*

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

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

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

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

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

(5) Upon a renewal request and approval by the insurance commissioner, a demonstration project may be renewed for additional 12-month increments for a maximum total of 5 years. (Terminates June 30, 2009—sec. 14, Ch. 325, L. 2003.)”

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

Section 3. Applicability. [This act] applies to limited coverage individual health benefit plans and limited coverage managed care plans issued, renewed, or amended after [the effective date of this act].

Approved April 8, 2005

CHAPTER NO. 175

[HB 321]

AN ACT ALLOWING A COUNTY PARK DISTRICT TO PURCHASE REAL PROPERTY FOR USE AS PARK AND RECREATION LAND WITH CONCURRENCE OF THE COUNTY GOVERNING BODY OR BODIES; AND AMENDING SECTIONS 7-16-2401, 7-16-2423, AND 7-16-2433, MCA.

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

Section 1. Section 7-16-2401, MCA, is amended to read:

“7-16-2401. Park and recreation land — definition. As used in this part, “park and recreation land” means real property, buildings, and fixtures on:

(1) land designated as park land or recreational land by the grant or deed of ~~such~~ *the* land to the county;

(2) land owned, leased, or otherwise possessed by a county *or county park district* and ~~which~~ *that* the governing body of a county *or the county park district commission* has designated as park or recreational land;

(3) land belonging to a public or private entity or person who has donated the recreational rights to ~~such~~ *the* land to a county park district on behalf of the county; or

(4) land ~~which~~ *that*, by agreement between an owner of land and a county park district, the district may use for park or recreational purposes.”

Section 2. Section 7-16-2423, MCA, is amended to read:

“7-16-2423. Powers of county park district commission. A county park district commission has all powers necessary for the *acquisition*, betterment, operation, maintenance, and administration of park and recreation land within the territory of the district. In the exercise of this general grant of powers, the county park district commission may:

(1) employ or contract with administrative, professional, and other personnel necessary for the operation of the district;

(2) *with the concurrence of the county governing body or bodies, lease or purchase real property for use as park and recreation land;*

~~(2)~~(3) lease, purchase, or contract for the purchase of personal property, including property that after purchase constitutes a fixture on real property;

~~(3)~~(4) lease, purchase, or contract for the purchase of buildings and facilities on lands controlled by the district and equip, operate, and maintain the buildings and facilities;

~~(4)~~(5) adopt by resolution rules for the operation and administration of all parks and recreational facilities under its control;

~~(5)~~(6) impose by resolution and collect charges for those services and facilities provided by the district that the commission considers necessary for the prudent operation of the district;

~~(6)~~(7) subject to 15-10-420, establish a property tax mill levy for the operation of the district as provided in 7-16-2431;

~~(7)~~(8) establish a fee on each household for the operation of the district as provided in 7-16-2431;

~~(8)~~(9) enter into agreements with any public or private entity or person for the operation of parks or recreational areas either by the district on behalf of the landowner or by another entity on behalf of the district;

~~(9)~~(10) with the concurrence of the county governing body or bodies, accept donations *or devises* of land or recreational-type easements on land within the district for park or recreational purposes on behalf and in the name of the county or counties;

~~(10)~~(11) accept donations and devises of money or personal property.”

Section 3. Section 7-16-2433, MCA, is amended to read:

“7-16-2433. Park district bonds authorized. (1) A county park district may borrow money by the issuance of its bonds to provide funds for payment of all or part of the cost of *lease or purchase of park and recreation land or of construction, acquisition, furnishing, equipping, extension, and betterment of park facilities* and to provide an adequate working capital for park facilities.

(2) The amount of bonds issued for the purposes provided in subsection (1) and outstanding at any time may not exceed 1.22% of the total assessed value of taxable property, determined as provided in 15-8-111, within the district, as ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(3) The bonds must be authorized, sold, and issued and provisions made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of school districts by Title 20, chapter 9, part 4.”

Approved April 8, 2005

CHAPTER NO. 176

[HB 371]

AN ACT PROVIDING THAT MONEY FROM ANY SOURCE MAY BE PLACED IN THE COUNTY PREDATORY ANIMAL CONTROL FUNDS TO BE USED FOR COUNTY PREDATORY ANIMAL CONTROL; AMENDING SECTIONS 81-7-303 AND 81-7-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 81-7-303, MCA, is amended to read:

“81-7-303. County commissioners permitted to require per capita license fee on sheep. (1) To defray the expense of protection, the board of county commissioners of a county may require all owners or persons in possession of a sheep 1 year of age or older in the county on the regular assessment date of each year as provided in 15-24-903 to pay a per capita license fee in an amount to be determined by the board. All owners or persons in possession of a sheep 1 year of age or older coming into the county after the regular assessment date and subject to the per capita levy under the provisions of Title 15, chapter 24, part 9, are subject to payment of the license fee.

(2) Upon the order of the board of county commissioners, the license fees may be imposed by entering the name of the licensee upon the assessment record of the county by the department of revenue. The license fees are payable to and must be collected by the county treasurer. When levied, the fees are a lien upon the property, both real and personal, of the licensee. If the person against whom the license fee is levied does not own real estate against which the license fee is or may become a lien, then the license fee is payable immediately upon its levy and the treasurer shall collect the fee in the manner provided by law for the collection of personal property taxes that are not a lien upon real estate.

(3) When collected, the fees must be placed in the predatory animal control fund and the fund may be expended on order of the board of county commissioners of the county for predatory animal control only.

(4) Money from any source may be deposited in the predatory animal control fund provided for in this section to carry out the provisions of this part.”

Section 2. Section 81-7-603, MCA, is amended to read:

“81-7-603. County commissioners permitted to levy per capita license fee on cattle. (1) To defray the expense of protection, the board of county commissioners may require all owners or persons in possession of any cattle 9 months old or older in the county on the regular assessment date of each year as provided in 15-24-903 to pay a per capita license fee in an amount to be determined by the board. All owners or persons in possession of cattle 9 months old or older coming into the county after the regular assessment date and subject to the per capita levy under the provisions of Title 15, chapter 24, part 9, are subject to payment of the license fee.

(2) Upon the order of the board of county commissioners, the license fee may be imposed by entering the name of the licensee upon the assessment record of the county by the department of revenue. The license fee is payable to the county treasurer. When levied, the fee is a lien upon the property, both real and personal, of the licensee. If the person against whom the license fee is levied does not own real estate against which the license fee is or may become a lien, then the license fee is payable immediately upon its levy and the treasurer shall collect the fee in the manner provided by law for the collection of personal property taxes that are not a lien upon real estate.

(3) The fees must be placed in a predatory animal control fund separate from the fund provided for in 81-7-303. The money in the predatory animal control fund may be expended by the board of county commissioners only for the predatory animal control program.

(4) Money from any source may be deposited in the predatory animal control fund provided for in this section to carry out the provisions of this part.”

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

Approved April 7, 2005

CHAPTER NO. 177

[HB 409]

AN ACT REVISING THE WORKFORCE DRUG AND ALCOHOL TESTING PROGRAM; REVISING THE DEFINITION OF SAMPLE; REVISING THE CRITERIA FOR A QUALIFIED TESTING PROGRAM; AND AMENDING SECTIONS 39-2-206, 39-2-207, AND 39-2-209, MCA.

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

Section 1. Section 39-2-206, MCA, is amended to read:

“39-2-206. Definitions. As used in 39-2-205 through 39-2-211, the following definitions apply:

(1) “Alcohol” means an intoxicating agent in alcoholic beverages, ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(2) “Alcohol concentration” means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath, as indicated by an evidential breath test.

(3) "Controlled substance" means a dangerous drug, as defined in 49 CFR, part 40, except a drug used pursuant to a valid prescription or as authorized by law.

(4) "Employee" means an individual engaged in the performance, supervision, or management of work in a hazardous work environment, security position, position affecting public safety, or fiduciary position for an employer and does not include an independent contractor. The term includes an elected official.

(5) "Employer" means a person or entity that has one or more employees and that is located in or doing business in Montana.

(6) "Hazardous work environment" includes but is not limited to positions:

(a) for which controlled substance and alcohol testing is mandated by federal law, such as aviation, commercial motor carrier, railroad, pipeline, and commercial marine employees;

(b) that involve the operation of or work in proximity to construction equipment, industrial machinery, or mining activities; or

(c) that involve handling or proximity to flammable materials, explosives, toxic chemicals, or similar substances.

(7) "Medical review officer" means a licensed physician trained in the field of substance abuse.

(8) "Prospective employee" means an individual who has made a written or oral application to an employer to become an employee.

(9) "Qualified testing program" means a program to test for the presence of controlled substances and alcohol that meets the criteria set forth in 39-2-207 and 39-2-208.

(10) "Sample" means a urine specimen, a *breath test*, or *oral fluid obtained in a minimally invasive manner and determined to meet the reliability and accuracy criteria accepted by laboratories for the performance of drug testing that is used to determine the presence of a controlled substance or a ~~breath~~ alcohol test to determine the presence of alcohol.*"

Section 2. Section 39-2-207, MCA, is amended to read:

"39-2-207. Qualified testing program. A qualified testing program must comply with the following criteria:

(1) Testing must be conducted according to the terms of written policies and procedures that must be adopted by the employer and must be available for review by all employees 60 days before the terms are implemented or changed. Controlled substance and alcohol testing procedures *for samples that are covered by 49 CFR, part 40, must conform to 49 CFR, part 40. For samples that are not covered by 49 CFR, part 40, the qualified testing program must contain chain of custody and other procedural requirements that are at least as stringent as those contained in 49 CFR, part 40, and the testing methodology must be cleared by the United States food and drug administration.* At a minimum, the policies and procedures must require:

(a) a description of the applicable legal sanctions under federal, state, and local law for the unlawful manufacture, distribution, possession, or use of a controlled substance;

(b) the employer's program for regularly educating or providing information to employees on the health and workplace safety risks associated with the use of controlled substances and alcohol;

(c) the employer's standards of conduct that regulate the use of controlled substances and alcohol by employees;

(d) a description of available employee assistance programs, including drug and alcohol counseling, treatment, or rehabilitation programs that are available to employees;

(e) a description of the sanctions that the employer may impose on an employee if the employee is found to have violated the standards of conduct referred to in subsection (1)(c) or if the employee is found to test positive for the presence of a controlled substance or alcohol;

(f) identification of the types of controlled substance and alcohol tests to be used from the types of tests listed in 39-2-208;

(g) a list of controlled substances for which the employer intends to test and a stated alcohol concentration level above which a tested employee must be sanctioned;

(h) a description of the employer's hiring policy with respect to prospective employees who test positive;

(i) a detailed description of the procedures that will be followed to conduct the testing program, including the resolution of a dispute concerning test results;

(j) a provision that all information, interviews, reports, statements, memoranda, and test results are confidential communications that may not be disclosed to anyone except:

(i) the tested employee;

(ii) the designated representative of the employer; or

(iii) in connection with any legal or administrative claim arising out of the employer's implementation of 39-2-205 through 39-2-211 or in response to inquiries relating to a workplace accident involving death, physical injury, or property damage in excess of \$1,500, when there is reason to believe that the tested employee may have caused or contributed to the accident; and

(k) a provision that information obtained through testing that is unrelated to the use of a controlled substance or alcohol must be held in strict confidentiality by the medical review officer and may not be released to the employer.

(2) In addition to imposing appropriate sanctions on an employee for violation of the employer's standards of conduct, an employer may require an employee who tests positive on a test for controlled substances or alcohol to participate in an appropriate drug or alcohol counseling, treatment, or rehabilitation program as a condition of continued employment. An employer may require the employee to submit to periodic followup testing as a condition of the counseling, treatment, or rehabilitation program.

(3) Testing must be at the employer's expense, and all employees must be compensated at the employee's regular rate, including benefits, for time attributable to the testing program.

(4) The collection, transport, and confirmation testing of ~~urine~~ urine samples must be performed in accordance with 49 CFR, part 40, and the collection, transport, and confirmation testing of nonurine samples must be as stringent as the requirements of 49 CFR, part 40, in requiring split specimens as defined by the United States department of health and human services,

requiring transport to a testing facility under the chain of custody, and confirmation of all screened positive results using mass-spectrometry technology.

(5) Before an employer may take any action based on a positive test result, the employer shall have the results reviewed and certified by a medical review officer who is trained in the field of substance abuse. An employee or prospective employee must be given the opportunity to provide notification to the medical review officer of any medical information that is relevant to interpreting test results, including information concerning currently or recently used prescription or nonprescription drugs.

(6) Breath alcohol tests must be administered by a certified breath alcohol technician and may only be conducted using testing equipment that appears on the list of conforming products published in the Federal Register.

(7) A breath alcohol test result must indicate an alcohol concentration of greater than 0.04 for a person to be considered as having alcohol in the person's body."

Section 3. Section 39-2-209, MCA, is amended to read:

"39-2-209. Employee's right of rebuttal. The employer shall provide an employee who has been tested under any qualified testing program described in 39-2-208 with a copy of the test report. The employer is also required to obtain, at the employee's request, an additional test of the ~~urine~~ split sample by an independent laboratory selected by the person tested. The employer shall pay for the additional tests if the additional test results are negative, and the employee shall pay for the additional tests if the additional test results are positive. The employee must be provided the opportunity to rebut or explain the results of any test."

Approved April 7, 2005

CHAPTER NO. 178

[HB 420]

AN ACT PROVIDING THAT IN A CHILD ABUSE AND NEGLECT PROCEEDING, IF A MEMBER OF THE CHILD'S EXTENDED FAMILY HAS REQUESTED THAT TEMPORARY OR PERMANENT CUSTODY BE AWARDED TO THAT FAMILY MEMBER AND THE REQUEST IS DENIED, THE FAMILY MEMBER IS ENTITLED TO A WRITTEN STATEMENT OF THE REASONS FOR THE DENIAL AS ALLOWED BY CONFIDENTIALITY LAWS; AND AMENDING SECTIONS 41-3-438, 41-3-439, AND 41-3-445, MCA.

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

Section 1. Section 41-3-438, MCA, is amended to read:

"41-3-438. Disposition — hearing — order. (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

(c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.

(3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment, making any of the following dispositions to protect the welfare of the child:

(a) permit the child to remain with the child's custodial parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding;

(c) grant an order of limited emancipation to a child who is 16 years of age or older, as provided in 41-1-501;

(d) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care of the child; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the child;

(e) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(f) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for the proposed care and treatment. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-446.

(4) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member; and

(iii) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court may award custody to the extended family member who can best meet the child's needs.

(c) If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member, the department shall investigate and determine if awarding custody to the family member is in the best interests of the child. The department shall provide the reasons for any denial to the court. If the court accepts the department's custody recommendation, the court must inform any denied family member of the reasons for the denial to the extent that confidentiality laws allow. The court shall include the reasons for denial in the court order if the family member who is denied temporary legal custody requests it to be included.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or subsection (5) of this section, a permanency plan hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 2. Section 41-3-439, MCA, is amended to read:

"41-3-439. Department to give placement priority to extended family member of an abandoned child. (1) If the department has received temporary legal custody of an abandoned child pursuant to 41-3-438 or permanent legal custody pursuant to 41-3-607, the department shall give priority to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, in determining the person or persons with whom the abandoned child should be placed if:

(a) placement with the extended family member is in the best interests of the abandoned child;

(b) the extended family member has requested that the abandoned child be placed with the family member; and

(c) the department has determined that the extended family member is qualified to receive and care for the abandoned child.

(2) If more than one extended family member of the abandoned child has requested that the child be placed with the family member and all are qualified to receive and care for the child, the department may determine which extended family member to place the abandoned child with in the same manner as provided for in 41-3-438(4).

(3) This part does not affect the department's ability to assess the appropriateness of placement of the child with a noncustodial parent when abandonment has been found against only one parent.

(4) If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that the child be placed with that family member and the department denies the request, the department shall give that family member a written statement of the reasons for the denial to the extent that confidentiality laws allow."

Section 3. Section 41-3-445, MCA, is amended to read:

"41-3-445. Permanency plan hearing. (1) (a) (i) Subject to subsection (1)(b), a permanency plan hearing must be held by the court:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); and

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed in either an adoptive or a guardianship placement, the court shall conduct a hearing and make a finding whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency plan hearing is not required if the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian.

(c) The permanency plan hearing may be combined with a hearing that is required in other sections of this part if held within the time limits of that section. If a permanency plan hearing is combined with another hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section.

(2) At least 3 working days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court for review. The report must address the department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.

(3) At least 3 working days prior to the permanency plan hearing, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) The court's order must be issued within a reasonable time after the permanency plan hearing. The court shall make findings on whether the permanency plan is in the best interests of the child and whether the department has made reasonable efforts to finalize the plan. The court shall order the department to take whatever additional steps are necessary to effectuate the terms of the plan. *If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member or that a prior grant of temporary custody with that family member be made permanent, the department shall investigate and determine if awarding custody to that family member is in the best interests of the child. The department shall provide the reasons for any denial to the court. If the court accepts the department's custody recommendation, the court must inform any denied family member of the reasons for the denial to the extent that confidentiality laws allow. The court shall include the reasons for denial in the court order if the family member who is denied custody requests it to be included.*

(5) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the options provided in subsection (6) and that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditures are reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(6) Permanency options include:

(a) reunification of the child with the child's parent or guardian;

(b) adoption;

(c) appointment of a guardian pursuant to 41-3-444; or

(d) long-term custody if the child is in a planned permanent living arrangement established by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;

(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or

(v) the child meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the child's best interests; and

(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(7) The court may terminate a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served.”

Approved April 8, 2005

CHAPTER NO. 179

[HB 427]

AN ACT INCREASING THE AMOUNT DEDUCTED FROM A POLICE OFFICER'S MONTHLY COMPENSATION THAT IS USED TO PAY PREMIUMS ON GROUP LIFE INSURANCE AND FOR REPRESENTATION BY THE POLICE PROTECTIVE ASSOCIATION; AND AMENDING SECTION 7-32-4122, MCA.

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

Section 1. Section 7-32-4122, MCA, is amended to read:

“7-32-4122. Contributions for group life insurance and representation. (1) Unless the police protective association of the city or town chooses not to participate, as provided in 7-32-4123, an employer shall deduct from each police officer's monthly compensation, except that of a police chief, assistant chief, or captain, an amount equal to ~~0.5%~~ 1% of the base salary paid to newly confirmed police officers in the city or town. The employer shall pay this amount on a monthly basis to the treasurer of the Montana police protective association to be used to pay premiums on a group life insurance policy for contributing police officers of participating city and town associations and to defray expenses incurred by the association when representing members of the plan.

(2) An employer may not deduct the amount provided for in subsection (1) from the monthly compensation of a police chief, assistant chief, or captain unless that person notifies ~~his~~ *the person's* employer in writing to make the deduction.

(3) A person who contributes under this section is a full member of the Montana police protective association and is entitled to all membership rights and benefits, including those benefits provided in subsection (1).

(4) For the purposes of this section, “police officer” means an officer who participates in the police officers' retirement system under Title 19, chapter 9.”

Approved April 7, 2005

CHAPTER NO. 180

[HB 478]

AN ACT PROVIDING THAT INDIVIDUALS REQUIRED TO REGISTER IN COMPLIANCE WITH THE FEDERAL MILITARY SELECTIVE SERVICE ACT MUST BE PROVIDED AN OPPORTUNITY TO FULFILL

REGISTRATION REQUIREMENTS IN CONJUNCTION WITH AN APPLICATION FOR A DRIVER'S LICENSE, COMMERCIAL DRIVER'S LICENSE, INSTRUCTION PERMIT, OR STATE IDENTIFICATION CARD; REQUIRING THE DEPARTMENT OF JUSTICE TO SUBMIT ANY SUPPLIED REGISTRATION INFORMATION TO THE SELECTIVE SERVICE SYSTEM; AND AMENDING SECTION 61-5-107, MCA.

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

Section 1. Section 61-5-107, MCA, is amended to read:

"61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Each application for an instruction permit, driver's license, commercial driver's license, or motorcycle endorsement must be made upon a form furnished by the department. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must include the full legal name, date of birth, sex, residence address of the applicant [and the applicant's social security number], must include a brief description of the applicant, and must provide the following additional information:

(a) the name of each jurisdiction in which the applicant has previously been licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the application;

(b) a certification from the applicant that the applicant is not currently subject to a suspension, revocation, disqualification, or withdrawal of a previously issued driver's license or any driving privileges in another jurisdiction and that the applicant does not have a driver's license from another jurisdiction;

(c) a brief description of any physical or mental disability, limitation, or condition that impairs or may impair the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(d) a brief description of any adaptive equipment or operational restrictions that the applicant relies upon or intends to rely upon to attain the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, including the nature of the equipment or restrictions.

[(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(4) (a) When an application is received from an applicant who is not ineligible for licensure under 61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from each jurisdiction in which the applicant was licensed in the preceding 10-year period. The driving record may be transmitted manually or by electronic medium.

(b) When received, the driving records must be appended to the driver's record created and maintained in this state. The department may rely on information contained in driving records received under this section to determine the appropriate action to be taken against the applicant upon subsequent receipt of a report of a conviction or other conduct requiring suspension or revocation of a driver's license under state law.

(5) *An individual who is under 26 years of age but at least 15 years of age who is required to register in compliance with the federal Military Selective Service Act, 50 App. U.S.C. 453, must be provided an opportunity to fulfill those registration requirements in conjunction with an application for an instruction permit, driver's license, commercial driver's license, or state identification card. If under 18 years of age but at least 15 years of age, an individual must be provided an opportunity to be registered by the selective service system upon attaining 18 years of age. Any registration information supplied on the application must be transmitted by the department to the selective service system. (Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)*

Approved April 7, 2005

CHAPTER NO. 181

[HB 481]

AN ACT ESTABLISHING A MAIN STREET PROGRAM IN THE DEPARTMENT OF COMMERCE TO BE DEVELOPED IN CONJUNCTION WITH THE NATIONAL TRUST FOR HISTORIC PRESERVATION; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Main street program — establishment — purpose — rulemaking. (1) There is a main street program in the department of commerce developed in conjunction with the main street program of the national trust for historic preservation.

(2) The purpose of the program is to:

(a) assist communities in restoring and retaining the historic character of their downtown areas and historic commercial districts;

(b) stimulate business investment, assist in retaining existing small businesses, and promote new businesses in those areas;

(c) strengthen the local tax base;

(d) create employment opportunities in community downtown areas and historic districts; and

(e) generally enhance the economic viability of downtown areas and historic districts.

(3) (a) The department of commerce may adopt rules governing the operation of the main street program.

(b) In developing the rules, the department shall consult with the national trust for historic preservation, provided for in 16 U.S.C. 468, to ensure that Montana's main street program is consistent with the main street program operated by the national trust for historic preservation.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 90, chapter 1, part 1, and the provisions of Title 90, chapter 1, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 7, 2005

CHAPTER NO. 182

[HB 507]

AN ACT ALLOWING ADDITIONAL COMPENSATION FOR COUNTY CLERKS AND RECORDERS WHO ARE ALSO ELECTION ADMINISTRATORS; AND AMENDING SECTION 7-4-2503, MCA.

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

Section 1. Section 7-4-2503, MCA, is amended to read:

“7-4-2503. Salary schedule for certain county officers — county compensation board. (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812, justice of the peace, and county auditor in all counties where the office is authorized must be established by the county governing body based upon the recommendations of the county compensation board provided for in subsection (4).

(b) The annual salary established pursuant to subsection (1)(a) must be uniform for all county officers referred to in subsection (1)(a).

(2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon subsection (1), the sum of \$400 a year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to \$2,000 a year.

(b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of \$2,000 a year.

(c) The county sheriff must receive a longevity payment amounting to 1% of the salary determined under subsection (1) for each year of service with the sheriff's department, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(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 county attorney is entitled to an increase in salary based upon the schedule developed and approved by the county compensation board as provided in subsection (4).

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of \$1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of \$1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of additional service up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of \$500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase.

(4) (a) There is a county compensation board consisting of the county commissioners, three of the county officials described in subsection (1) appointed by the board of county commissioners, the county attorney, and two 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.”

Approved April 8, 2005

CHAPTER NO. 183

[HB 520]

AN ACT PROVIDING THAT INFORMATION OR STATEMENTS PROVIDED 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 THE CRIMINAL LAWS RELATING TO SEXUAL OFFENSES AGAINST A PERSON MAY NOT BE USED IN A PROSECUTION OF THAT PERSON FOR THE OFFENSE OF BEING A MINOR IN POSSESSION OF AN INTOXICATING SUBSTANCE; PROVIDING THAT THE SAME PROTECTION EXTENDS TO A PERSON WHO HELPS THE VICTIM OBTAIN MEDICAL OR OTHER ASSISTANCE OR REPORT THE OFFENSE TO LAW ENFORCEMENT PERSONNEL; AMENDING SECTION 45-5-624, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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 does not commit the offense if the person consumes or gains possession of the 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, shall be fined an amount not to exceed \$200, and may be ordered to perform community service;

(b) for a second offense, shall be fined an amount not to exceed \$200 and may be ordered to perform community service;

(c) for a third or subsequent offense, shall be fined an amount not to exceed \$500 and:

(i) may be ordered to perform community service;

(ii) shall be ordered to complete 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

(iii) 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), or (2)(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)(c)(ii) 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.)

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

Approved April 7, 2005

CHAPTER NO. 184

[HB 555]

AN ACT CREATING THE MONTANA PARENTS AS SCHOLARS PROGRAM; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CREATE A PROGRAM WITH TEMPORARY ASSISTANCE FOR NEEDY FAMILIES OR MAINTENANCE OF EFFORT FUNDS TO FUND PUBLIC ASSISTANCE TO RECIPIENTS IN APPROVED EDUCATIONAL PROGRAMS; AMENDING SECTIONS 53-4-201 AND 53-4-212, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Montana parents as scholars program — department duties. (1) There is a Montana parents as scholars program administered by the department.

(2) The department shall:

(a) use state maintenance of effort funds or temporary assistance for needy families funds, to the extent practicable, in a program to provide public assistance only to eligible individuals for the purpose of continuation of education leading toward a high school diploma, a general equivalency degree, an associate's degree, or a baccalaureate degree;

(b) establish or coordinate a skills training center pilot program in coordination with the board of regents or a community college district to provide training to individuals identified as appropriate through an assessment process;

(c) allow an individual receiving public assistance from the program to attend an approved educational program if the individual:

- (i) has completed an employee assessment conducted as provided by rule;
- (ii) meets the income and resource eligibility requirements;
- (iii) qualifies as a full-time student pursuant to subsection (4); and
- (iv) completes a 180-hour work activity requirement in a 12-month period that may include work study, internships, or paid employment;
- (d) limit approved educational programs to educational courses that are intended to promote economic self-sufficiency, not to exceed the baccalaureate level or one vocational training program; and
- (e) amend the state plan submitted to the United States department of health and human services to provide that the state elects, as authorized by 42 U.S.C. 602(a)(1)(A)(ii), to define work as including all activities permitted under 42 U.S.C. 607 and satisfactory full-time school attendance.

(3) The department shall provide for dependent day care while the recipient is in a work activity.

(4) A program must require a recipient to be a full-time student, which means a recipient:

- (a) shall maintain enrollment in at least 12 credit hours each semester or 30 credit hours a year;
- (b) shall maintain a 2.0 grade point average on a 4.0 grade point scale;
- (c) shall cooperate with paternity and child support requirements;
- (d) shall agree to relocate after graduation, if necessary, to seek employment in a job for which the education was intended; and
- (e) may not be allowed to remain in the program after receiving a baccalaureate degree.

Section 2. Section 53-4-201, MCA, is amended to read:

“53-4-201. Definitions. As used in part 6 and this part, the following definitions apply:

(1) *“Approved educational program” means:*

(a) *a program in a unit of the Montana university system, as provided in 20-25-201, a community college, a tribal college, or any other accredited college in Montana in which an individual is enrolled in pursuit of an associate’s or baccalaureate degree; or*

(b) *an accredited high school or training program approved by the department by rule.*

~~(1)~~(2) *“Assessment” means the process of evaluating a recipient’s skills, education, job readiness, and barriers to employment. The term may include further in-depth examination to identify and access services and resources to assist the recipient in eliminating barriers to employment if barriers are identified during the initial assessment.*

~~(2)~~(3) *“Department” means the department of public health and human services provided for in 2-15-2201.*

~~(3)~~(4) (a) *“Dependent child”, for public assistance purposes, means:*

- (i) a child under 18 years of age; or
- (ii) a person under 19 years of age who is a student, as defined by the department by rule.

(b) The person described in subsection ~~(3)(a)(i)~~ (4)(a)(i) or ~~(3)(a)(ii)~~ (4)(a)(ii) must be living with a specified caretaker relative, as defined by the department by rule.

~~(4)(5)~~ “FAIM project” means the families achieving independence in Montana project as established in 53-4-601.

~~(5)(6)~~ “Family” means a group of people who live with a dependent child, each of whom is related to the dependent child by blood, marriage, or adoption or by law, such as:

(a) a parent, including a natural or adoptive parent, a stepparent, or a person considered by law to be a parent in the case of a child conceived by artificial insemination; or

(b) a sibling.

~~(6)(7)~~ “Federal poverty level” means the measure of indigence established annually by the U.S. office of management and budget.

~~(7)(8)~~ “Financial assistance” means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(a).

~~(8)(9)~~ “Nonfinancial assistance” means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(b).

~~(9)(10)~~ “Public assistance” or “assistance” means a type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

~~(10)(11)~~ “Specified caretaker relative” means a person within a degree of kinship to the dependent child, as specified by department rule, who lives with the child and exercises care and control over the child.

~~(11)(12)~~ “State plan” means the policies and procedures governing the state of Montana’s FAIM project and other programs funded by temporary assistance for needy families. It is prepared by the department and certified by the federal agency that provides funding for those programs.

~~(12)(13)~~ “Temporary assistance for needy families” means the federal block grant established pursuant to 42 U.S.C. 601, et seq.”

Section 3. Section 53-4-212, MCA, is amended to read:

“53-4-212. Department to make rules. (1) The department shall make rules and take action as necessary or desirable for the administration of public assistance programs.

(2) The department shall adopt rules that may include but are not limited to rules concerning:

(a) eligibility requirements, including gross and net income limitations, resource limitations, and income and resource exclusions;

(b) amounts of assistance, methods for computing benefit amounts, and the length of time for which benefits may be granted;

(c) the degree of kinship required for a person to qualify as a specified caretaker relative in order to be eligible for assistance;

(d) procedures and policies for employment and training programs, requirements for participation in employment and training programs, and exemptions, if any, from participation requirements;

(e) requirements for specified caretaker relatives, including cooperation with assessments, the number of hours of participation required for each month,

specific activities required to address employment barriers, and other terms of performance;

(f) eligibility for and terms and conditions of child-care assistance for financial assistance recipients, including maximum amounts of assistance payable and amounts of copayments required by specified caretaker relatives;

(g) eligibility criteria and participation requirements for nonfinancial assistance recipients;

(h) terms of ineligibility or sanctions against a specified caretaker relative or other family member who fails to enter into a family investment agreement, as provided for in 53-4-606, or to comply with the individual's obligations under the agreement, including the length of the period of ineligibility, if any;

(i) requirements, if any, for participation in the employment and training demonstration project;

(j) eligibility for and terms and conditions of extended medical assistance benefits;

(k) reporting requirements;

(l) sanctions, disqualification, or other penalties for failure or refusal to comply with the rules or requirements of a public assistance program;

(m) exemptions from the 60-month limitation on assistance provided in 53-4-231 based on hardship or for families that include an individual who has been battered or subjected to extreme cruelty, as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608, including but not limited to the duration of the exemption;

(n) individuals who must be included as members of an assistance unit;

(o) categories of aliens who may receive assistance, if any;

(p) requirements relating to the assignment of child and medical support rights and cooperation in establishing paternity and obtaining child and medical support;

(q) requirements for eligibility and other terms and conditions of other programs to strengthen and preserve families;

(r) special eligibility or participation requirements applicable to teenage parents, if any; ~~and~~

(s) conditions under which assistance may be continued when an adult or a dependent child is temporarily absent from the home and the length of time for which assistance may be continued; *and*

(t) *approved educational programs, appropriate educational courses of study, employee assessment instruments, and administration of the Montana parents as scholars program provided for in [section 1].*"

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 4, part 2, and the provisions of Title 53, chapter 4, part 2, apply to [section 1].

Section 6. Effective date. [This act] is effective July 1, 2006.

Approved April 8, 2005

CHAPTER NO. 185

[HB 556]

AN ACT CLARIFYING THE MENTAL STATE RELATED TO ONE TYPE OF MEDICAID FRAUD; CLARIFYING THAT A FALSE OR MISLEADING STATEMENT IS NEEDED FOR THAT TYPE OF MEDICAID FRAUD; REMOVING A PROVISION ALLOWING A CONVICTION FOR ATTEMPTING TO OBTAIN A SERVICE OR ITEM THAT THE PERSON IS NOT ENTITLED TO UNDER A REGULATION OR POLICY NOT ADOPTED AS AN ADMINISTRATIVE RULE UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND AMENDING SECTION 45-6-313, MCA.

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

Section 1. Section 45-6-313, MCA, is amended to read:

“45-6-313. Medicaid fraud. (1) A person commits the offense of medicaid fraud when:

(a) the person obtains a medicaid payment or benefit for the person or another person by purposely or knowingly:

~~(i) making, submitting, or authorizing the making or submitting of a false or misleading medicaid claim, statement, representation, application, or document to a medicaid agency for a service or item when that the person knows or has reason to know that the person is not entitled to under applicable statutes, regulations, or under rules, or policies to medicaid payment or benefits for the service or item or for the amount of payment requested or claimed; or~~

~~(ii) making, submitting, or authorizing the making or submitting of a medicaid claim, statement, representation, application, or document under the medicaid program for a service or item when the person knows or has reason to know that the person is not entitled under applicable statutes, regulations, rules, or policies to medicaid payment or benefit for the service or item or for the amount of payment requested or claimed; adopted under Title 2, chapter 4;~~

(b) the person purposely or knowingly:

(i) solicits, accepts, offers, or provides any remuneration, including but not limited to a kickback, bribe, or rebate, other than an amount legally payable under the medical assistance program, for furnishing services or items for which payment may be made under the medicaid program or in return for purchasing, leasing, ordering, arranging for, or recommending the purchasing, leasing, or ordering of any services or items from a provider for which payment may be made under the medicaid program; or

(ii) makes, offers, or accepts a remuneration, a rebate of a fee, or a charge for referring a recipient to another provider for the furnishing of services or items for which payment may be made under the medicaid program; or

(c) the person, with respect to a managed care contract, health maintenance organization contract, or similar contract or subcontract under the medicaid program, purposely or knowingly fails or refuses to provide covered medically necessary services to eligible recipients as required by the contract.

(2) Any conduct or activity that does not violate or that is protected under the provisions of, or federal regulations adopted under, 42 U.S.C. 1395nn or 42 U.S.C. 1320a-7b(b), as may be amended, is not considered an offense under

subsection (1)(b), and the conduct or activity must be accorded the same protections allowed under federal laws and regulations.

(3) In a prosecution for a violation of this section, it is a defense if the person acted in reliance upon the written authorization or advice of the department.

(4) (a) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims not exceeding \$1,000 in value shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined \$1,000 and be imprisoned in the county jail for a term not less than 10 days or more than 6 months. A person convicted of a third or subsequent offense shall be fined \$1,000 and be imprisoned in the county jail for a term not less than 30 days or more than 1 year.

(b) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims exceeding \$1,000 in value shall be fined an amount not to exceed the greater of \$50,000 or 10 times the value of the payments obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(c) For purposes of imposing sentence for a conviction under subsection (1)(b), the value of payments or benefits involved is the greater of the value of medicaid payments or benefits received as a result of the illegal conduct or activity or the value of the remuneration, rebate, or charge involved.

(d) Amounts involved in medicaid fraud committed pursuant to a common scheme or the same transaction may be aggregated in determining the value involved.

(e) A person convicted of the offense of medicaid fraud must be suspended from participation in the medicaid program:

(i) for any period of time not less than 1 year for a first offense, or the person may be permanently terminated from participation in the medical assistance program;

(ii) for any period of time not less than 3 years for a second offense, or the person may be permanently terminated from participation in the medical assistance program; or

(iii) permanently for a third offense.

(5) In addition to any other penalty provided by law, a person convicted of medicaid fraud is not entitled to bill or collect from the recipient, the medicaid program, or any other third-party payor for the services or items involved and shall repay to the medicaid program any payments or benefits obtained by any person for the services or items involved.

(6) The establishment of the criminal offenses specified in this section does not preclude the application of any other provision of law.”

Approved April 7, 2005

CHAPTER NO. 186

[HB 559]

AN ACT ALLOWING AN IRREVOCABLE LETTER OF CREDIT AS SECURITY FOR A PUBLIC CONSTRUCTION CONTRACT; AND AMENDING SECTION 18-2-201, MCA.

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

Section 1. Section 18-2-201, MCA, is amended to read:

“18-2-201. Security requirements. (1) (a) Except as otherwise provided in 85-1-219 and subsections (3) through (5) of this section, whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or public body contracts with a person or corporation to do work for the state, county, or municipality or other public body, city, town, or district, the board, council, commission, trustees, or body shall require the person or corporation with whom the contract is made to make, execute, and deliver to the board, council, commission, trustees, or body a good and sufficient bond with a surety company, licensed in this state, as surety, conditioned that the person or corporation shall:

- (i) faithfully perform all of the provisions of the contract;
- (ii) pay all laborers, mechanics, subcontractors, and material suppliers; and
- (iii) pay all persons who supply the person, corporation, or subcontractors with provisions, provender, material, or supplies for performing the work.

(b) The state or other governmental entity listed in subsection (1)(a) may not require that any bond required by subsection (1)(a) be furnished by a particular surety company or by a particular insurance producer for a surety company.

(2) The state or other governmental entity listed in subsection (1)(a) may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency of the following securities in an amount at least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and subcontractors:

- (a) lawful money of the United States; or
- (b) a cashier's check, certified check, bank money order, certificate of deposit, money market certificate, ~~or~~ bank draft, *or irrevocable letter of credit*, drawn or issued by:
 - (i) any federally or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation; or
 - (ii) a credit union insured by the national credit union share insurance fund.

(3) Any board, council, commission, trustee, or body acting for any county, municipality, or public body other than the state may, subject to the provisions of subsection (1)(b), in lieu of a bond from a licensed surety company, accept good and sufficient bond with two or more sureties acceptable to the governmental entity.

(4) Except as provided in subsection (5), the state or other governmental entity may waive the requirements contained in subsections (1) through (3) for building or construction projects, as defined in 18-2-101, that cost less than \$50,000.

(5) A school district may waive the requirements contained in subsections (1) through (3) for building or construction projects, as defined in 18-2-101, that cost less than \$7,500.”

Approved April 8, 2005

CHAPTER NO. 187

[HB 567]

AN ACT EXPANDING UNEMPLOYMENT BENEFITS TO INCLUDE AN INDIVIDUAL WHO LEAVES WORK DUE TO BEING A VICTIM OF A SEXUAL ASSAULT OR STALKING; AND AMENDING SECTION 39-51-2111, MCA.

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

Section 1. Section 39-51-2111, MCA, is amended to read:

“39-51-2111. Unemployment benefits for victims of domestic violence, sexual assault, or stalking. (1) (a) An individual who is otherwise eligible for benefits may not be denied benefits because the individual left work or was discharged because of circumstances resulting from the individual or a child of the individual being a victim of domestic violence, *a sexual assault, or stalking* or the individual left work or was discharged because of an attempt on the individual's part to protect the individual or the individual's child from domestic abuse, *a sexual assault, or stalking*.

(b) An employer's account may not be charged for the payment of benefits to an individual who left work or was discharged because of circumstances resulting from domestic violence, *a sexual assault, or stalking* as provided for in subsection (1)(a).

(c) An individual may not receive more than 10 weeks of unemployment benefits for the 12-month period after the filing of a claim under the provisions of this section. The provisions of this section do not affect the rights of an individual to receive unemployment benefits that the individual is entitled to under other provisions of state law.

(2) For the purposes of subsection (1), an individual must be treated as being a victim of domestic violence, *a sexual assault, or stalking* if the individual provides one or more of the following:

(a) an order of protection or other documentation of equitable relief issued by a court of competent jurisdiction;

(b) a police record documenting the domestic violence, *sexual assault, or stalking*;

(c) medical documentation of domestic violence, *or a sexual assault*; or

(d) other documentation or certification of domestic violence, *a sexual assault, or stalking* provided by a social worker, clergy member, shelter worker, or professional person, as defined in 53-21-102, who has assisted the individual in dealing with domestic violence, *a sexual assault, or stalking*.

(3) An individual who is otherwise eligible for benefits under this section becomes ineligible if the individual remains in or returns to the abusive situation that caused the individual to leave work or be discharged.

(4) The department shall provide a report to the legislature, as provided in 5-11-210, regarding the benefits applied for and granted under this section, including a summary of the demographics of applicants for and recipients of the benefits and the average and total cost of benefits provided.

(5) For the purposes of this section,:

(a) "domestic violence" means the physical, ~~sexual~~, mental, or emotional abuse of an individual or the individual's child by a person with whom that individual or the individual's child lives or has recently lived;

(b) "sexual assault" means sexual assault as described in 45-5-502, sexual intercourse without consent as described in 45-5-503, incest as described in 45-5-507, or sexual abuse of children as described in 45-5-625; and

(c) "stalking" has the meaning provided in 45-5-220."

Approved April 7, 2005

CHAPTER NO. 188

[HB 581]

AN ACT REVISING AIR QUALITY LAWS; MODIFYING PUBLIC COMMENT PERIODS FOR CERTAIN AIR QUALITY PERMITS; CLARIFYING THE FILING DEADLINE FOR CERTAIN AFFIDAVITS; PROVIDING THE BOARD OF ENVIRONMENTAL REVIEW WITH RULEMAKING AUTHORITY TO AUTHORIZE AND EXTEND PUBLIC COMMENT PERIODS; AMENDING SECTION 75-2-211, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 75-2-211, MCA, is amended to read:

"75-2-211. (Temporary) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Except as provided in 75-1-208(4)(b) and 75-2-234, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department except as provided in subsection (12).

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) (a) The department's decision on the application is not final until 15 days have elapsed from the date of the decision.

(b) The filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) (a) Except as provided in subsections (12)(b) and (12)(c), an applicant who has received a written notice that its application is considered filed pursuant to subsection (8) may:

(i) for a temporary power generation unit or units with a total electrical generation capacity of not more than 125 megawatts, construct the unit or units. Operation of the unit or units may commence upon the department's issuance of a permit under this section.

(ii) for a temporary power generation unit or units with a total electrical generating capacity of 10 megawatts or less, construct and operate the unit or units.

(b) The construction or operation of a temporary power generation unit or units described in subsection (12)(a) is not in violation of this part unless the operation of the temporary power generation unit or units continues after a department decision to deny the permit application becomes final as provided in this section.

(c) (i) A permit applicant shall discontinue construction or operation of a temporary power generation unit or units if the applicant is notified by the department in writing that the applicant has failed to submit by the department's deadline any additional information that is necessary to process the permit application.

(ii) The operation of a permit applicant's temporary power generation unit or units described in subsection (12)(a) may not violate ambient air quality standards.

(d) A permit issued under this part and pursuant to the provisions of this subsection (12) must expire no later than 2 years from the date that the department received the permit application and must require removal of the temporary power generation unit or units upon expiration of the permit unless an air quality permit for permanent operation has been issued.

(13) The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(14) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (14)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department. (Terminates July 1, 2005—sec. 4, Ch. 588, L. 2001.)

75-2-211. (Effective July 1, 2005) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Except as provided in 75-1-208(4)(b) and 75-2-234, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to

list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application, *except as provided in subsection (13)*.

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision. ~~and must include an~~ An affidavit setting forth the grounds for the request *must be filed within 30 days after the department renders its decision.* The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) (a) The department's decision on the application is not final until 15 days have elapsed from the date of the decision.

(b) The filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(13) *The board shall provide, by rule, a period of 15 days in which the public may submit comments on draft air quality permits not subject to subsection (12).*

(14) *The board shall provide, by rule, the basis upon which the department may extend by 15 days:*

(a) *the period as provided in subsection (13) in which the public may submit comments on draft air quality permits not subject to subsection (12); and*

(b) *the period for notifying an applicant of its final decision on approval or denial of an application, as provided in subsection (9)(b).*

~~(13)~~(15) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection ~~(13)(a)~~ (15)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department."

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved April 7, 2005

CHAPTER NO. 189

[HB 607]

AN ACT REMOVING REQUIREMENTS FOR COUNTY TREASURERS TO NOTE TAX RECEIPTS BY CERTAIN DEADLINES AND TO DEMAND PAYMENT OF ROAD TAXES; CHANGING REPORTING DEADLINES FOR COUNTY TREASURERS TO COMPORT WITH THE FISCAL YEAR; AMENDING SECTIONS 15-16-301, 15-24-210, AND 15-24-302, MCA; REPEALING SECTIONS 15-16-115 AND 15-16-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 15-16-301, MCA, is amended to read:

“15-16-301. Delinquent list — list of taxes suspended or canceled — real property. (1) ~~On the third Monday of December and on~~ *On the third Monday of June of each year, the county treasurer must shall* make a report to the county clerk and recorder in detail, showing the amount of taxes collected and a complete list of all persons and property then owing taxes. *The report may be submitted to the county clerk and recorder electronically.*

(2) The county treasurer ~~must shall~~ make a separate report to the county clerk and recorder showing the amount of taxes suspended or canceled under the provisions of Title 15, chapter 24, part 17, during the ~~6-month~~ *1-year* period immediately preceding the date of the report.

(3) The county clerk and recorder shall compare the reports with the books of the county treasurer and shall keep a record of the reports in ~~his~~ *the county clerk and recorder's office.*”

Section 2. Section 15-24-210, MCA, is amended to read:

“15-24-210. Notice of impending sale to certain lienholders. After entry of a notation ~~under 15-16-115(2)~~ *by a county treasurer* concerning a mobile home or manufactured home that is not taxed as an improvement to real property but before directing the sheriff to make a levy and sale on the mobile home or manufactured home, the treasurer shall notify a person who has a properly perfected security interest in the mobile home or manufactured home and who has furnished the treasurer a copy of the instrument by which the interest was perfected of the levy and sale. The notice must state that the sheriff may soon be requested to make a levy and sale on the mobile home or manufactured home.”

Section 3. Section 15-24-302, MCA, is amended to read:

“15-24-302. Collection procedure. All property mentioned in 15-24-301 is assessed at the same value as property of like kind and character, and the assessment, levy, and collection of the tax are governed by the provisions of 15-8-408, ~~15-16-115~~, 15-16-119, 15-16-404, 15-17-911, and 15-24-202, except:

(1) the imposition of registration fees on motor vehicles under 15-24-301(4) to the extent that subsection varies from the general provisions cited in this section; and

(2) livestock taxation governed by 81-7-104 and Title 81, chapter 7, part 2.”

Section 4. Repealer. Sections 15-16-115 and 15-16-117, MCA, are repealed.

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

Approved April 8, 2005

CHAPTER NO. 190

[HB 624]

AN ACT ALLOWING A SCHOOL DISTRICT TO ADOPT FOR FISCAL YEARS 2006 AND 2007 THE GREATER OF ITS MAXIMUM GENERAL FUND BUDGET OR THE HIGHEST ACTUAL BUDGET ADOPTED BETWEEN FISCAL YEAR 2001 AND FISCAL YEAR 2005; AMENDING SECTION 20-9-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

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

Section 1. Section 20-9-308, MCA, is amended to read:

“20-9-308. BASE budgets and maximum general fund budgets. (1)

The trustees of a district shall adopt a general fund budget that is at least equal to the BASE budget established for the district and, except as provided in subsection (3), does not exceed the maximum general fund budget established for the district.

(2) Whenever the trustees of a district adopt a general fund budget that exceeds the BASE budget for the district but does not exceed the maximum general fund budget for the district, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353.

(3) (a) (i) Except as provided in ~~subsection~~ *subsections (3)(a)(ii) and (3)(b)*, the trustees of a school district whose previous year's general fund budget exceeds the current year's maximum general fund budget amount may adopt a general fund budget up to the maximum general fund budget amount or the previous year's general fund budget, whichever is greater. ~~A~~ *Except as provided in subsection (3)(b)*, a school district may adopt a budget under the criteria of this subsection (3)(a)(i) for a maximum of 5 consecutive years, but the trustees shall adopt a plan to reach the maximum general fund budget by no later than the end of the 5-year period. ~~A~~ *Except as provided in subsection (3)(b)*, a school district whose adopted general fund budget for the previous year exceeds the maximum general fund budget for the current year and whose ANB for the previous year exceeds the ANB for the current year by 30% or more shall reduce its adopted budget by:

(A) in the first year, 20% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(B) in the second year, 25% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(C) in the third year, 33.3% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(D) in the fourth year, 50% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year; and

(E) in the fifth year, the remainder of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year.

(ii) ~~The~~ *Except as provided in subsection (3)(b), the* trustees of a district whose general fund budget was above the maximum general fund budget established by Chapter 38, Special Laws of November 1993, and whose general fund budget has continued to exceed the district's maximum general fund budget in each school fiscal year after school fiscal year 1993 may continue to adopt a general fund budget that exceeds the maximum general fund budget. However, the budget adopted for the current year may not exceed the lesser of:

(A) the adopted budget for the previous year; or

(B) the district's maximum general fund budget for the current year plus the over maximum budget amount adopted for the previous year.

(b) A school district that adopted a general fund budget over its maximum general fund budget under any provision of subsection (3)(a) at any time between fiscal year 2001 and fiscal year 2005 may, for fiscal year 2006 and fiscal year 2007, adopt the greater of its maximum general fund budget or the highest actual budget adopted between fiscal year 2001 and fiscal year 2005.

~~(b)(c)~~ (c) The trustees of the district shall submit a proposition to raise any general fund budget amount that is in excess of the maximum general fund budget for the district to the electors who are qualified under 20-20-301 to vote on the proposition, as provided in 20-9-353.

(4) The BASE budget for the district must be financed by the following sources of revenue:

(a) state equalization aid, as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue, as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

(5) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district, as provided in 20-9-141."

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies to school budgets for the school fiscal year beginning July 1, 2005.

Section 3. Termination. [This act] terminates June 30, 2007.

Approved April 8, 2005

CHAPTER NO. 191

[HB 631]

AN ACT REVISING THE CONDITIONS PRECEDENT TO THE SALE OF SURPLUS LINES INSURANCE TO PROVIDE THAT A POLICY MAY NOT BE PLACED WITH AN UNAUTHORIZED INSURER UNLESS THE PREMIUM RATE QUOTED BY THE AUTHORIZED INSURER IS AT LEAST 10 PERCENT HIGHER AND AT LEAST \$1,500 GREATER THAN THE PREMIUM RATE QUOTED BY THE UNAUTHORIZED INSURER; REQUIRING THE UNAUTHORIZED INSURER TO BE A-RATED OR BETTER; REQUIRING INFORMATION DISCLOSURE; AMENDING SECTIONS 2-9-211 AND 33-2-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 2-9-211, MCA, is amended to read:

“2-9-211. Political subdivision insurance. (1) All political subdivisions of the state may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part. Political subdivisions that elect to procure insurance jointly (pooled fund) under this section may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302~~(2)(1)(b)~~ through ~~(4) (1)(d)~~. Political subdivisions that are not in a pooled fund may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302~~(2)(1)(b)~~ through ~~(4) (1)(d)~~ only if the insurer carries an A rating or better by a nationally recognized rating company or is a Lloyds of London underwriter.

(2) A political subdivision that elects to establish a deductible plan may establish a deductible reserve separately or jointly with other subdivisions.

(3) A political subdivision that elects to establish a self-insurance plan may accumulate a self-insurance reserve fund, separately or jointly with other subdivisions, sufficient to provide self-insurance for all liability coverages that, in its discretion, the political subdivision considers should be self-insured. Payments into the reserve fund must be made from local legislative appropriations for that purpose or from the proceeds of bonds or notes authorized by subsection (5). Proceeds of the fund may be used only to pay claims under parts 1 through 3 of this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures must be invested, and all proceeds of the investment must be credited to the fund.

(5) A political subdivision may issue and sell its bonds or notes for purposes of funding a self-insurance or deductible reserve fund and costs incident to the reserve fund in an amount not exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, within the political subdivision as of the date of issuance. The bonds or notes must be authorized by resolution of the governing body, are payable from the taxes authorized by 2-9-212, may be sold at public or private sale, do not constitute debt within the meaning of any statutory debt limitation, and may contain other terms and provisions as the governing body determines. Two or more political subdivisions may agree pursuant to an interlocal agreement to exercise their respective

borrowing powers under this section jointly and may authorize a joint board created pursuant to the agreement to exercise powers on their behalf.”

Section 2. Section 33-2-302, MCA, is amended to read:

“33-2-302. Conditions precedent to sale of surplus lines insurance.

(1) A producing insurance producer may request a surplus lines insurance producer to place or a surplus lines insurance producer may place a contract of insurance with an unauthorized insurer if:

~~(1)~~(a) the insurer is an eligible surplus lines insurer;

~~(2)~~(b) the line of insurance or the full amount of the line of insurance cannot be obtained from authorized insurers or, in the case of a renewal, the line of insurance has not become available from an authorized insurer;

~~(3)~~(c) the producing insurance producer makes a diligent effort to place the business with a minimum of three insurers authorized and actually transacting that line of business in this state. If fewer than three insurers are authorized and actually transacting the line of business in this state, diligent effort must be met by searching this lesser market.

~~(4)~~(d) the insurance is not procured for the purpose of securing:

~~(a)~~(i) a lower premium rate than would be accepted by an authorized insurer *unless the premium rate quoted by the authorized insurer is at least 10% higher and at least \$1,500 greater than the premium rate quoted by the unauthorized insurer*; or

~~(b)~~(ii) an advantage in terms of the insurance contract; and

~~(5)~~(e) all other requirements of this part are met.

(2) *A contract of insurance may not be placed with an unauthorized insurer under subsection (1)(d)(i) unless the unauthorized insurer is the equivalent of A-rated or better and the unauthorized insurer or the surplus lines insurance producer that placed the contract of insurance with the unauthorized insurer has provided the insured with disclosure information in a form and content approved by the commissioner.”*

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 8, 2005

CHAPTER NO. 192

[HB 636]

AN ACT INCREASING TO \$50,000 THE THRESHOLD AT WHICH A MUNICIPALITY SHALL REQUIRE BIDS FOR THE PURCHASE OF ANY AUTOMOBILE, TRUCK, OTHER VEHICLE, ROAD MACHINERY, OTHER MACHINERY, APPARATUS, APPLIANCES, EQUIPMENT, OR MATERIALS OR SUPPLIES OR FOR CONSTRUCTION, REPAIR, OR MAINTENANCE; AND AMENDING SECTIONS 7-5-4302 AND 7-5-4310, MCA.

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

Section 1. Section 7-5-4302, MCA, is amended to read:

“7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts. (1) Except as provided in 7-5-4303 or 7-5-4310, ~~all contracts~~ *a contract* for the purchase of any automobile, truck,

other vehicle, road machinery, other machinery, apparatus, appliances, equipment, or materials or supplies of any kind in excess of \$20,000 or for construction, repair, or maintenance in excess of ~~\$25,000~~ \$50,000 must be let to the lowest responsible bidder after advertisement for bids.

(2) The advertisement must be published as provided in 7-1-4127, and the second publication must be made not less than 5 days or more than 12 days before the consideration of bids. If the advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of the advertisement and the day set for considering bids.

(3) The council may postpone action on any contract until the next regular meeting after bids are received in response to the advertisement and may reject any bids and readvertise as provided in this section.”

Section 2. Section 7-5-4310, MCA, is amended to read:

“7-5-4310. Use of public auction to make purchase. In lieu of soliciting bids, the council may purchase at public auction any vehicle, machinery, appliances, apparatus, building, or materials and supplies for which must be paid a sum less than ~~\$25,000~~ of \$50,000 or less.”

Approved April 8, 2005

CHAPTER NO. 193

[HB 283]

AN ACT REVISING FUNDING FOR CITY AND TOWN FIREFIGHTER RELIEF ASSOCIATION DISABILITY AND PENSION FUNDS; AMENDING SECTIONS 19-18-501, 19-18-503, AND 19-18-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 19-18-501, MCA, is amended to read:

“19-18-501. Contributions to fund. The disability and pension fund ~~shall consist~~ consists of:

(1) all bequests, fees, gifts, emoluments, donations, or money from other sources given or paid to the fund, except as otherwise designated by the donor;

(2) a monthly ~~fee which shall be paid into~~ contribution to the fund by each paid or part-paid member of the association amounting to 6% of the member’s regular monthly salary;

(3) the proceeds of the tax levy provided for in ~~19-18-503 and~~ 19-18-504;

(4) all ~~moneys~~ money received from the state, including those *payments* provided for in 19-18-512; and

(5) all interest and other income earned from the investment of the fund.”

Section 2. Section 19-18-503, MCA, is amended to read:

“19-18-503. ~~Special tax levy for fund required~~ Fund to be soundly funded. (1) ~~The purpose of this section is to provide a means by which each~~ Each disability and pension fund ~~may be~~ must be soundly funded. The fund is soundly funded if, subject to subsection (2):

(a) *assets in the fund are maintained at a level equal to at least 0.21% but no more than 0.52% of the total assessed value of taxable property, determined as provided in 15-8-111, within the limits of the city or town; or*

(b) *funding is maintained at a level determined by an actuarial valuation to be sufficient to keep the fund actuarially sound.*

(2) *An actuarial valuation may be requested only by a city, town, or association. Once an actuarial valuation has been conducted, funding must continue to be based on actuarial determinations rather than on the total assessed value of taxable property pursuant to subsection (1)(a).*

~~(2) Subject to 15-10-420, if the fund contains less than 0.21% of the total assessed value of all taxable property within the limits of the city or town, the governing body of the city or town shall, at the time of the levy of the annual tax, levy a tax as provided in 19-18-504. The tax must be collected as other taxes are collected and, when collected, must be paid into the disability and pension fund."~~

Section 3. Section 19-18-504, MCA, is amended to read:

"19-18-504. Amount of Special tax levy for fund required. (1) Whenever the fund contains an amount that is less than ~~0.21% of the total assessed value of taxable property, determined as provided in 15-8-111, within the city or town~~ *the minimum amount required to keep the fund soundly funded pursuant to 19-18-503*, the city or town council shall, subject to 15-10-420, levy an annual tax on the taxable value of all taxable property within the city or town.

(2) When the fund contains an amount that is less than 0.52% but more than 0.21% of the total assessed value of all taxable property within the city or town, the city or town council may, if authorized by the voters as provided in 15-10-425, levy an annual tax.

(3) *All revenue from the tax must be deposited in the fund."*

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

Approved April 7, 2005

CHAPTER NO. 194

[HB 638]

AN ACT REVISING BARBER AND COSMETOLOGY LAWS; CLARIFYING CONDITIONS FOR A TEMPORARY SHOP OR SALON OPERATING PERMIT; AMENDING SECTIONS 37-31-302 AND 37-31-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 37-31-302, MCA, is amended to read:

"37-31-302. License required to practice, teach, or operate salon or shop, booth, or school. (1) A person may not practice or teach barbering, cosmetology, electrology, esthetics, or manicuring without a license.

(2) A place may not be used or maintained for the teaching of barbering, cosmetology, electrology, esthetics, or manicuring for compensation except under a certificate of registration as a school.

(3) A person may not operate or manage a salon or shop without a license *or a temporary operating permit as provided in 37-31-312.*

(4) A person may not operate or conduct a school of barbering, cosmetology, electrology, esthetics, or manicuring or teach barbering, cosmetology, electrology, esthetics, or manicuring without a license to teach barbering, cosmetology, electrology, esthetics, or manicuring.

(5) A person may not manage or operate a booth without a booth rental license.

(6) A person, firm, partnership, corporation, or other legal entity desiring to operate a salon or shop shall apply to the department for a certificate of registration and license. The application must be accompanied by the registration fee.

(7) A license may not be issued until the inspection fees required in 37-31-312 have been paid.”

Section 2. Section 37-31-312, MCA, is amended to read:

“37-31-312. Inspection — temporary permits. (1) The department shall appoint one or more inspectors, each of whom shall devote time to inspecting salons or shops and performing other duties as the department, in cooperation with the board, may direct. The inspectors may enter a salon or shop, booth, school of barbering, school of cosmetology, school of electrology, school of esthetics, or school of manicuring during business hours for the purpose of inspection, and the refusal of a licensee or school to permit the inspection during business hours is cause for revocation of a licensee’s license or a school’s certificate of registration.

~~(2) Upon application for a license, a salon or shop shall pay an initial inspection fee prescribed by the board.~~

~~(2)~~ *When an owner or operator applies for a shop or salon license and pays licensure and inspection fees prescribed by the board, the board:*

(a) may authorize the department to grant to a new salon or shop, upon payment of the initial inspection fee, a temporary operating permit authorizing the salon or shop to operate for a period not to exceed 90 days or until the inspector is able to make the inspection, whichever occurs first.; or

(b) shall, in order to avoid a disruption of business, authorize the department to grant a temporary operating permit to an existing shop or salon whose owner or operator is currently in good standing with the board, as defined by the board, and who is relocating to a new location. An owner or operator of an existing shop or salon may not receive a temporary operating permit under this section within 90 days of a license renewal date.

(3) A temporary operating permit granted pursuant to subsection (2) authorizes the salon or shop to operate for a period not to exceed 90 days or until the inspector is able to make the inspection, whichever comes first. A temporary permit is not renewable.

(4) The department shall require the an inspector or inspectors, appointed as provided in under subsection (1); to conduct an annual inspection of each salon or shop in the state.”

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

Approved April 7, 2005

CHAPTER NO. 195

[HB 653]

AN ACT PROVIDING A TIME LIMITATION FOR FILING CERTAIN CLAIMS WITH THE MONTANA INSURANCE GUARANTY ASSOCIATION; AMENDING SECTION 33-10-105, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Section 33-10-105, MCA, is amended to read:

“33-10-105. General powers and duties. (1) ~~The~~ *Subject to subsection (2), the association:*

(a) (i) is obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency or before the policy expiration date if less than 30 days after the determination or before the insured replaces the policy or causes its cancellation if the insured does so within 30 days of the determination;

(ii) is obligated under subsection (1)(a)(i) only for that amount of each covered claim that is in excess of \$100 and is less than \$300,000, except that:

(A) the association shall pay an amount not exceeding \$10,000 per policy for a covered claim for the return of unearned premium; and

(B) the association shall pay the full amount of any covered claim arising out of a workers' compensation policy; and

(iii) is not obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises;

(b) is considered the insurer to the extent of its obligation on the covered claims and to that extent has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(c) shall investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which the settlements, releases, and judgments may be properly contested;

(d) shall notify persons as the commissioner directs under 33-10-109(2)(a), *including the department of labor and industry for workers' compensation claims;*

(e) shall handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but the designation may be declined by a member insurer.

(f) shall reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this part.

(2) (a) *Except as provided in subsection (2)(b), a covered claim may not include a claim filed with the association or a liquidator for protection under the*

insured's policy for losses incurred but not reported and may not include a claim filed with the association after the earlier of:

(i) 36 months after the date of the order of liquidation; or

(ii) the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

(b) (i) If the claimant learns that the claimant's condition resulted from an occupational disease compensable under Title 39, chapter 72, within 36 months of the order of liquidation or the final date set by the court for the filing of claims against the liquidator, the claimant shall file a claim, which must be paid under the terms of subsection (1)(a). If the claimant does not learn of a compensable condition under Title 39, chapter 72, until after the time specified in either subsection (1)(a)(i) or (1)(a)(ii) has expired, the claimant shall file a claim with the association within 1 year from the date the claimant knew or should have known that the claimant's condition resulted from an occupational disease.

(ii) Notice by a claimant or insurer to the department of labor and industry of a workers' compensation claim pursuant to Title 39, chapter 71, or an occupational disease claim pursuant to Title 39, chapter 72, constitutes notice to the liquidator for the purposes of workers' compensation or occupational disease claims.

~~(2)~~(3) The association may:

(a) employ or retain persons ~~as are~~ necessary to handle claims and perform other duties of the association;

(b) borrow funds necessary to effect the purposes of this part in accord with the plan of operation;

(c) sue or be sued;

(d) negotiate and become a party to contracts ~~as are~~ necessary to carry out the purpose of this part;

(e) perform other acts ~~as are~~ necessary or proper to effectuate the purpose of this part;

(f) refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year."

Section 2. Applicability. [This act] applies to all liquidations commenced on or after [the effective date of this act].

Approved April 8, 2005

CHAPTER NO. 196

[HB 660]

AN ACT REQUIRING A MINIMUM OF A 30-HOUR NOTIFICATION BY A CLERK OF THE SCHOOL DISTRICT TO COUNTY TREASURERS FOR CASH DEMANDS TO MEET WARRANTS IN EXCESS OF \$50,000; REQUIRING THE ASSESSMENT OF A FEE FOR SCHOOL DISTRICTS FAILING TO MEET THE NOTIFICATION DEADLINES; AND AMENDING SECTIONS 20-3-325 AND 20-9-212, MCA.

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

Section 1. Section 20-3-325, MCA, is amended to read:

“20-3-325. Clerk of the district. (1) As provided in 20-3-321, the trustees shall employ and appoint a clerk of the district. The clerk of the district shall attend all meetings of the trustees to keep an accurate and permanent record of all the proceedings of each meeting. If the clerk is not present at a meeting, the trustees ~~shall~~ *must* have one of their members or a district employee act as clerk for the meeting, and ~~such that~~ *that* person shall supply the clerk with a certified copy of the proceedings. The clerk of the district ~~also shall~~ *must* be the custodian of all documents, records, and reports of the trustees. Unless the trustees provide otherwise, the clerk shall:

(1) ~~(a)~~ keep an accurate and detailed accounting record of all receipts and expenditures of the district in accordance with the financial administration provisions of this title; and

(2) ~~(b)~~ prepare the annual trustees' report required under the provisions of 20-9-213.

(2) *The clerk of the district shall provide the county treasurer with a minimum of 30 hours' notice in advance of cash demands to meet payrolls, claims, and electronic transfers that are in excess of \$50,000. If the clerk of the district fails to provide the required 30-hour notice, the district must be assessed a fee equal to any charges demanded by the state investment pool or other permissible investment manager for improperly noticed withdrawal of funds.*

Section 2. Section 20-9-212, MCA, is amended to read:

“20-9-212. Duties of county treasurer. The county treasurer of each county:

(1) must receive and shall hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts that are entitled to a portion of the money according to the apportionments ordered by the county superintendent or by the superintendent of public instruction. A separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax for elementary equalization;

(b) the basic county tax for high school equalization;

(c) the county tax in support of the transportation schedules;

(d) the county tax in support of the elementary and high school district retirement obligations; and

(e) any other county tax for schools, including the community colleges, that may be authorized by law and levied by the county commissioners.

(2) whenever requested, shall notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) and the amount of any other school money subject to apportionment and apportion the county and other school money to the districts in accordance with the apportionment ordered by the county superintendent or the superintendent of public instruction;

(3) shall keep a separate accounting of the receipts, expenditures, and cash balances for each fund;

(4) except as otherwise limited by law, shall pay all warrants properly drawn on the county or district school money;

(5) must receive all revenue collected by and for each district and shall deposit these receipts in the fund designated by law or by the district if a fund is not designated by law. Interest and penalties on delinquent school taxes must be credited to the same fund and district for which the original taxes were levied.

(6) shall send all revenue received for a joint district, part of which is situated in the county, to the county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months after that date until the end of the school fiscal year;

(7) at the direction of the trustees of a district, shall assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(8) shall register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(9) when directed by the trustees of a district, shall invest the money of the district within 3 working days of the direction;

(10) each month, shall give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, registered warrants, interest distribution, amounts and types of revenue received, and the cash balance;

(11) shall remit promptly to the department of revenue receipts for the county tax for a vocational-technical program within a unit of the university system when levied by the board of county commissioners under the provisions of 20-25-439;

(12) shall invest the money received from the basic county taxes for elementary and high school equalization, the county levy in support of the elementary and high school district retirement obligations, and the county levy in support of the transportation schedules within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. *Clerks of a school district shall provide a minimum of 30 hours' notice in advance of cash demands to meet payrolls, claims, and electronic transfers that are in excess of \$50,000, pursuant to 20-3-325. If a clerk of a district fails to provide the required 30-hour notice, the county treasurer shall assess a fee equal to any charges demanded by the state investment pool or other permissible investment manager for improperly noticed withdrawal of funds.* Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds established to account for the taxes received for the purposes specified in subsections (1)(a) through (1)(d).

(13) shall remit on a monthly basis to the department of revenue, as provided in 15-1-504, all county equalization revenue received under the provisions of 20-9-331 and 20-9-333, including all interest earned and excluding any amount required for tuition paid under the provisions of 20-5-324(6) or (7), in repayment of the state advance for county equalization prescribed in 20-9-347. Any funds in excess of a state advance must be used as required in 20-9-331(1)(b) and 20-9-333(1)(b)."

Approved April 8, 2005

CHAPTER NO. 197

[HB 702]

AN ACT PROVIDING THAT AN OUTFITTER'S LICENSE MAY NOT BE TRANSFERRED; EXPANDING BEYOND FAMILY MEMBERS THOSE WHO MAY CONTINUE THE BUSINESS OF A DECEASED OUTFITTER; CLARIFYING THE ONE-LICENSE LIMIT FOR OUTFITTERS; AND AMENDING SECTIONS 37-47-310 AND 37-47-311, MCA.

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

Section 1. Section 37-47-310, MCA, is amended to read:

“37-47-310. Transfer or amendment of outfitter's license — transfer of river-use days to new owner of fishing outfitter business. (1) An outfitter's license may not be transferred ~~during any license year.~~

(2) An individual person may, upon proper showing, have that person's outfitter's license amended to indicate that the license is being held for the use and benefit of a named proprietorship, partnership, or corporation.

(3) Subject to approval by the board, ~~an immediate member of a person designated by~~ the family of a deceased licensed outfitter may continue to outfit for the deceased outfitter's unexpired license year or until the heirs or personal representative of the estate ~~sells sell~~ the outfitting business or ~~obtains obtain~~ relicensure of the business.

(4) When a fishing outfitter's business is sold or transferred in its entirety, any river-use days that have been allocated to that fishing outfitter through the fishing outfitter's historic use of or activities on restricted-use streams are transferable to the new owner of the fishing outfitter's business. Upon the sale or transfer of a fishing outfitter's business, the outfitter who sells or transfers the business shall notify the new owner that the use of any transferred river-use days is subject to change pursuant to rules adopted by the fish, wildlife, and parks commission and that ~~a ne~~ property right ~~attaches does not attach~~ to the transferred river-use days.”

Section 2. Section 37-47-311, MCA, is amended to read:

“37-47-311. Limit one license. ~~No An individual person~~ may not hold more than one outfitter's license either for ~~his the individual's~~ own benefit or for the use and benefit of a partnership, *limited liability partnership, limited liability company*, or corporation, ~~nor may the~~ *However, the name of any a partnership, limited liability partnership, limited liability company, or corporation may appear on more than one current outfitter's license and within more than one operation plan filed with the board.*”

Approved April 6, 2005

CHAPTER NO. 198

[HB 743]

AN ACT PROVIDING A LEGISLATIVE FINDING THAT IT IS WITHIN A LOCAL GOVERNMENT'S AUTHORITY TO ENTER INTO CERTAIN CONTRACTS; AND REPEALING SECTION 7-32-4139, MCA.

WHEREAS, in 1999, the Legislature enacted Chapter 337, Laws of 1999, providing for reimbursement of training expenses for a police officer to a city or town if the officer leaves employment within 36 months of service; and

WHEREAS, in the 2005 Legislative Session, the same protection for counties regarding the training costs of Deputy Sheriffs is being sought in House Bill No. 19; and

WHEREAS, the House Standing Committee on Local Government seeks to make a finding that the ability to include these provisions in any employment contract is within the contract authority granted to local governments and statutory authorization is unnecessary.

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

Section 1. Finding — contract authority. (1) Pursuant to Article XI, section 6, of the Montana constitution, a local government unit adopting a self-government charter may exercise any power not prohibited by the constitution, law, or charter.

(2) Article XI, section 4, of the Montana constitution provides that a local government unit without self-government powers has powers provided or implied by law and that the powers of incorporated cities and towns and counties must be liberally construed.

(3) Section 7-1-2101 states that a county has the powers specified in this title or in special statutes and has powers that are necessarily implied from those expressed powers.

(4) Section 7-1-2103 states that a county has the power to make contracts that may be necessary to the exercise of its powers.

(5) Section 7-1-2104 states that a county's powers can only be exercised by the board of county commissioners or by agents and officers acting under their authority or authority of law.

(6) Therefore, the legislature finds that it is within a county's contract authority to enter into any contract necessary for the exercise of its power, including but not limited to a contract for reimbursement that may require that the county be reimbursed for the cost of basic course training if an employee leaves employment before completing a reasonable period of service.

Section 2. Finding — contract authority. (1) Pursuant to Article XI, section 6, of the Montana constitution, a local government unit adopting a self-government charter may exercise any power not prohibited by the constitution, law, or charter.

(2) Article XI, section 4, of the Montana constitution provides that a local government unit without self-government powers has powers provided or implied by law and that the powers of incorporated cities and towns and counties must be liberally construed.

(3) Section 7-1-4124 states that a municipality with general powers has the power, subject to the provisions of state law, to contract with persons and to hire, direct, and discharge employees.

(4) Therefore, the legislature finds that it is within a local government's contract authority to enter into any contract necessary for the exercise of its power, including but not limited to a contract for reimbursement that may require that the local government be reimbursed for the cost of basic course training if an employee leaves employment before completing a reasonable period of service.

Section 3. Repealer. Section 7-32-4139, MCA, is repealed.

Section 4. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 7, chapter 1, part 21, and the provisions of Title 7, chapter 1, part 21, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 7, chapter 1, part 41, and the provisions of Title 7, chapter 1, part 41, apply to [section 2].

Approved April 8, 2005

CHAPTER NO. 199

[HB 709]

AN ACT REVISING THE LAWS GOVERNING THE CHIROPRACTIC LEGAL PANEL; CLARIFYING THE STATUS OF THE PANEL AS A QUASI-GOVERNMENTAL ENTITY; REVISING THE SELECTION PROCEDURE FOR THE PANEL; REVISING THE FILING REQUIREMENTS FOR DECISIONS OF THE PANEL; AMENDING SECTIONS 27-12-104, 27-12-402, AND 27-12-605, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 27-12-104, MCA, is amended to read:

“27-12-104. Creation of panel. There is a Montana chiropractic legal panel. The panel *is a quasi-governmental entity and* is allocated to the Montana supreme court for administrative purposes only, except that 2-15-121(2) does not apply. *The only state laws applicable to the panel are those contained in this chapter and those laws specifically made applicable to the panel.*”

Section 2. Section 27-12-402, MCA, is amended to read:

“27-12-402. Selection of panelists. ~~(1) The director shall promptly transmit an application submitted under 27-12-301 to the directors of the chiropractic physician’s state professional society or association board of chiropractors and the director of the state bar of Montana shall each annually transmit a list of licensees to the director of the panel. Within 14 days from the date of transmittal of the application a list, the director of the professional society or association and the state bar of Montana shall each select 12 proposed panelists from the list, which the~~ *The director shall select three from each list to serve on the panel. The director shall notify the parties of the names of the panelists.*

~~(2) If no state professional society or association exists or if the chiropractic physician does not belong to such a society or association, the director shall transmit the application to the chiropractic physician’s state licensing board and the licensing board shall select 12 proposed panelists from the chiropractic physician’s profession and, when applicable, from persons specializing in the same field or discipline as the chiropractic physician.”~~

Section 3. Section 27-12-605, MCA, is amended to read:

“27-12-605. Decision to be filed and copies sent to parties, attorneys, and licensing board. A copy of the decision must be:

- (1) given to the parties and their attorneys; *and*
- (2) retained in the permanent files of the panel; ~~and~~
- ~~(3) given to the chiropractic physician’s professional licensing board.”~~

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved April 8, 2005

CHAPTER NO. 200

[SB 42]

AN ACT CLARIFYING AND RECONCILING THE DUTIES OF THE CHILDREN'S SYSTEM OF CARE PLANNING COMMITTEE AND A SERVICE AREA AUTHORITY BOARD FOR THE DEVELOPMENT OF POLICIES, PLANS, AND BUDGETS FOR THE DELIVERY OF MENTAL HEALTH SERVICES TO CHILDREN; AND AMENDING SECTIONS 52-2-304 AND 53-21-1006, MCA.

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

Section 1. Section 52-2-304, MCA, is amended to read:

"52-2-304. Committee duties. (1) The committee established in 52-2-303 shall, to the extent possible within existing resources:

(a) develop policies aimed at eliminating or reducing barriers to the implementation of a system of care;

(b) promote the development of an in-state quality array of core services in order to assist in returning high-risk children with multiagency service needs from out-of-state placements, limiting and preventing the placement of high-risk children with multiagency service needs out of state, and maintaining high-risk children with multiagency service needs within the least restrictive and most appropriate setting;

(c) advise local agencies to ensure that the agencies comply with applicable statutes, administrative rules, and department policy in committing funds and resources for the implementation of unified plans of care for high-risk children with multiagency service needs and in making any determination that a high-risk child with multiagency service needs cannot be served by an in-state provider;

(d) encourage the development of local interagency teams with participation from representatives from child serving agencies who are authorized to commit resources and make decisions on behalf of the agency represented;

(e) specify outcome indicators and measures to evaluate the effectiveness of the system of care; ~~and~~

(f) develop mechanisms to elicit meaningful participation from parents, family members, and youth who are currently being served or who have been served in the children's system of care in the initiative; *and*

(g) *take into consideration the policies, plans, and budget developed by any service area authority provided for in 53-21-1006.*

(2) The committee shall coordinate responsibility for the development of a stable system of care for high-risk children with multiagency service needs that may include, as appropriate within existing resources:

(a) pooling funding from federal, state, and local sources to maximize the most cost-effective use of funds to provide services in the least restrictive and most appropriate setting to high-risk children with multiagency service needs;

(b) applying for federal waivers and grants to improve the delivery of integrated services to high-risk children with multiagency service needs;

(c) providing for multiagency data collection and for analysis relevant to the creation of an accurate profile of the state's high-risk children with multiagency service needs in order to provide for the use of services based on client needs and outcomes and use of the analysis in the decisionmaking process;

(d) developing mechanisms for the pooling of human and fiscal resources; and

(e) providing training and technical assistance, as funds permit, at the local level regarding governance, development of a system of care, and delivery of integrated multiagency children's services.

(3) (a) In order to maximize integration and minimize duplication, the local interagency team, provided for in subsection (1)(d), may be facilitated in conjunction with an existing statutory team for providing youth services, including:

(i) a child protective team as provided for in 41-3-108;

(ii) a youth placement committee as provided for in 41-5-121 and 41-5-122;

(iii) a county interdisciplinary child information team or an auxiliary team as provided for in 52-2-211;

(iv) a foster care review committee as provided for in 41-3-115; ~~and~~

(v) a local citizen review board as provided for in 41-3-1003; *and*

(vi) *a local advisory council as provided for in 53-21-702.*

(b) If the local interagency team decides to coordinate and consolidate statutory teams, it shall ensure that all state and federal rules, laws, and policies required of the individual statutory teams are fulfilled."

Section 2. Section 53-21-1006, MCA, is amended to read:

"53-21-1006. Service area authorities — leadership committees — boards — plans. (1) In the development of a service area authority, public meetings must be held in communities throughout a service area as defined by the department by rule. The purpose of the meetings is to assist the department to establish a stakeholder leadership committee. The meetings must be designed to solicit input from consumers of services for persons with mental illness, advocates, family members of persons with mental illness, mental health professionals, county commissioners, and other interested community members.

(2) The leadership committee within each service area must include but is not limited to a significant portion of consumers of services for persons with mental illness, family members of persons with mental illness, and a mental health services provider. The department shall provide assistance for the development of a leadership committee. The department shall approve a leadership committee within each service area.

(3) The leadership committee within each service area shall establish a service area authority board and create bylaws that describe the board's functions and method of appointment. The bylaws must be submitted to the department for review.

(4) The service area authority board must be established under Title 35, chapter 2. Upon incorporation, the board may enter into contracts with the

department to carry out the comprehensive plan for mental health for that service area. Nonprofit corporations incorporated for the purposes of this part may not be considered agencies of the department or the state of Montana.

(5) A service area authority board:

(a) shall define the operation and management of the service area mental health system, including:

- (i) provider contracting;
- (ii) quality and outcome management;
- (iii) service planning;
- (iv) utilization management and review;
- (v) preadmission screening and discharge planning;
- (vi) consumer advocacy and family education and rights protection;
- (vii) infrastructure;
- (viii) information system requirements; and
- (ix) procurement processes;

(b) shall submit a biennial review and evaluation of mental health service needs and services within the service area;

(c) shall keep all records of the board and make reports required by the department;

(d) shall prepare and submit a plan and budget proposal to support mental health services for ~~children and~~ adults within the service area, including proposals within existing allocations and specifically outlining any new funding proposals, to the department and to each county in the service area;

(e) may receive and shall administer funding available for the provision of mental health services, including grants from the United States government and other agencies, receipts for established fees rendered, taxes, gifts, donations, and other types of support or income. All funds received by the board must be used to carry out the purposes of this part.

(f) shall reimburse board members for actual and necessary expenses incurred in attending meetings and in the discharge of board duties as assigned by the board; ~~and~~

(g) shall either include a county commissioner or work closely with county commissioners in the service area; *and*

(h) shall take into consideration the policies, plans, and budget developed by the children's system of care planning committee provided for in 52-2-303.

(6) The department shall review the plan and budget proposal provided for in subsection (5)(d) and assess the readiness of the service area authority to assume each duty provided in subsection (5)(a). The department shall certify that the service area authority is capable of assuming the duty before contracting with the service area authority for that duty and may provide for a gradual assumption of the duties by a service area authority within the department's 4-year transition plan, subject to approval of the federal waivers as provided for in section 15, Chapter 602, Laws of 2003.

(7) A service area authority may not directly provide mental health services."

Approved April 8, 2005

CHAPTER NO. 201

[SB 103]

AN ACT PROVIDING THAT INTERNET GAMBLING IS AN ILLEGAL GAMBLING ENTERPRISE EXCEPT AS SPECIFICALLY AUTHORIZED BY MONTANA LAW; DEFINING THE TERM AND PROVIDING EXCEPTIONS; AND AMENDING SECTION 23-5-112, MCA.

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

Section 1. Section 23-5-112, MCA, is amended to read:

“23-5-112. Definitions. Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter:

(1) “Applicant” means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter.

(2) “Application” means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) “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 ~~any~~ 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:

~~(a)~~(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;

~~(b)~~(ii) a promotional game of chance; or

~~(c)~~(iii) an amusement game regulated under *Title 23*, chapter 6 of this title.

(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, of this title 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, of this title and parts 2, 5, and 8 of this chapter; and

(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.*

~~(18)~~(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.

~~(19)~~(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.

~~(20)~~(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.

~~(21)~~(22) “Licensee” means a person who has received a license from the department.

~~(22)~~(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.

~~(23)~~(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* ~~of this title.~~

~~(24)~~(25) “Manufacturer” means a person who 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.

~~(25)~~(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.

~~(26)~~(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.

~~(27)~~(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.

~~(28)~~(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.

~~(29)~~(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.

~~(30)~~(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.

~~(31)~~(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.

~~(32)~~(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.

~~(33)~~(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.

~~(34)~~(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.

~~(35)~~(36) "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. This definition does not apply to video gambling machines authorized under part 6 of this chapter.

~~(36)~~(37) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

Approved April 8, 2005

CHAPTER NO. 202

[SB 105]

AN ACT EXPANDING THE TYPES OF LICENSED HEALTH CARE PROFESSIONALS THAT ARE REQUIRED FOR RINGSIDE ATTENDANCE AT A BOXING OR WRESTLING EVENT; AMENDING SECTION 23-3-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 23-3-405, MCA, is amended to read:

"23-3-405. Rules. (1) The board may adopt rules for the administration and enforcement of this chapter.

(2) (a) The rules must include the granting, suspension, and revocation of licenses and the qualification requirements for those to be licensed to conduct matches or exhibitions or to be licensed as referees, managers, or judges. License qualifications must include appropriate knowledge, experience, and integrity.

(b) The rules may include but are not limited to the following:

- (i) the labeling of a match as a championship match;
- (ii) the number and length of rounds and the weight of gloves;
- (iii) the extent and timing of the physical examination of contestants;
- (iv) the attendance of a referee and the referee's powers and duties; and
- (v) review of decisions made by officials.

(3) The rules must:

(a) meet or exceed the safety codes required by recognized professional boxing and wrestling organizations ~~and;~~

(b) provide reasonable measures for the fair conduct of the matches or exhibitions and for the protection of the health and safety of the contestants. ~~The rules must;~~

(c) require a physical examination of each contestant prior to each match or exhibition ~~and the attendance of a licensed physician at ringside and must;~~

(d) provide for the qualifications of judges, referees, and seconds and for their payment by the promoter; *and*

(e) provide for the attendance at ringside of one or more of the following and require the promoter to pay for that person's attendance:

(i) a licensed physician as defined in 37-3-102;

(ii) a licensed physician assistant-certified as defined in 37-20-401; or

(iii) a licensed advanced practice registered nurse as defined in 37-8-102.”

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

Approved April 8, 2005

CHAPTER NO. 203

[SB 129]

AN ACT REVISING LAWS RELATING TO THE CREATION, CONSOLIDATION, AND FUNDING OF PUBLIC LIBRARIES AND PUBLIC LIBRARY DISTRICTS; ESTABLISHING A LIBRARY DEPRECIATION RESERVE FUND; AND AMENDING SECTIONS 22-1-326, 22-1-327, 22-1-330, 22-1-702, 22-1-705, AND 22-1-707, MCA.

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

Section 1. Section 22-1-326, MCA, is amended to read:

“22-1-326. State aid to public libraries. (1) As used in 22-1-326 through 22-1-331, “public library” means a library created under Title 7 or under 22-1-301 through 22-1-317.

(2) As provided in 22-1-325 through 22-1-329, the commission shall administer state aid to public libraries *and public library districts created and operated under part 7 of this chapter*. The purposes of state aid are to:

(a) broaden access to existing information by strengthening public libraries *and public library districts*;

(b) augment and extend services provided by public libraries *and public library districts*; and

(c) permit new types of library services based on local need.

(3) Money appropriated for the purposes of this section may not be used to supplant general operating funds of recipient public libraries *or public library districts*. The commission may withhold a distribution to a library *or district* that receives less support from a mill levy or local government appropriation than its average for the preceding 3 fiscal years if ~~such a~~ *the* decrease may reasonably be linked to money received or expected to be received under 22-1-325 through 22-1-329.”

Section 2. Section 22-1-327, MCA, is amended to read:

“22-1-327. State aid — per capita — per square mile. The commission shall distribute grants to public libraries *and public library districts* on a per capita and per square mile basis.”

Section 3. Section 22-1-330, MCA, is amended to read:

“22-1-330. Commission rulemaking authority. The commission may adopt rules and procedures for:

(1) the distribution of state aid to public libraries *and public library districts* on a per capita and per square mile basis;

- (2) issuance of state multilibrary cards;
- (3) reimbursement for interlibrary loan lending;
- (4) distribution of base grants provided for in 22-1-331; and
- (5) the composition of the library federation board of trustees, as provided in 22-1-404.”

Section 4. Section 22-1-702, MCA, is amended to read:

“22-1-702. Creation or enlargement of public library district. (1) Proceedings for the creation or enlargement of a public library district or the conversion of a public library to a public library district may be initiated by:

(a) a petition signed by not less than 15% of the qualified electors who reside within the proposed district or the area to be added to an existing district; or

(b) a resolution of intent adopted by the county governing body, calling for the creation of a district.

(2) The petition must contain:

(a) the boundaries of the proposed public library district;

(b) a map showing the boundaries;

(c) subject to 15-10-420, the proposed maximum property tax mill levy that could be levied on property owners within the district for the operation of the district; and

(d) the proposed number of members on the board of trustees. The number of members must be five or seven.

(3) When the territory to be included in the proposed public library district lies in more than one county, a petition must be presented to the governing body of each county in which the territory lies. Each petition must be signed by not less than 15% of the qualified electors of the territory within the county proposed for inclusion in the district.

(4) Upon receipt of a petition to create a public library district, the county clerk shall examine the petition and within 15 days either reject the petition if it is insufficient under the provisions of subsection (1), (2), or (3) or certify that the petition is sufficient and present it to the county governing body at its next meeting.

(5) The text of the petition must be published as provided in 7-1-2121 in each county in which territory of the proposed public library district lies.

(6) At a hearing on the proposed public library district, the county governing body shall hear testimony:

(a) of all interested persons on whether a district should be created;

(b) regarding the proposed boundary, the property tax mill levy, and the number of members of the board of trustees; and

(c) on any other matter relating to the petition.

(7) After the hearing, if the county governing body determines that the proposed public library district should be created, it shall by resolution:

(a) set the boundaries of the proposed district;

(b) set the maximum mill levy for the proposed district;

(c) set the number of members to be on the board of trustees; and

(d) call for an election on the question of whether to create the district. The election may be:

(i) held in conjunction with a regular or primary election; or

(ii) conducted by mail ballot in accordance with the provisions of Title 13, chapter 19.

~~(8) Except as provided in 22-1-705, if all or part of the territory served by an existing public library, as defined in 22-1-326, is included within the boundaries of a newly created or enlarged public library district, the governing body of the county shall adjust the boundaries of the district to exclude the territory served by the public library."~~

Section 5. Section 22-1-705, MCA, is amended to read:

"22-1-705. Consolidation of existing public libraries ~~or~~ and public library districts. (1) (a) If all or part of the territory served by an existing public library, as defined in 22-1-326, is included within the boundaries of a public library district, *the governing body of each county with territory included in the district shall notify the governing body of the city or county that established the public library that the territory served by the library is included in the district boundaries. The governing body of the city or county that established the public library shall hold a public hearing on the question of whether the territory served by the library should be included in the district. If the governing body determines that the territory served by the public library may should be consolidated into the district, upon the adoption of it shall adopt a resolution, following a the public hearing, by the governing body of the city or county that established the public library to that effect and by the board of trustees of the district. If the governing body of the city or county that established the public library determines that the territory served by the library should not be included in the district, it shall adopt a resolution to that effect and the boundaries of the district must be adjusted to exclude the territory served by the public library.*

(b) Any existing bonded indebtedness against the territory served by the public library *or the library district* remains the indebtedness of the original territory and must be paid by levies on the original territory.

(2) The territory of an existing public library district may be consolidated into a contiguous district upon the adoption of a resolution, following a public hearing, by the board of trustees of each district. The governing board of the county containing the largest percentage of territory in the district shall appoint the board of trustees for the consolidated district. The appointed trustees shall serve until their successors are elected, in accordance with the provisions of 22-1-706."

Section 6. Section 22-1-707, MCA, is amended to read:

"22-1-707. Duties and powers of board of trustees. (1) The board of trustees of a public library district shall:

(a) operate and maintain library property within the district and may conduct programs relating to libraries and make improvements to district property as the board considers appropriate;

(b) prepare annual budgets as required by the county governing body or bodies;

(c) pay necessary expenses of district staff members when on business of the district; and

(d) prepare and submit any records required by the Montana state library.

(2) The board has all powers necessary for the betterment, operation, and maintenance of library property within the territory of the public library district, including establishing library locations. In the exercise of this general grant of powers, the board may:

(a) (i) employ or contract with administrative, professional, or other personnel necessary for the operation of the district; or

(ii) contract with other entities to provide or receive library services and to pay out or receive funds for those library services;

(b) lease, purchase, or contract for the purchase of personal property, including property that after purchase constitutes a fixture on real property;

(c) (i) lease, purchase, or contract for the purchase of buildings and facilities on lands controlled by the district *and may own and hold title to the buildings and facilities* and equip, operate, and maintain the buildings and facilities; or

(ii) receive by transfer, conditionally or otherwise, from a county or city, the ownership or control of a library building, with all or any part of its property, provided that any existing debt of the governing body transferring the interest tied to the property must remain an obligation of the governing body and may not become an obligation of the district;

(d) adopt by resolution, bylaws and rules for the operation and administration of the district;

(e) subject to 15-10-420, establish a property tax mill levy for the operation of the district as provided in 22-1-708;

(f) with the concurrence of the county governing body or bodies, accept donations of land or facilities within the district to be used for district purposes;

(g) accept donations and devises of money or personal property; ~~and~~

(h) *establish a library depreciation reserve fund as authorized and described in [sections 7 through 9]; and*

~~(i)~~ (i) exercise other powers, not inconsistent with the law, necessary for the operation and management of the district.”

Section 7. Library depreciation reserve fund authorized. The trustees of a public library district may establish a library depreciation reserve fund for the replacement and acquisition of property, capital improvements, and equipment necessary to maintain and improve district library services.

Section 8. Money for library depreciation reserve fund. Money for the library depreciation reserve fund is those funds that have been allocated for district library services in any year but which have not been expended by the end of the year. The money includes but is not limited to county appropriations, federal reserve sharing funds, and public and private grants.

Section 9. Investment of library depreciation reserve fund. The money held in the library depreciation reserve fund may be invested as provided by law. All interest earned on the fund must be credited to the library depreciation reserve fund.

Section 10. Codification instruction. [Sections 7 through 9] are intended to be codified as an integral part of Title 22, chapter 1, part 7, and the provisions of Title 22, chapter 1, part 7, apply to [sections 7 through 9].

Approved April 8, 2005

CHAPTER NO. 204

[SB 130]

AN ACT REQUIRING THE TRANSFER OF INTEREST EARNED ON THE MICROBUSINESS DEVELOPMENT LOAN ACCOUNT TO THE MICROBUSINESS FINANCE PROGRAM ADMINISTRATIVE ACCOUNT; REQUIRING THE RETENTION OF INTEREST EARNED BY THE MICROBUSINESS FINANCE PROGRAM ADMINISTRATIVE ACCOUNT; AMENDING SECTION 17-6-407, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 17-6-407, MCA, is amended to read:

“17-6-407. Microbusiness development loan account and finance program administrative account — criteria — limitations. (1) (a) There is in the state special revenue fund a microbusiness development loan account into which the funds appropriated pursuant to section 11, Chapter 602, Laws of 1991, money appropriated pursuant to section 3, Chapter 413, Laws of 1995, and money received in repayment of the principal of development loans must be deposited.

(b) The department may make development loans from the account to a certified microbusiness development corporation.

(c) *Interest earned on the account must be deposited in the microbusiness finance program administrative account established in subsection (2).*

(2) There is in the state special revenue fund a microbusiness finance program administrative account into which must be deposited:

(a) all interest received on development loans received directly from microbusiness development corporations;

(b) service charges or fees received from certified microbusiness development corporations; ~~and~~

(c) grants, donations, and private or public income; *and*

(d) *all interest earned on money in the account and interest earned on money in the account provided for in subsection (1)(a).*

(3) Money in the administrative account may be transferred to the development loan account or be used to pay the costs of the program, including personnel, travel, equipment, supplies, consulting costs, and other operating expenses of the program.

(4) Subject to subsection (1), a certified microbusiness development corporation that receives a development loan may apply for an additional loan if the applicant meets the performance criteria established by the department.

(5) To establish the criteria for making development loans, the department shall consider:

(a) the plan for providing services to microbusinesses;

(b) the scope of services to be provided by the certified microbusiness development corporation;

(c) the geographic representation of all regions of the state, including urban, rural[, and tribal] communities;

(d) the plan for providing service to minorities, women, and low-income persons;

(e) the ability of the corporation to provide business training and technical assistance to microbusiness clients;

(f) the ability of the corporation, with ~~its~~ a plan, to:

(i) monitor and provide financial oversight of recipients of microbusiness loans;

(ii) administer a revolving loan fund; and

(iii) investigate and qualify financing proposals and to service credit accounts;

(g) sources and sufficiency of operating funds for the certified microbusiness development corporation; and

(h) the intent of the corporation, with ~~its~~ a plan and written indications of local institutional support, to provide services to a designated multicounty region of the state.

(6) Development loan funds may be used by a certified microbusiness development corporation to:

(a) satisfy matching fund requirements for other state, federal, or private funding only if funding is intended and used for the purpose of providing or enhancing the certified microbusiness development corporation's ability to provide and administer loans, technical assistance, or management training to microbusinesses;

(b) establish a revolving loan fund from which the certified microbusiness development corporation may make loans to qualified microbusinesses, provided that a single loan does not exceed \$35,000 and the outstanding balance of all loans to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share does not exceed \$35,000;

(c) establish a guarantee fund from which the certified microbusiness development corporation may guarantee loans made by financial institutions to qualified microbusinesses. However, a single guarantee may not exceed \$35,000, and the aggregate of all guarantees to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share may not exceed \$35,000.

(7) Development loan funds may not be:

(a) loaned for relending or investment in stocks, bonds, or other securities or for property not intended for use in production by the recipient of the loan; or

(b) used to:

(i) refinance a nonperforming loan held by a financial institution; or

(ii) pay the operating costs of a certified microbusiness development corporation. However, interest income earned from the proceeds of a development loan may be used to pay operating expenses.

(8) Certified microbusiness development corporations are required to contribute cash from other sources to leverage and secure development loans from the program. Contributions provided by the corporation must be on a ratio of at least \$1 from other sources for each \$6 from the program. These

contributions may come from a public or private source other than the program and may be in the form of equity capital, loans, or grants.

(9) Development loans must be made pursuant to a development loan agreement and may be amortization or term loans, bear interest at less than the market rate, be renewable, be callable, and contain other terms and conditions considered appropriate by the department *and* that are consistent with the purposes of and with rules promulgated to implement this part.

(10) Each certified microbusiness development corporation that receives a development loan under this part shall provide the department with an annual audit from an independent certified public accountant. The audit must cover all of the microbusiness development corporation's activities and must include verification of compliance with requirements specific to the microbusiness program.

(11) A certified microbusiness development corporation that is in default for nonperformance under rules established by the department may be required to refund the outstanding balance of development loans awarded prior to the default declaration. A development loan is secured by a first lien on all funds and all receivables administered under the authority of the microbusiness development act by the corporation receiving the loan. (Bracketed language terminates June 30, 2005—sec. 5, Ch. 69, L. 2001.)”

Section 2. Effective date. [This act] is effective July 1, 2005.

Approved April 8, 2005

CHAPTER NO. 205

[SB 134]

AN ACT CLARIFYING APPLICATION OF TITLE 33, MCA, STATUTES TO CAPTIVE INSURANCE COMPANIES REGARDING VOLUNTARY DISSOLUTIONS AND LIMITS ON AGGREGATE PREMIUM TAXES AND CERTAIN OTHER TAXES; CLARIFYING THAT RISK RETENTION GROUP STATUTES APPLY TO CERTAIN CAPTIVE INSURERS; AND AMENDING SECTIONS 33-28-105, 33-28-201, AND 33-28-207, MCA.

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

Section 1. Section 33-28-105, MCA, is amended to read:

“33-28-105. Formation of captive insurance companies. (1) A pure captive insurance company or a sponsored captive insurance company must be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

(2) An association captive insurance company or an industrial insured captive insurance company may be:

(a) incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

(b) incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association or associations; or

(c) organized as a reciprocal insurer under Title 33, chapter 5.

(3) A captive insurance company incorporated or organized in this state may not have less than three incorporators, at least one of whom must be a resident of this state.

(4) (a) In the case of a captive insurance company formed as a corporation and before the articles of incorporation are transmitted to the secretary of state, the incorporators shall file a copy of the proposed articles of incorporation and a petition with the commissioner requesting the commissioner to issue a certificate that finds that the establishment and maintenance of the proposed corporation will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the incorporators;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and

(iii) any other factors that the commissioner considers appropriate.

(b) If the commissioner does not issue a certificate or finds that the proposed articles of incorporation of the captive insurance company do not meet the requirements of the applicable laws, including but not limited to 33-2-112, the commissioner shall refuse to approve the draft of the articles of incorporation and shall return the draft to the proposed incorporators, together with a written statement explaining the refusal.

(c) If the commissioner issues a certificate and approves the draft articles of incorporation, the commissioner shall forward the certificate and an approved draft of articles of incorporation to the proposed incorporators. The incorporators shall prepare two sets of the approved articles of incorporation and shall file one set of articles of incorporation with the secretary of state as required by the applicable law and one set with the commissioner.

(5) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(6) At least one of the members of the board of directors of a captive insurance company must be a resident of this state.

(7) (a) A captive insurance company formed as a corporation has the privileges and is subject to the provisions of general corporation law, as well as the applicable provisions contained in this chapter.

(b) In the event of conflict between the provisions of general corporation law and this chapter, the provisions of this chapter control.

(8) (a) With respect to a captive insurance company formed as a reciprocal insurer, the organizers shall petition and request that the commissioner issue a certificate that finds that the establishment and maintenance of the proposed association will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the organizers;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the attorney-in-fact; and

(iii) any other factors that the commissioner considers appropriate.

(b) The commissioner may either approve the petition and issue the certificate or reject the petition in a written statement of the reasons for the rejection.

(c) A captive insurance company formed as a reciprocal insurer has the privileges and is subject to the provisions of Title 33, chapter 5, in addition to the applicable provisions of this chapter. If there is a conflict between Title 33, chapter 5, and this chapter, the provisions of this chapter control. If a reciprocal insurer is determined to be subject to other provisions of Title 33, chapter 5, the other provisions of chapter 5 are not applicable to a reciprocal captive insurance company formed under this chapter unless those provisions of chapter 5 are expressly made applicable to captive insurance companies.

(d) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of at least one-third of the number of its members.

(9) Except as provided in 33-28-306, the provisions of Title 33 pertaining to mergers, consolidations, conversions, mutualizations, *voluntary dissolutions*, and redomestications apply in determining the procedures to be followed by captive insurance companies in carrying out any of those transactions.

(10) With respect to a branch captive insurance company, the foreign captive insurance company shall petition and request that the commissioner issue a certificate that finds that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the foreign captive insurance company, the licensing and maintenance of the branch operation will promote the general good of the state. The foreign captive insurance company may apply to the secretary of state for a certificate of authority to transact business in this state after the commissioner's certificate is issued."

Section 2. Section 33-28-201, MCA, is amended to read:

"33-28-201. Tax on premiums collected. (1) (a) Each captive insurance company shall pay to the commissioner, on or before March 1 of each year, a tax on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company ~~in this state~~ during the year ending December 31, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, including dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

(b) The tax on direct premiums collected in this state must be calculated as follows:

- (i) 0.4% on the first ~~20~~ \$20 million ~~dollars~~;
- (ii) 0.3% on the next ~~20~~ \$20 million ~~dollars~~;
- (iii) 0.2% on the next ~~20~~ \$20 million ~~dollars~~; and
- (iv) 0.075% on each subsequent dollar collected.

(2) (a) Each captive insurance company shall pay to the commissioner on or before March 1 of each year a tax on assumed reinsurance premiums.

(b) A reinsurance tax does not apply to premiums for risks or portions of risks that are subject to taxation on a direct basis pursuant to subsection (1).

(c) A reinsurance premium tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer and if the intent of the

parties to the transaction is to renew or maintain the business with the captive insurance company.

(d) The amount of the reinsurance tax must be calculated as follows:

(i) 0.225% on the first ~~20~~ \$20 million dollars of assumed reinsurance premiums;

(ii) 0.150% on the next ~~20~~ \$20 million dollars of assumed reinsurance premiums; and

(iii) 0.050% on each subsequent dollar of assumed reinsurance premiums.

(3) (a) If the aggregate taxes to be paid by a captive insurance company calculated under subsections (1) and (2) amount to less than \$5,000 in any year, the captive insurance company shall pay a tax of \$5,000 for that year.

(b) *Aggregate taxes to be paid by a captive insurance company under this section may not exceed \$100,000 in any year.*

(4) Two or more captive insurance companies under common ownership and control must be taxed as though they were a single captive insurance company.

(5) For the purposes of this section, "common ownership and control" means:

(a) in the case of stock corporations, the direct or indirect ownership of 80% or more of the outstanding voting stock of two or more corporations by the same shareholder or shareholders; and

(b) in the case of mutual corporations, the direct or indirect ownership of 80% or more of the surplus and the voting power of two or more corporations by the same member or members.

(6) Only the branch business of a branch captive insurance company is subject to taxation under the provisions of this section."

Section 3. Section 33-28-207, MCA, is amended to read:

"33-28-207. Applicable laws. (1) *The following apply to captive insurance companies:*

(a) definitions of property insurance provided in 33-1-210, casualty insurance provided in 33-1-206, life insurance provided in 33-1-208, health insurance coverage provided in 33-22-140, and disability income insurance provided in 33-1-235;;

(b) *the limitation provided in 33-2-705 on the imposition of other taxes;*

(c) the provisions relating to supervision, rehabilitation, and liquidation of insurance companies as provided for in Title 33, chapter 2, part 13; and

(d) the provisions of 33-18-201, 33-18-203, 33-18-205, and 33-18-242 ~~apply to captive insurance companies.~~

(2) This chapter may not be construed as exempting:

(a) a captive insurance company, its parent, or affiliated companies from compliance with the laws governing workers' compensation insurance; or

(b) *a captive insurance company that is a risk retention group from complying with the provisions of Title 33, chapter 11.*

(3) Except as expressly provided in this chapter, the provisions of Title 33 do not apply to captive insurance companies."

Approved April 8, 2005

CHAPTER NO. 206

[SB 135]

AN ACT INCREASING THE PENALTY FOR KNOWINGLY FILING FALSE INFORMATION ON CERTAIN STATEMENTS FILED WITH THE STATE AUDITOR'S OFFICE; AMENDING SECTION 33-2-701, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 33-2-701, MCA, is amended to read:

“33-2-701. Annual statement — revocation or fine for failure to file — penalty for perjury. (1) (a) Each authorized insurer shall annually on or before March 1 file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the preceding December 31. The statement must be in the general form and context as:

(i) is required or not disapproved by the commissioner; ~~as~~;

(ii) is in current use for similar reports to states in general with respect to the type of insurer and kinds of insurance to be reported upon; ~~and as~~

(iii) supplemented for additional information required by the commissioner.

(b) The statement must be completed in accordance with the annual statement instructions and the accounting practices and procedures manual of the national association of insurance commissioners.

(c) The statement must be accompanied by an actuarial opinion attesting to the adequacy of the insurer's reserves.

(d) The statement must be verified by the oath of the insurer's president or vice president and secretary or, if a reciprocal insurer, by the oath of the attorney-in-fact or its like officers if a corporation. The commissioner may waive the verification under oath.

(2) (a) Each domestic insurer shall file electronic versions of ~~its~~ *the insurer's* annual and quarterly financial statements with the national association of insurance commissioners. The date for submission of the annual statement electronic filing is March 1. The dates for the submission of the quarterly statement electronic filings are as follows:

(i) the first quarter filing is due May 15;

(ii) the second quarter filing is due August 15; and

(iii) the third quarter filing is due November 15.

(b) The commissioner may exempt insurers that operate only in Montana from these filing requirements.

(3) The statement of an alien insurer must relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. If the commissioner requires a statement as to an alien insurer's affairs throughout the world, the insurer shall file the statement with the commissioner as soon as reasonably possible. The statement must be verified by the insurer's United States manager or other authorized officer.

(4) The commissioner may refuse to accept the fee for renewal of the insurer's certificate of authority, as provided in 33-2-117, or may suspend or revoke the certificate of authority of any insurer failing to file ~~its~~ *the insurer's*

annual statement when due or within an extension of time that the commissioner may grant.

(5) A director, officer, ~~insurance producer~~ *agent*, or employee of a company who subscribes to, makes, or concurs in making or publishing an annual statement or any other statement required by law knowing that the statement contains any material statement that is false shall be punished by a fine of not more than ~~\$1,000~~ *\$25,000 for each violation*.

(6) The commissioner may impose a fine not to exceed \$100 a day for each day after March 1 that an insurer fails to file the annual statement referred to in subsection (1). The fine may not exceed a maximum of \$1,000."

Section 2. Effective date — applicability. [This act] is effective July 1, 2005, and applies to all filings due on or after July 1, 2005.

Approved April 8, 2005

CHAPTER NO. 207

[SB 136]

AN ACT REQUIRING THE SECRETARY OF STATE TO MAINTAIN A CENTRAL FILING SYSTEM FOR CERTAIN AGRICULTURAL LIENS THAT MEETS THE REQUIREMENTS OF FEDERAL LAW TO PROTECT PURCHASERS OF FARM PRODUCTS; DESIGNATING THE SECRETARY OF STATE'S OFFICE AS THE APPROPRIATE OFFICE IN WHICH TO FILE AN EFFECTIVE FINANCING STATEMENT FOR THE PURPOSES OF CERTAIN AGRICULTURAL LIENS; AND AMENDING SECTIONS 2-15-401, 30-9A-302, AND 30-9A-501, MCA.

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

Section 1. Section 2-15-401, MCA, is amended to read:

"2-15-401. Duties of secretary of state — authority. (1) In addition to the duties prescribed by the constitution, it is the duty of the secretary of state to:

(a) attend at every session of the legislature for the purpose of receiving bills and resolutions and to perform other duties as may be devolved upon the secretary of state by resolution of the two houses or either of them;

(b) keep a register of and attest the official acts of the governor, including all appointments made by the governor, with date of commission and names of appointees and predecessors;

(c) affix the great seal, with the secretary of state's attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required;

(d) record in proper books all articles of incorporation filed in the secretary of state's office;

(e) take and file receipts for all books distributed by the secretary of state and direct the county clerk of each county to do the same;

(f) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;

(g) furnish, on demand, to any person paying the fees, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in the secretary of state's office;

(h) keep a fee book in which must be entered all fees, commissions, and compensation earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which must be verified annually by the secretary of state's affidavit entered in the fee book;

(i) file in the secretary of state's office descriptions of seals in use by the different state officers;

(j) discharge the duties of member of the board of examiners and of the board of land commissioners and all other duties required by law;

(k) register marks as provided in Title 30, chapter 13, part 3;

(l) report annually to the legislative services division all watercourse name changes received pursuant to 85-2-134 for publication in the Laws of Montana;

(m) keep a register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application;

(n) *establish and maintain a central filing system that complies with the requirements of a central filing system pursuant to 7 U.S.C. 1631 and use the information in the central filing system for the purposes of 7 U.S.C. 1631.*

(2) The secretary of state may develop and implement a statewide electronic filing system as described in 2-15-404."

Section 2. Section 30-9A-302, MCA, is amended to read:

"30-9A-302. Law governing perfection and priority of agricultural liens. ~~While~~ *Subject to the provisions of 30-9A-501, while* farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products."

Section 3. Section 30-9A-501, MCA, is amended to read:

"30-9A-501. Filing office. (1) Except as otherwise provided in subsection (2), if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(a) the office designated for the filing or recording of a mortgage on the real property if:

(i) the collateral is as-extracted collateral or timber to be cut; or

(ii) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(b) the office of secretary of state in all other cases, including if the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(2) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of secretary of state. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement that is or is to become fixtures.

(3) *The office in which a financial institution must file an effective financing statement, as defined in 7 U.S.C. 1631, is the office of the secretary of state.*"

Approved April 8, 2005

CHAPTER NO. 208

[SB 152]

AN ACT DEFINING "BASIC SYSTEM OF FREE QUALITY PUBLIC ELEMENTARY AND SECONDARY SCHOOLS" AS REQUIRED BY ARTICLE X, SECTION 1(3), OF THE MONTANA CONSTITUTION; IDENTIFYING THE EDUCATIONALLY RELEVANT FACTORS ON WHICH THE BASIC SYSTEM IS ESTABLISHED; PROVIDING DEFINITIONS; PROVIDING A STATEMENT OF LEGISLATIVE GOALS FOR PUBLIC SCHOOLS; REQUIRING THE BOARD OF PUBLIC EDUCATION TO SUBMIT NEW OR PROPOSED AMENDMENTS TO ACCREDITATION STANDARDS TO THE EDUCATION AND LOCAL GOVERNMENT INTERIM COMMITTEE FOR REVIEW AND FOR A DETERMINATION OF FISCAL IMPACT FOR INCLUSION IN THE EXECUTIVE BUDGET; REQUIRING THE LEGISLATURE TO DETERMINE THE COSTS OF THE BASIC SYSTEM OF FREE QUALITY PUBLIC ELEMENTARY AND SECONDARY SCHOOLS; REQUIRING THAT THE LEGISLATURE AUTHORIZE A STUDY AT LEAST EVERY 10 YEARS TO REASSESS THE EDUCATIONAL NEEDS AND COSTS RELATED TO THE BASIC SYSTEM OF FREE QUALITY PUBLIC ELEMENTARY AND SECONDARY SCHOOLS AND INCORPORATE THE RESULTS OF THOSE REASSESSMENTS INTO THE STATE'S FUNDING FORMULA IF NECESSARY; AMENDING SECTIONS 20-1-101, 20-7-101, AND 20-9-303, MCA; REPEALING SECTIONS 20-2-115 AND 20-9-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Legislative goals for public elementary and secondary schools. It is the goal of the legislature that Montana's public elementary and secondary school system, in cooperation with parents or guardians, create a learning environment for each student that:

- (1) furthers the ability to reason critically and creatively;
- (2) fosters the ability to effectively communicate ideas, knowledge, and thoughts;
- (3) develops a sense of personal and civic responsibility;
- (4) develops a strong work ethic, postsecondary readiness, and employment skills; and
- (5) encourages a healthy lifestyle.

Section 2. Basic system of free quality public elementary and secondary schools defined — identifying educationally relevant factors — establishment of funding formula and budgetary structure — legislative review. (1) Pursuant to Article X, section 1, of the Montana constitution, the legislature is required to provide a basic system of free quality public elementary and secondary schools throughout the state of Montana that will guarantee equality of educational opportunity to all.

(2) As used in this section, a “basic system of free quality public elementary and secondary schools” means:

(a) the educational program specified by the accreditation standards provided for in 20-7-111, which represent the minimum standards upon which a basic system of free quality public elementary and secondary schools is built;

(b) educational programs to provide for students with special needs, such as:

(i) a child with a disability, as defined in 20-7-401;

(ii) an at-risk student;

(iii) a student with limited English proficiency;

(iv) a child who is qualified for services under 29 U.S.C. 794; and

(v) gifted and talented children, as defined in 20-7-901;

(c) educational programs to implement the provisions of Article X, section 1(2), of the Montana constitution and Title 20, chapter 1, part 5, through development of curricula designed to integrate the distinct and unique cultural heritage of American Indians into the curricula, with particular emphasis on Montana Indians;

(d) qualified and effective teachers or administrators and qualified staff to implement the programs in subsections (2)(a) through (2)(c);

(e) facilities and distance learning technologies associated with meeting the accreditation standards;

(f) transportation of students pursuant to Title 20, chapter 10;

(g) a procedure to assess and track student achievement in the programs established pursuant to subsections (2)(a) through (2)(c); and

(h) preservation of local control of schools in each district vested in a board of trustees pursuant to Article X, section 8, of the Montana constitution.

(3) In developing a mechanism to fund the basic system of free quality public elementary and secondary schools and in making adjustments to the funding formula, the legislature shall, at a minimum, consider the following educationally relevant factors:

(a) the number of students in a district;

(b) the needs of isolated schools with low population density;

(c) the needs of urban schools with high population density;

(d) the needs of students with special needs, such as a child with a disability, an at-risk student, a student with limited English proficiency, a child who is qualified for services under 29 U.S.C. 794, and gifted and talented children;

(e) the needs of American Indian students; and

(f) the ability of school districts to attract and retain qualified educators and other personnel.

(4) By July 1, 2007, the legislature shall:

(a) determine the costs of providing the basic system of free quality public elementary and secondary schools;

(b) establish a funding formula that:

(i) is based on the definition of a basic system of free quality public elementary and secondary schools and reflects the costs associated with providing that system as determined in subsection (4)(a);

(ii) allows the legislature to adjust the funding formula based on the educationally relevant factors identified in this section;

(iii) is self-executing and includes a mechanism for annual inflationary adjustments;

(iv) is based on state laws;

(v) is based on federal education laws consistent with Montana's constitution and laws; and

(vi) distributes to school districts in an equitable manner the state's share of the costs of the basic system of free quality public elementary and secondary schools; and

(c) consolidate the budgetary fund structure to create the number and types of funds necessary to provide school districts with the greatest budgetary flexibility while ensuring accountability and efficiency.

(5) At least every 10 years following [the effective date of this act], the legislature shall:

(a) authorize a study to reassess the educational needs and costs related to the basic system of free quality public elementary and secondary schools; and

(b) if necessary, incorporate the results of those assessments into the state's funding formula.

Section 3. Section 20-1-101, MCA, is amended to read:

"20-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) *"Accreditation standards" means the body of administrative rules governing standards such as:*

(a) *school leadership;*

(b) *educational opportunity;*

(c) *academic requirements;*

(d) *program area standards;*

(e) *content and performance standards;*

(f) *school facilities and records;*

(g) *student assessment; and*

(h) *general provisions.*

~~(1)~~(2) *"Agricultural experiment station" means the agricultural experiment station established at Montana state university-Bozeman.*

(3) *"At-risk student" means any student who is affected by environmental conditions that negatively impact the student's educational performance or threaten a student's likelihood of promotion or graduation.*

~~(2)~~(4) *"Average number belonging" or "ANB" means the average number of regularly enrolled, full-time pupils attending the public schools of a district.*

~~(3)~~(5) *"Board of public education" means the board created by Article X, section 9, subsection (3), of the Montana constitution and 2-15-1507.*

~~(4)~~(6) "Board of regents" means the board of regents of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

~~(5)~~(7) "Commissioner" means the commissioner of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1506.

~~(6)~~(8) "County superintendent" means the county government official who is the school officer of the county.

~~(7)~~(9) "District superintendent" means a person who holds a valid class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(10)(a) *"Educational program" means a set of educational offerings designed to meet the program area standards contained in the accreditation standards.*

(b) *The term does not include an educational program or programs used in 20-4-121 and 20-25-803.*

~~(8)~~(11) "K-12 career and vocational/technical education" means organized educational activities that have been approved by the office of public instruction and that:

(a) offer a sequence of courses that provide a pupil with the academic and technical knowledge and skills that the pupil needs to prepare for further education and for careers in the current or emerging employment sectors; and

(b) include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills of the pupil.

~~(9)~~(12) "Principal" means a person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a principal. For the purposes of this title, any reference to a teacher must be construed as including a principal.

~~(10)~~(13) "Pupil" means a child who is 6 years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustees under 20-5-101(3) but has not yet reached 19 years of age and who is enrolled in a school established and maintained under the laws of the state at public expense. For purposes of calculating the average number belonging pursuant to 20-9-311, the definition of pupil includes a person who has not yet reached 19 years of age by September 10 of the year and is enrolled under 20-5-101(3) in a school established and maintained under the laws of the state at public expense.

~~(11)~~(14) "Pupil instruction" means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

(15) *"Qualified and effective teacher or administrator" means an educator who is licensed and endorsed in the areas in which the educator teaches, specializes, or serves in an administrative capacity as established by the board of public education.*

~~(12)~~(16) "Regents" means the board of regents of higher education.

~~(13)~~(17) "School food services" means a service of providing food for the pupils of a district on a nonprofit basis and includes any food service financially assisted through funds or commodities provided by the United States government.

~~(14)~~(18) "State board of education" means the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1), of the Montana constitution.

~~(15)~~(19) "State university" means Montana state university-Bozeman.

(20) "*Student with limited English proficiency*" means any student:

(a) (i) *who was not born in the United States or whose native language is a language other than English;*

(ii) *who is an American Indian and who comes from an environment in which a language other than English has had a significant impact on the individual's level of English proficiency; or*

(iii) *who is migratory, whose native language is a language other than English, and who comes from an environment in which a language other than English is dominant; and*

(b) *whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the student:*

(i) *the ability to meet the state's proficiency assessments;*

(ii) *the ability to successfully achieve in classrooms where the language of instruction is English; or*

(iii) *the opportunity to participate fully in society.*

~~(16)~~(21) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the Montana constitution.

~~(17)~~(22) "System" means the Montana university system.

~~(18)~~(23) "Teacher" means a person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher includes a person for whom an emergency authorization of employment has been issued under the provisions of 20-4-111.

~~(19)~~(24) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

~~(20)~~(25) "Textbook dealer" means a party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state.

~~(21)~~(26) "Trustees" means the governing board of a district.

~~(22)~~(27) "University" means the university of Montana-Missoula.

~~(23)~~(28) "Vocational-technical education" means vocational-technical education of vocational-technical students that is conducted by a unit of the Montana university system, a community college, or a tribally controlled community college, as designated by the board of regents."

Section 4. Section 20-7-101, MCA, is amended to read:

“20-7-101. Standards of accreditation. (1) Standards of accreditation for all schools shall *must* be adopted by the board of public education upon the recommendations of the superintendent of public instruction.

(2) *Prior to adoption or amendment of any accreditation standard, the board shall submit each proposal to the education and local government interim committee for review. The interim committee shall request a fiscal analysis to be prepared by the legislative fiscal division. The legislative fiscal division shall provide its analysis to the interim committee and to the office of budget and program planning to be used in the preparation of the executive budget.*

(3) *If the fiscal analysis of the proposal is found by the legislative fiscal division to have a substantial fiscal impact, the board may not implement the standard until July 1 following the next regular legislative session and shall request that the same legislature fund implementation of the proposed standard. A substantial fiscal impact is an amount that cannot be readily absorbed in the budget of an existing school district program.*

~~(2)~~(4) Standards for the retention of school records must be as provided in 20-1-212.”

Section 5. Section 20-9-303, MCA, is amended to read:

“20-9-303. Nonisolated school BASE budget funding — special education funds. (1) An elementary school that has an ANB of nine or fewer pupils for 2 consecutive years and that is not approved as an isolated school under the provisions of 20-9-302 may budget and spend the BASE budget amount, but the county and state shall provide one-half of the direct state aid, and the district shall finance the remaining one-half of the direct state aid by a tax levied on the property of the district. When a school of nine or fewer pupils is approved as isolated under the provisions of 20-9-302, the county and state shall participate in the financing of the total amount of the direct state aid.

(2) Funds provided to support the special education program may be expended only for special education purposes as approved by the superintendent of public instruction in accordance with the special education budgeting provisions of this title. Expenditures for special education must be accounted for separately from and in addition to the balance of the school district general fund budgeting requirements provided in ~~20-9-307~~ and 20-9-308. The amount of the special education allowable cost payments that is not matched with district funds, as required in 20-9-321, will reduce by a like amount the district’s ensuing year’s allowable cost payment for special education.”

Section 6. Repealer. Sections 20-2-115 and 20-9-307, MCA, are repealed.

Section 7. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 20, and the provisions of Title 20 apply to [sections 1 and 2].

Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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

Approved April 7, 2005

CHAPTER NO. 209

[SB 162]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE BONDING OF COUNTY OFFICIALS AND EMPLOYEES AND CITY OR TOWN OFFICERS AND EMPLOYEES; EXEMPTING COUNTY AND MUNICIPAL OFFICERS FROM THE GENERAL PROVISIONS RELATED TO OFFICIAL BONDS; REMOVING THE REQUIREMENT THAT BONDS BE APPROVED BY THE COUNTY ATTORNEY OR CITY OR TOWN ATTORNEY AND FILED WITH THE COUNTY CLERK AND RECORDER OR CITY OR TOWN CLERK; REMOVING THE REQUIREMENT THAT GROUP BONDS COMPLY WITH CERTAIN CONDITIONS; REMOVING THE REQUIREMENT THAT BONDS BE PURCHASED THROUGH A COMPETITIVE BID PROCESS; ALLOWING A SELF-INSURANCE PLAN TO PROVIDE THE BONDS; PROHIBITING A LOCAL GOVERNMENT OFFICIAL FROM COLLECTING ON THE OFFICIAL'S BOND IF THE OFFICIAL OVERSPENDS THE APPROPRIATION FOR A FUND; REMOVING THE BONDING PROVISIONS RELATED SPECIFICALLY TO A SHERIFF; AMENDING SECTIONS 2-9-501, 2-9-701, 2-9-703, 2-9-803, 2-9-804, AND 7-6-4005, MCA; REPEALING SECTION 2-9-711, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-9-501, MCA, is amended to read:

“2-9-501. Application — ~~state official and employee bonds excepted.~~ The provisions of this part apply to ~~the bonds of county, town, or township officers;~~ the official bond of any executor, administrator, or guardian; or to the bond or undertaking of any person ~~where~~ *when* by law a bond or undertaking is required, except *county, town, or township officers and state officers and employees.*”

Section 2. Section 2-9-701, MCA, is amended to read:

“2-9-701. County officers and employees to be bonded — ~~form — conditions of group bonds.~~ (1) All elected and appointed county officers and employees ~~shall~~ *must* be bonded *for the faithful performance of all official duties required by law.*

~~(2) The form of bonds for county officers and employees must be approved by the county attorney and filed and recorded in the office of the county clerk and recorder.~~

~~(3)~~(2) A bond may cover an individual officer or employee, or a blanket bond may cover all officers and employees or any group or combination of county officers and employees.

~~(4) All official bonds covering a group of county officers or employees shall be made upon the same conditions as are required of a principal under subsections (1) through (3) of 2-9-504, except that the bond need not be signed by each officer or employee.”~~

Section 3. Section 2-9-703, MCA, is amended to read:

“2-9-703. Purchase. (1) The board of county commissioners shall purchase all surety bonds for county officers and employees.

~~(2) The board of county commissioners shall actively solicit offers on a competitive basis from available qualified insurance or surety companies before purchasing the bonds.~~

~~(2)~~(2) Bonds purchased by the board of county commissioners ~~shall~~ *must* be executed by responsible insurance or surety companies authorized and admitted to execute surety bonds in this state *or by a self-insurance pool insuring counties as authorized by 2-9-211.*

Section 4. Section 2-9-803, MCA, is amended to read:

“2-9-803. Form — coverage — approval City and town officers and employees to be bonded. (1) A bond may cover an individual officer or employee or a blanket bond may cover all officers and employees or any group or combination of officers and employees.

(2) All ~~official bonds covering a group of~~ *elected and appointed* city or town officers or employees ~~shall be made upon the same conditions as are required of a principal under subsections (1) through (3) of 2-9-504, except that the bond need not be signed by each officer and employee~~ *must be bonded for the faithful performance of all official duties required by law.*

~~(3) The form of bonds for city or town officers and employees must be approved by the city or town attorney and filed and recorded in the office of the city or town clerk.”~~

Section 5. Section 2-9-804, MCA, is amended to read:

“2-9-804. Purchase — responsible surety. (1) The city or town council or commissioners shall purchase all surety bonds for city officers and employees.

(2) Bonds purchased by the city or town council or commission must be executed by responsible insurance or surety companies authorized and admitted to execute surety bonds in this state *or by a self-insurance pool insuring cities or towns as authorized under 2-9-211.*

Section 6. Section 7-6-4005, MCA, is amended to read:

“7-6-4005. Expenditures limited to appropriations. (1) Local government officials may not make a disbursement or an expenditure or incur an obligation in excess of the total appropriations for a fund.

(2) A local government official who violates subsection (1) is liable for the amount of the excess disbursement, expenditure, or obligation personally ~~and upon the official's bond.~~

(3) The subsequent claims approval process may not be considered as the making of a disbursement or an expenditure or as incurring an obligation and does not otherwise limit or mitigate the local government official's personal liability.”

Section 7. Repealer. Section 2-9-711, MCA, is repealed.

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

Approved April 8, 2005

CHAPTER NO. 210

[SB 165]

AN ACT REVISING CONSUMER LOAN LAWS; PROVIDING THAT A CONSUMER OF A DEFERRED DEPOSIT LOAN OR A TITLE LOAN HAS THE RIGHT TO RESCISSION THROUGH THE FIRST BUSINESS DAY FOLLOWING THE EXECUTION OF THE LOAN AGREEMENT; ALLOWING ARBITRATION CLAUSES IN LOAN AGREEMENTS; ESTABLISHING

FAIRNESS STANDARDS FOR MANDATORY ARBITRATION CLAUSES IN DEFERRED DEPOSIT LOAN AND TITLE LOAN AGREEMENTS; AND AMENDING SECTIONS 31-1-715, 31-1-723, AND 31-1-816, MCA.

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

Section 1. Section 31-1-715, MCA, is amended to read:

“31-1-715. Loan requirements — right of rescission — arbitration. (1) Each 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).*

~~(5)~~(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.

~~(6)~~(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.

~~(7)~~(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.”

Section 2. 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.

(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) a mandatory arbitration clause;~~

~~(e)~~(d) any assignment of or order for payment of wages or other compensation for services;

~~(f)~~(e) a provision in which the consumer agrees not to assert any claim or defense arising out of the contract; or

~~(g)~~(f) a waiver of any provision of this part.”

Section 3. Section 31-1-816, MCA, is amended to read:

“31-1-816. Title loan requirements — liability of borrower — right of rescission — arbitration. (1) Any licensed title lender may engage in the business of making loans secured by a certificate of title subject to the provisions of this part.

(2) Every title loan must be reduced to writing in a title loan agreement. Each title loan agreement must provide that:

(a) the title lender agrees to make a loan of money to the borrower and that the borrower agrees to give the title lender a security interest in unencumbered titled personal property owned by the borrower;

(b) the borrower consents to the title lender keeping possession of the certificate of title;

(c) (i) the borrower has the exclusive right to redeem the certificate of title by repaying the loan of money in full and by complying with the title loan agreement for an agreed period of time;

(ii) *the borrower may rescind the transaction if, by 5 p.m. of the title lender’s first business day following the day that the loan was executed, the borrower provides the title lender with cash or certified funds equaling 100% of the amount loaned to the borrower. A title lender may not charge a borrower any fee or interest if the borrower rescinds the loan as provided in this subsection (2)(c)(ii). Except as provided in this subsection (2)(c)(ii), a borrower does not have a right to rescind the loan unless the title lender agrees to the rescission.*

(d) (i) the title lender may renew the title loan for additional 30-day periods beyond the original term provided that beginning with the sixth extension or continuation, and for each subsequent extension or continuation, the borrower must reduce the principal amount by at least 10% of the original principal amount of the loan; and

(ii) if the borrower fails to reduce the principal amount as required by subsection (2)(d)(i), the title lender may at its option:

(A) declare outstanding principal and any finance charges due and payable;
or

(B) solely for the purpose of calculating the finance charge, reduce the amount of the principal balance by 10%, with the understanding that that portion of the principal is still owed by the borrower but that portion of the loan may not accrue interest or finance charges after that date;

(e) when the certificate of title is redeemed, the title lender shall release its security interest in the titled personal property and return the personal property certificate of title to the borrower;

(f) (i) upon failure of the borrower to redeem the certificate of title at the end of the original 30-day agreement period or at the end of any agreed-upon 30-day renewal or subsequent renewals, the borrower shall deliver the titled personal property to the title lender at the location specified in the title loan agreement; and

(ii) the borrower shall deliver the titled personal property to the title lender in substantially the same condition that it was in at the time that the borrower entered into the loan, minus normal wear and tear;

(g) if the borrower fails to deliver the titled personal property to the title lender, the title lender must be allowed to take possession of the titled personal property;

(h) upon obtaining possession of the titled personal property, the title lender is authorized to sell the titled personal property and to convey to the buyer good title, subject to the waiting periods provided for in 31-1-820; and

(i) a borrower who does not redeem a pledged certificate of title is not personally liable to the title lender to repay principal, interest, or expenses incurred in connection with the title loan and that the title lender shall look solely to the titled personal property for satisfaction of the amounts owed under the title loan agreement.

(3) The security interest provided for in subsection (2)(a) is not perfected unless it is filed in accordance with 61-3-103.

(4) Any borrower who obtains a title loan from a title lender under false pretenses by hiding or not disclosing the existence of a valid prior lien or security interest affecting the titled personal property is personally liable to the title lender for the full amount stated in the title loan agreement, including interest and expenses incurred by the title lender in connection with the loan.

(5) (a) *A loan agreement may not contain a mandatory arbitration clause that is oppressive, unconscionable, unfair, or in substantial derogation of a borrower'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 (5)(a)."*

Approved April 8, 2005

CHAPTER NO. 211

[SB 178]

AN ACT AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ISSUE PERMITS AND ADOPT RULES FOR THE USE OF AIRCRAFT BY LANDOWNERS TO PROTECT THEIR PROPERTY BY DRIVING, HERDING, OR HAZING GAME ANIMALS; AMENDING

SECTION 87-3-126, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-3-126, MCA, is amended to read:

“87-3-126. Restrictions on use of aircraft or boats — exception — authority to issue permits and adopt rules. (1) (a) ~~No~~ A game birds *bird* or game or fur-bearing animals *animal* may not be killed, taken, or shot at from any aircraft, including helicopters; ~~nor may any.~~

(b) An aircraft or helicopter *may not* be used for the purpose of concentrating, pursuing, driving, rallying, or stirring up any game or migratory birds or game or fur-bearing animals; ~~nor may any.~~

(c) A powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat, or any boat under sail *may not* be used for the purpose of killing, capturing, taking, pursuing, concentrating, driving, or stirring up any upland game birds or game or fur-bearing animals.

(2) It is unlawful for any person airborne in any aircraft, including a helicopter, to spot or locate any game or fur-bearing animals and communicate the location ~~thereof of the game or fur-bearing animals~~ to any person on the ground by means of any air-to-ground communication signal or *other* device ~~whatsoever~~ as an aid to hunting or pursuing wildlife.

(3) Within the boundaries of a national forest, except as permitted by the department, it is unlawful to use aircraft, including helicopters, for hunting purposes, except when persons or cargo are loaded and unloaded at federal aviation agency approved airports, aircraft landing fields, or heliports ~~which that~~ have been established on private property or ~~which that~~ have been established by any federal, state, county, or municipal governmental body. Hunting purposes include the transportation of hunters or wildlife and hunting equipment and supplies. The provisions of this subsection do not apply:

(a) during emergency situations;

(b) ~~or~~ when search and rescue operations are being conducted; or

(c) for predator control as permitted by the department of livestock.

(4) *An aircraft or helicopter may be used for the purpose of herding, driving, or hazing wild animals damaging private property or crops on the property in question pursuant to a permit issued by the department. The commission shall adopt rules for the issuance of the permit. The permit may be conditioned to address individual circumstances of each application for a permit. The department may not issue permits during any legal hunting season for the species for which a permit was requested. The permitting program must comply with requirements of federal law for such activity.”*

Section 2. 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 3. Effective date. [This act] is effective on passage and approval.

Approved April 7, 2005

CHAPTER NO. 212

[SB 254]

AN ACT UPDATING SERVICE CREDIT ELIGIBILITY REQUIREMENTS FOR VOLUNTEER FIREFIGHTERS; AND AMENDING SECTION 19-17-108, MCA.

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

Section 1. Section 19-17-108, MCA, is amended to read:

“19-17-108. Credit for service as volunteer firefighter. (1) The annual period of service that may be credited under this chapter is the fiscal year. A fractional part of a year may not count toward the service required for participation in this system. To be eligible to receive credit for any particular year, a volunteer firefighter shall serve with a fire company throughout the entire fiscal year.

(2) The years of service are cumulative and need not be continuous. Separate periods of service properly credited with different fire companies in different fire districts must be credited toward a member’s eligibility for full or partial benefits.

(3) A volunteer firefighter must receive credit for service during any fiscal year if:

(a) during the fiscal year, the volunteer firefighter completes a minimum of 30 hours of instruction in matters pertaining to firefighting under a formal program that has been formulated, supervised, and certified to the board by the chief or supervisor of the fire company;

(b) the volunteer firefighter’s participation in the program is documented in the fire department records filed and maintained by the chief or supervisor; *and*

(c) the fire company maintained firefighting equipment that is in serviceable condition and owns, *rents, or uses* one or more buildings used for the storage of that equipment that all together are valued at \$12,000 or more; ~~and~~

~~(d) the fire company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates.”~~

Approved April 8, 2005

CHAPTER NO. 213

[SB 316]

AN ACT REQUIRING EACH MEDICAL MALPRACTICE INSURER TO INCLUDE CERTAIN INFORMATION, BASED UPON THE INSURER’S EXPERIENCE IN THIS STATE, IN ITS ANNUAL STATEMENT TO THE COMMISSIONER OF INSURANCE; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Medical malpractice insurance report by insurer. (1) Each insurer engaged in issuing medical malpractice professional liability insurance in this state shall include the following, by profession and based upon the

insurer's experience in this state, in its annual statement to the commissioner of insurance:

(a) the number of medical malpractice insureds as of December 31 of the preceding calendar year;

(b) the amount of direct premiums written and direct premiums paid for medical malpractice insurance during the preceding calendar year;

(c) the number of medical malpractice claims made against its insureds during the preceding calendar year;

(d) the number of medical malpractice claims that were closed and that had a direct loss paid during the preceding calendar year, together with the total amount of direct losses paid for all closed claims for that year;

(e) the number of medical malpractice claims that were still open and had no direct losses paid as of December 31 of the preceding calendar year;

(f) the number of claims filed against its insureds in state and federal courts during the preceding calendar year, including the number of claims that were closed:

(i) without settlement during the preceding calendar year;

(ii) with a settlement during the preceding calendar year and the total amount paid for those claims;

(iii) during the preceding calendar year and that went to trial and the number that resulted in a judgment or verdict for the plaintiff, the number that resulted in a judgment or verdict for the insured, and the number that resulted in some other judgment or verdict;

(g) the total direct losses paid for claims against its medical malpractice insureds that went to trial and were closed during the preceding year; and

(h) other information and statistics that the commissioner of insurance requires.

(2) For purposes of this section:

(a) "insurer" has the meaning provided in 33-1-201; and

(b) "profession" includes the categories of physician, osteopath, podiatrist, dentist, optometrist, registered nurse, licensed practical nurse, or health care facility as defined in 50-5-101.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 23, part 3, and the provisions of Title 33, chapter 23, part 3, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 8, 2005

CHAPTER NO. 214

[SB 317]

AN ACT REGULATING THE CONVERSION OF A NONPROFIT HEALTH ENTITY TO A FOR-PROFIT CORPORATION OR ENTITY OR A MUTUAL BENEFIT CORPORATION OR ENTITY; PROVIDING DEFINITIONS; PROVIDING FOR APPROVAL BY THE ATTORNEY GENERAL AND THE

STATE AUDITOR; PROVIDING CRITERIA FOR APPROVAL; PROVIDING FOR PUBLIC RECORDS, NOTICE, AND HEARING; PROVIDING FOR EXPERTS AND COSTS; PROVIDING PROCEDURES AND RULEMAKING AUTHORITY; PROVIDING FOR DISTRIBUTION OF PROCEEDS OF A CONVERSION TRANSACTION; AMENDING SECTIONS 35-2-609, 35-2-617, AND 35-2-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Definitions. As used in [sections 1 through 18], the following definitions apply:

(1) "Commissioner" means the Montana state auditor and ex officio commissioner of insurance provided for in 2-15-1903.

(2) "Control or governance" means the possession, indirect or direct, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise unless the power is solely the result of an official position with a corporate office held by the person.

(3) (a) "Conversion" or "conversion transaction" means the sale, transfer, lease, exchange, transfer by exercise of an option, optioning, conveyance, merger, affiliation, mutualization, joint venture, or other disposition by a nonprofit health entity or another person or entity resulting in the transfer of control or governance to a person or entity other than the nonprofit health entity of the lesser of:

(i) more than 10% in fair market value of the assets or operations of a nonprofit health entity; or

(ii) assets of a nonprofit health entity amounting to a fair market value of \$5 million or more.

(b) A disposition or transfer constitutes a conversion transaction regardless of whether it occurs directly or indirectly and whether it occurs in a single transaction or a series of related transactions. In determining the value of a tangible asset under this definition, the value of the asset must be calculated net of any mortgage, lien, or other encumbrance on the asset that exists of record.

(c) The term does not include:

(i) a transaction in the ordinary course of the nonprofit health entity's business that does not result in a material change in the nonprofit health entity's ownership, management structure, or nonprofit corporate mission;

(ii) a transaction or series of transactions in the ordinary course of a nonprofit health entity's business if the effect of the transaction or series of transactions is not to convert the nonprofit health entity from a nonprofit to a for-profit entity, to transfer the nonprofit health entity's business or operations to a for-profit entity, or to transfer the control or benefit of public assets and the proceeds of public assets to a mutual benefit or for-profit entity;

(iii) awards, grants, or payments to or on behalf of intended members or beneficiaries, consistent with the lawful purposes of a nonprofit health entity;

(iv) a change in the membership of the board of directors or officers of the nonprofit health entity or a wholly owned subsidiary of the nonprofit health entity if the change in membership does not result in a change in the nonprofit

corporate status of the nonprofit health entity, does not result from a transfer of control, governance, or ownership of the nonprofit health entity, and does not result from transfer of a power of appointment of directors or officers of the nonprofit health entity or a wholly owned subsidiary of the nonprofit health entity;

(v) settlement, satisfaction, or payment of a claim or suit against or debt of the nonprofit health entity or a wholly owned subsidiary of the nonprofit health entity incurred in the ordinary course of business;

(vi) execution of a promissory note, guaranty, or other evidence of indebtedness for the amount of a loan, the proceeds of which are paid solely to the nonprofit health entity or a wholly owned subsidiary of the nonprofit health entity;

(vii) any payment, transfer, or other transaction required by law or by order of any authorized administrative officer or agency, including but not limited to payment of taxes, fees, fines, penalties, or other assessments to a government or a nonprofit health entity or a transaction ordered by the commissioner or the attorney general;

(viii) purchases, sales, or transfers in the ordinary course of business for fair market value of cash or cash equivalents owned by the nonprofit health entity or any wholly owned subsidiary in exchange for goods, products, services, or an interest in property, including but not limited to stocks, shares, bonds, notes, evidences of indebtedness, negotiable instruments, or an ownership interest in an entity, to be held by the nonprofit health entity or its wholly owned subsidiary;

(ix) granting of an encumbrance in the ordinary course of business, such as a security interest or mortgage deed with respect to an asset owned by the nonprofit health entity or a wholly owned subsidiary of the nonprofit health entity to secure indebtedness for borrowed money, the net proceeds of which are paid solely to the nonprofit health entity or its wholly owned subsidiary, and a foreclosure or other exercise of remedies permitted with respect to an encumbrance;

(x) sale, investment, or transfer in the ordinary course of business for fair market value of an interest in property owned by the nonprofit health entity or a wholly owned subsidiary, the net proceeds of which are paid solely to the nonprofit health entity or its wholly owned subsidiary;

(xi) any transfer of assets between a nonprofit health entity that is a nonprofit public benefit corporation and a nonprofit mutual benefit corporation in which all of the members are nonprofit public benefit corporations, provided that the management of all assets transferred by a nonprofit public benefit corporation in a transaction described in this subsection (3)(c)(xi) continue to be managed in a manner consistent with the public benefit purpose of the transferring nonprofit public benefit corporation; or

(xii) any other transaction or proposed transaction for fair market value if:

(A) the nonprofit health entity or its wholly owned subsidiary retains or will retain substantially the same degree of control, governance, or ownership of the proceeds of the transaction that the nonprofit health entity or its wholly owned subsidiary held in the assets or operations prior to the transaction or proposed transaction;

(B) the nonprofit health entity maintains its operations as a nonprofit health entity and public assets or the proceeds of public assets are maintained as public assets; and

(C) none of the assets or operations of the nonprofit health entity or its wholly owned subsidiary inure or will inure directly or indirectly to the benefit of any officer, director, trustee, or employee of the nonprofit health entity or its wholly owned subsidiary.

(4) "Fair market value" means the fair market value as of the date of the transaction or proposed transaction as determined by an independent appraisal of the assets or operations performed and communicated by a qualified appraiser according to applicable professional appraisal standards.

(5) "Health maintenance organization" has the meaning provided in 33-31-102.

(6) "Health service corporation" has the meaning provided in 33-30-101.

(7) (a) "Nonprofit health entity" means:

(i) a nonprofit health maintenance organization; or

(ii) a nonprofit health service corporation.

(b) The term includes any entities affiliated with a nonprofit health entity through ownership, governance, or membership, such as a holding company or subsidiary.

(8) "Ordinary course of business" means with respect to a transaction or disposition that the transaction comports with the usual and customary practices of the kind of business in which the nonprofit health entity is engaged.

(9) "Public assets" include:

(a) assets held for the benefit of the public or the community;

(b) assets in which the public has an ownership interest;

(c) assets owned by a governmental entity; and

(d) assets owned by a nonprofit corporation to the extent that the corporation holds assets in a charitable trust.

(10) "Transferee" means the person in a conversion transaction that receives the ownership or control of the nonprofit health entity that is the subject of the conversion transaction or of the nonprofit health entity's assets.

(11) "Transferor" means the nonprofit health entity that is the subject of the conversion transaction or the corporation that owns the nonprofit health entity that is the subject of the conversion transaction.

Section 2. Conversion transaction — approval. A person may not engage in a conversion transaction involving a nonprofit health entity unless the commissioner and the attorney general issue orders approving the conversion transaction.

Section 3. Rulemaking authority. The commissioner and the attorney general shall adopt rules to carry out [sections 1 through 18], 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 [section 6] to the extent allowed by law; and

(3) establish hearing and appeal procedures.

Section 4. Rights and powers. (1) (a) [Sections 1 through 18] may not be construed to impair the rights and powers of a court or the attorney general with respect to the assets of any public benefit corporation, to any asset devoted to charity, or to a charitable trust as provided in Title 72, chapter 33, part 5.

(b) Filing of an application under [sections 1 through 18] satisfies any notice requirements under 35-2-609, 35-2-617, or 35-2-722.

(2) (a) (i) Nothing in [sections 1 through 18] precludes the attorney general, the commissioner, or a nonprofit health entity from filing an action in district court under Title 27, chapter 8, seeking a declaration that a nonprofit health entity transaction is or is not a conversion transaction as defined in [section 1] or a declaration of whether assets of a nonprofit health entity are or are not public assets as defined in [section 1]. No other declaratory relief may be sought in a court regarding any issue arising from a transaction that is or is alleged to be a conversion transaction under [sections 1 through 18], except that a transferor or transferee may file an action in district court seeking an injunction prohibiting the attorney general or commissioner from making an unlawful disclosure of trade secrets or proprietary or other confidential information.

(ii) In an action under this subsection (2) to determine whether assets of a nonprofit health entity are or are not public assets, the presumption in [section 13(3)] applies.

(b) The commissioner or the attorney general, or both, may contract with experts as reasonably necessary to bring or defend an action pursuant to this subsection (2) and the nonprofit health entity shall pay the costs reasonably incurred by the commissioner or the attorney general for the experts' services.

(c) In an action under this subsection (2), if the court finds that the transaction is a conversion transaction subject to [sections 1 through 18] and the transaction has not been completed, the court shall enter an injunction prohibiting any further actions to complete the transaction until it has been approved by the commissioner and attorney general under [section 2].

(d) In an action under this subsection (2), if the court finds that a completed transaction was a conversion transaction that the commissioner and attorney general have not approved under [section 2], the court shall enter an injunction requiring the nonprofit health entity or any successor to the assets involved in the transaction to submit an application for review under [section 5]. After reviewing any application submitted following a court order under this subsection (2)(d), the attorney general may direct that the nonprofit health entity or any successor to the assets involved in the transaction distribute the fair market value of any public assets involved in the transaction as required under [section 18].

(e) The court issuing the declaratory judgment retains jurisdiction to enforce any direction by the attorney general for distribution of the fair market value of public assets under this subsection (2).

(3) [Sections 1 through 18] may not be construed to make void or voidable or to require any distribution of assets with respect to any transaction or series of transactions completed before [the effective date of this act], even if that

transaction or series of transactions is considered as part of a conversion transaction completed on or after [the effective date of this act].

Section 5. Application process — content. (1) A person that seeks to engage in a conversion transaction for a nonprofit health entity and the nonprofit health entity shall submit an application to the commissioner and a copy of the application to the attorney general.

(2) The application submitted under subsection (1) is in addition to any other filing required by law.

(3) An application must include:

(a) the name of the proposed transferor;

(b) the name of the proposed transferee;

(c) the names of any other parties to the conversion transaction agreement;

(d) the terms of the proposed conversion transaction, including but not limited to a description and valuation of all consideration exchanges as a part of or as a result of the conversion and the extent to which the assets proposed to be converted are public assets;

(e) a copy of the conversion transaction agreement;

(f) a financial and community impact analysis report from an independent expert or consultant that addresses the criteria in [sections 13 through 15];

(g) an independent valuation of the fair market value of the nonprofit health entity for a valuation date within 1 year prior to receipt by the nonprofit health entity or publication of a bona fide bid, offer, or letter of intent to acquire the nonprofit health entity; and

(h) an antitrust analysis prepared by an appropriate expert.

Section 6. Public records. All documents and records, excluding any proprietary or confidential information as defined by law, submitted to the commissioner or attorney general by any person, including a nonprofit health entity making application under [section 5], in connection with the commissioner's and the attorney general's review of the proposed nonprofit health entity conversion transaction are public records to the extent required by the provisions of applicable state law. The contents of the application submitted to the commissioner pursuant to [section 5] are a public record, except that any proprietary information or trade secret that may by law be kept confidential is not a public record.

Section 7. Receiving an application — notice of application. (1) Within 15 working days after receiving an application for a conversion transaction, the commissioner shall:

(a) publish notice of the application by the internet and by press release to the most widely circulated newspapers in a nonprofit health entity's service area; and

(b) maintain a list of, and notify by e-mail or first-class mail, any person that has requested in writing notice of the filing of an application.

(2) The notice under subsection (1) must:

(a) state that an application has been received;

(b) state the names of the parties to the conversion transaction;

(c) describe the contents of the application;

(d) state the date by which a person shall submit written comments on the application; and

(e) provide the date, time, and place of the public hearing on the conversion transaction.

Section 8. Public hearing. (1) As soon as practicable, but no later than 90 days after receiving a complete application for a conversion transaction, including all necessary expert reports, the commissioner or a designee shall hold a public hearing.

(2) Any person may file written comments and exhibits or make a statement at the public hearing.

Section 9. Procedures. (1) In the hearing required by [section 8], the commissioner and the attorney general shall agree on and jointly appoint a qualified person to preside over the hearing. The commissioner, the attorney general, the transferor, and the transferee may use discovery procedures as provided in Title 25, chapter 20. Except as otherwise specifically provided in this section, the procedures for conducting a contested case hearing, as provided in 2-4-611(3) and (4), 2-4-612 through 2-4-614, and 2-4-621 through 2-4-623, and the procedures for judicial review of contested case decisions under Title 2, chapter 4, part 7, apply.

(2) Notwithstanding any otherwise applicable rule of evidence, the commissioner and attorney general shall provide for the receipt of comments from the public in writing or on the record at the hearing. Oral public comments are not subject to cross-examination without the consent of the person providing the comments. However, the commissioner and the attorney general may rely on factual information provided in public comment only if the person providing the comment consents to cross-examination or the commissioner or the attorney general makes a specific finding that the factual information meets the requirements of Rule 804(b)(5) of the Montana Rules of Evidence.

Section 10. Experts. (1) The commissioner or the attorney general, or both, may contract with experts as reasonably necessary to:

(a) determine whether to approve a conversion transaction generally;

(b) perform an independent valuation of fair market value of the public assets of the transferor;

(c) evaluate the impact of the conversion on the affected community;

(d) determine whether there has been due diligence by the transferor in evaluating the proposed conversion transaction; and

(e) determine the existence of any conflicts of interest.

(2) If the commissioner or attorney general contracts for expert assistance under subsection (1), the transferor and the transferee shall each pay half of the costs reasonably incurred by the commissioner or the attorney general for the expert's services.

Section 11. Deadline for approval or nonapproval. (1) Within 60 days after the record, including the public hearing process, has been closed, the commissioner and the attorney general shall each issue a separate order to:

(a) approve the conversion transaction, with or without modifications; or

(b) disapprove the conversion transaction.

(2) If the commissioner and the attorney general do not both determine that the conversion transaction is approved, the conversion transaction is disapproved.

(3) Subject to subsection (4), the commissioner or the attorney general may, for cause, extend the time for making a determination for a 60-day period.

(4) The commissioner and the attorney general are limited to a maximum of two 60-day extensions for making a determination on the same application.

Section 12. Effect of determination. Determinations made by the commissioner and the attorney general under [section 11] become effective on the date on which both the commissioner and the attorney general have issued orders under [section 11].

Section 13. Criteria for attorney general approval of conversion transaction. (1) The attorney general may not approve a conversion transaction except upon a finding that the conversion transaction is in the public interest. If the attorney general or a court pursuant to [section 4] determines that the transaction does not involve public assets, the attorney general may not disapprove the conversion transaction under the provisions of [sections 1 through 18].

(2) In determining whether a conversion transaction is in the public interest, the attorney general shall require that:

(a) the fair market value of public assets is preserved and protected;

(b) the fair market value of public assets is expended or invested with reasonable and prudent consideration of the potential risk of financial loss associated with the conversion transaction;

(c) the fair market value of the public assets of a nonprofit health entity will be distributed as provided in [section 18];

(d) no part of the public assets of the transferor inure directly or indirectly to an officer, director, or trustee of the transferor or to the transferee or an officer, director, trustee, shareholder, or employee of the transferee or to any other person that is not a foundation or nonprofit organization approved to receive the assets by the attorney general; and

(e) an officer, director, or trustee of the nonprofit health entity does not receive any immediate or future remuneration as a result of a proposed conversion transaction except for the reasonable value of services rendered pursuant to a valid contract between the officer, director, or trustee and the nonprofit health entity.

(3) For purposes of the attorney general's review under 35-2-609, 35-2-617, and this section, there is a rebuttable presumption that the assets of a nonprofit health entity are public assets.

Section 14. Criteria for distribution of assets. (1) The public assets distributed to a foundation or nonprofit organization in accordance with [section 13 or 18] must be in the form of cash or a combination of cash and publicly traded securities or bonds or similar assets that are readily convertible to cash and for which a secondary market exists.

(2) The attorney general may determine that a distribution of assets of a nonprofit health entity is not required if the transaction is determined not to be a conversion transaction and is a transaction in the ordinary course of business and for fair market value.

(3) In determining fair market value, the attorney general may consider all relevant factors that may include but are not limited to:

(a) the value of the nonprofit health entity or an affiliate or the assets of the nonprofit health entity or affiliate that are determined as if the nonprofit health entity or affiliate had voting stock outstanding and 100% of its stock was freely transferable and available for purchase without restriction;

(b) the value as a going concern;

(c) the market value;

(d) the investment or earnings value;

(e) the net asset value; and

(f) a control premium, if any.

Section 15. Criteria for commissioner approval of conversion transaction. (1) The commissioner may not approve a conversion transaction except upon a finding that the conversion transaction is in the public interest. If the attorney general or a court pursuant to [section 4] determines that the transaction does not involve public assets, the commissioner may not disapprove the conversion transaction under the provisions of [sections 1 through 18].

(2) In determining whether a conversion transaction is in the public interest, the commissioner shall consider:

(a) whether the transferor exercised due diligence in deciding to engage in a conversion transaction, selecting the transferee, and negotiating the terms and conditions of the conversion transaction;

(b) the procedures that the transferor used in making the decision, including whether appropriate expert assistance was used;

(c) whether any conflicts of interest were disclosed, including conflicts of interest of board members, executives, and experts retained by the transferor, transferee, or any other parties to the conversion transaction;

(d) whether the conversion has the likelihood of creating a significant adverse effect on the availability or accessibility of health care services or health insurance coverage in the affected community;

(e) whether the conversion transaction includes sufficient safeguards to ensure that the affected community will have continued access to affordable health care;

(f) whether any management contract under the conversion transaction is for reasonable value; and

(g) whether the conversion transaction:

(i) is equitable to the public interest, enrollees, insureds, shareholders, and certificate holders, if any, of the transferor;

(ii) is in compliance with Title 33, chapters 30 and 31;

(iii) ensures that the transferee will possess surplus in an amount sufficient to comply with the surplus required under law and provide for the security of the transferee's certificate holders, if any, and policyholders.

(3) In making the determination required under this section, the commissioner may not determine that a conversion transaction is in the public

interest unless the nonprofit health entity considered the risks of a conversion transaction, including whether a conversion transaction:

- (a) would result in inefficient economies of scale; or
- (b) would violate federal or state antitrust laws.

(4) If an agreement for the conversion of a nonprofit health entity requires payment of money, as liquidated damages or otherwise, in the event of a breach of the agreement by the nonprofit health entity, the commissioner shall determine whether and to what extent the payment by the nonprofit health entity is in the public interest.

Section 16. Deposit of assets. Any public assets distributed pursuant to [section 14] as a result of the conversion transaction of a nonprofit health entity approved by the commissioner and the attorney general on or after [the effective date of this act] must be distributed as provided in [section 18].

Section 17. For-profit health entity. (1) A corporation that becomes a for-profit health entity under [sections 1 through 18] may not be considered to have abandoned its corporate status by virtue of a conversion transaction unless the conversion transaction provides specifically to the contrary.

(2) The certificate of authority, agent appointments, licenses, forms, and any other filings in existence at the time of a conversion transaction continue in full force and effect upon a conversion transaction if a corporation at all times remains qualified to engage in business in the state.

(3) All outstanding contracts of a transferor remain in full force and effect and need not be otherwise endorsed unless ordered by the commissioner.

Section 18. Distribution of proceeds — annual report. (1) Except as provided in subsection (5), the proceeds of a conversion transaction that are public assets must be distributed to an existing or new foundation or other nonprofit organization to be held in a trust that meets the following requirements:

(a) The foundation or nonprofit organization shall operate pursuant to 26 U.S.C. 501(c)(3) or 501(c)(4), and regardless of whether the foundation is classified as a private foundation under 26 U.S.C. 509, the foundation or nonprofit organization shall operate in accordance with the restrictions and limitations that apply to private foundations in 26 U.S.C. 4941 through 4945.

(b) The foundation or nonprofit organization must have a mission statement that is as close as possible to the mission of the converting nonprofit health entity.

(c) The foundation or nonprofit organization's assets may not be used to supplant government funds.

(d) The foundation or nonprofit organization may not be an agent or instrumentality of the government.

(e) The foundation or nonprofit organization and its directors, officers, and staff must be and shall remain independent of the parties to the conversion transaction and their affiliates. A person who is an officer, director, or staff member of a nonprofit health entity submitting a conversion plan at the time that the plan is submitted or at the time of the conversion transaction or within 5 years after the conversion may not be an officer, director, or staff member of the foundation. A director, officer, agent, or employee of the nonprofit health entity submitting the plan or the foundation receiving the charitable assets may not

benefit directly or indirectly from the transaction. Public officials, elected or appointed, may not serve as an officer, director, or staff member of the foundation or nonprofit organization.

(f) A foundation or nonprofit organization must have or shall establish formal mechanisms to avoid conflicts of interest and to prohibit grants benefiting:

(i) any party to the conversion transaction or members of the board of directors and management of a party to the conversion transaction; or

(ii) the foundation or nonprofit organization's board of trustees, directors, agents, or employees.

(g) Boards of trustees or directors of the foundation or nonprofit organization shall reflect the geographic, ethnic, gender, age, socioeconomic, and other factors that the board considers to represent the diversity of the nonprofit health entity applicant's service area. In addition, trustees or directors must have the following qualifications and qualities:

(i) interest in and concern for the foundation or nonprofit organization and its mission;

(ii) objectivity and impartiality;

(iii) willingness and ability to commit time and thought to the foundation or nonprofit organization's affairs; and

(iv) commitment to the foundation or nonprofit organization as a whole and not to a special interest.

(h) Boards of trustees or directors must include persons with special knowledge, expertise, and skills in investments and asset management, finance, and nonprofit administration.

(2) A foundation or nonprofit organization that receives a distribution of public assets shall submit an annual report to the commissioner and to the attorney general regarding the award of grants and other charitable activities of the entity related to its use of the public assets received.

(3) The annual report submitted under subsection (2) must be made available to the public at the principal office of the foundation or nonprofit organization.

(4) The attorney general shall retain oversight and monitoring authority over the foundation or nonprofit organization that receives the proceeds of a proposed conversion transaction.

(5) Notwithstanding any other provision of this section, the proceeds of a conversion transaction that are public assets of a nonprofit mutual benefit corporation in which all of the members are nonprofit public benefit corporations may be distributed to the member nonprofit public benefit corporations if the articles of incorporation of the nonprofit mutual benefit corporation provide for that distribution.

Section 19. Section 35-2-609, MCA, is amended to read:

"35-2-609. Limitations on mergers by public benefit or religious corporations. (1) ~~Without~~ *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 office is located, 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 [section 1], is subject to the provisions of 35-2-617 and [sections 1 through 18].*

Section 20. Section 35-2-617, MCA, is amended to read:

“35-2-617. Sale of assets other than in regular course of activities. (1) A corporation may sell, lease, exchange, or otherwise dispose of all or substantially all of its property, which may include the good will, other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the corporation’s board if the proposed transaction is approved as required by subsection (2).

(2) Unless this chapter, the articles, *the* bylaws, or the board of directors or members, acting pursuant to subsection (4), require a greater vote or voting by class, the proposed transaction to be authorized must be approved:

- (a) by the board;
- (b) by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(c) in writing by any person or persons whose approval is required by a provision of the articles, as authorized by 35-2-232, for an amendment to the articles or bylaws.

(3) If the corporation does not have members, the transaction must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice, in accordance with 35-2-429(3), of any directors' meeting at which approval is to be obtained. The notice must also state that the purpose or one of the purposes of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property or assets of the corporation and must contain or be accompanied by a copy or summary of a description of the transaction.

(4) The board may condition its submission of the proposed transaction and the members may condition their approval of the transaction on receipt of a higher percentage of affirmative votes or on any other basis.

(5) If the corporation seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with 35-2-530. The notice must state that the purpose or one of the purposes of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property or assets of the corporation and must contain or be accompanied by a copy or summary of a description of the transaction.

(6) If the board needs to have the transaction approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of a description of the transaction.

(7) (a) *Except as provided in subsection (7)(b), a public benefit corporation or religious corporation must shall* give written notice to the attorney general 20 days before it sells, leases, exchanges, or otherwise disposes of all or substantially all of its property if the transaction is not in the usual and regular course of its activities unless the attorney general has given the corporation a written waiver of this subsection.

(b) *A public benefit corporation or religious corporation that is considered a nonprofit health entity, as defined in [section 1], is subject to the provisions of [sections 1 through 18].*

(8) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further action by the members or any other person who approved the transaction in accordance with the procedure set forth in the resolution proposing the transaction or, if no procedure is set forth, in the manner determined by the board of directors."

Section 21. Section 35-2-722, MCA, is amended to read:

"35-2-722. Notices to the attorney general. (1) *Except as provided in subsection (4), a public benefit corporation or religious corporation shall give the attorney general written notice that it intends to dissolve at or before the time it delivers articles of dissolution to the secretary of state. The notice must include a copy or summary of the plan of dissolution.*

(2) Assets may not be transferred or conveyed by a public benefit corporation or religious corporation as part of the dissolution process until 20 days after it has given the written notice required by subsection (1) to the attorney general or until the attorney general has consented in writing to the dissolution or

indicated in writing that he will not take action in respect to the transfer or conveyance, whichever is earlier.

(3) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the attorney general a list showing those, other than creditors, to whom the assets were transferred or conveyed. The list must indicate the address of each person, other than creditors, who received assets and indicate what assets each received.

(4) A public benefit corporation or religious corporation that is considered a nonprofit health entity, as defined in [section 1], is subject to the provisions of [sections 1 through 18].”

Section 22. Codification instruction. [Sections 1 through 18] are intended to be codified as an integral part of Title 50, chapter 4, and the provisions of Title 50, chapter 4, apply to [sections 1 through 18].

Section 23. Effective date. [This act] is effective on passage and approval.

Section 24. Applicability. [This act] applies prospectively to and may not be applied or interpreted to have an effect on a conversion transaction or any individual transaction or series of transactions completed before [the effective date of this act], except that a transaction or series of transactions made prior to [the effective date of this act] may be considered in any application for a conversion transaction made after [the effective date of this act].

Approved April 8, 2005

CHAPTER NO. 215

[SB 359]

AN ACT REVISING CERTAIN STATUTES RELATED TO SCHOOL DISTRICT ENROLLMENT; ALLOWING TUITION TO BE PAID FOR A NONRESIDENT PUBLIC SCHOOL STUDENT WHO REACHES THE AGE OF 18 DURING THE SCHOOL YEAR; MEASURING ENROLLMENT IN AGGREGATE HOURS TO DETERMINE PORTIONS OF FULL-TIME ENROLLMENT AND SETTING THE CONDITIONS UNDER WHICH ENROLLMENT IS INCLUDED IN THE CALCULATION OF AVERAGE NUMBER BELONGING FOR A SCHOOL DISTRICT; DEFINING “AGGREGATE HOURS”; AMENDING SECTIONS 20-1-101, 20-5-322, AND 20-9-311, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 20-1-101, MCA, is amended to read:

“20-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Aggregate hours” means the hours of pupil instruction for which a school course or program is offered or for which a pupil is enrolled.

~~(1)~~(2) “Agricultural experiment station” means the agricultural experiment station established at Montana state university-Bozeman.

~~(2)~~(3) “Average number belonging” or “ANB” means the average number of regularly enrolled, full-time pupils attending the public schools of a district.

~~(3)~~(4) "Board of public education" means the board created by Article X, section 9, subsection (3), of the Montana constitution and 2-15-1507.

(4)(5) "Board of regents" means the board of regents of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

~~(5)~~(6) "Commissioner" means the commissioner of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1506.

~~(6)~~(7) "County superintendent" means the county government official who is the school officer of the county.

~~(7)~~(8) "District superintendent" means a person who holds a valid class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(8)(9) "K-12 career and vocational/technical education" means organized educational activities that have been approved by the office of public instruction and that:

(a) offer a sequence of courses that provide a pupil with the academic and technical knowledge and skills that the pupil needs to prepare for further education and for careers in the current or emerging employment sectors; and

(b) include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills of the pupil.

~~(9)~~(10) "Principal" means a person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a principal. For the purposes of this title, any reference to a teacher must be construed as including a principal.

~~(10)~~(11) "Pupil" means a child who is 6 years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustees under 20-5-101(3) but has not yet reached 19 years of age and who is enrolled in a school established and maintained under the laws of the state at public expense. For purposes of calculating the average number belonging pursuant to 20-9-311, the definition of pupil includes a person who has not yet reached 19 years of age by September 10 of the year and is enrolled under 20-5-101(3) in a school established and maintained under the laws of the state at public expense.

~~(11)~~(12) "Pupil instruction" means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

~~(12)~~(13) "Regents" means the board of regents of higher education.

~~(13)~~(14) "School food services" means a service of providing food for the pupils of a district on a nonprofit basis and includes any food service financially assisted through funds or commodities provided by the United States government.

~~(14)~~(15) "State board of education" means the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1), of the Montana constitution.

~~(15)~~(16) "State university" means Montana state university-Bozeman.

~~(16)~~(17) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the Montana constitution.

~~(17)~~(18) "System" means the Montana university system.

~~(18)~~(19) "Teacher" means a person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher includes a person for whom an emergency authorization of employment has been issued under the provisions of 20-4-111.

~~(19)~~(20) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

~~(20)~~(21) "Textbook dealer" means a party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state.

~~(21)~~(22) "Trustees" means the governing board of a district.

~~(22)~~(23) "University" means the university of Montana-Missoula.

~~(23)~~(24) "Vocational-technical education" means vocational-technical education of vocational-technical students that is conducted by a unit of the Montana university system, a community college, or a tribally controlled community college, as designated by the board of regents."

Section 2. Section 20-5-322, MCA, is amended to read:

"20-5-322. Residency determination — notification — appeal for attendance agreement. (1) In considering an out-of-district attendance agreement, the trustees shall determine the child's district of residence on the basis of the provisions of 1-1-215.

(2) Within 10 days of the initial application for an agreement, the trustees of the district of choice shall notify the parent or guardian of the child and the trustees of the district of residence involved in the out-of-district attendance agreement of the anticipated date for approval or disapproval of the agreement.

(3) Within 10 days of approval or disapproval of an out-of-district attendance agreement, the trustees shall provide copies of the approved or disapproved attendance agreement to the parent or guardian and to the child's district of residence.

(4) Within 15 days of receipt of an approved out-of-district attendance agreement, the trustees of the district of residence shall approve or disapprove the agreement under the provisions of this part and forward the completed agreement to the county superintendent of schools of the county of residence, the trustees of the district of choice, and the parent or guardian.

(5) If an out-of-district attendance agreement is disapproved or no action is taken, the parent may appeal the disapproval or lack of action to the county superintendent and, subsequently, to the superintendent of public instruction under the provisions for the appeal of controversies in this title.

(6) *For purposes of payment under 20-5-324(6), a nonresident student who becomes a resident by reaching the age of 18 during the school year may continue to have tuition paid on the student's behalf for the duration of the student's enrollment in the district for that school year.*"

Section 3. Section 20-9-311, MCA, is amended to read:

"20-9-311. Calculation of average number belonging (ANB). (1) Average number belonging (ANB) must be computed as follows:

(a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the next school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of the pupil-instruction and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than 180 school days under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) ~~Enrollment for a part of a morning session or a part of an afternoon session by a pupil must be counted as enrollment for one-half day (a) Except as provided in subsection (5), for the purpose of calculating ANB, enrollment in an education program:~~

(i) *from 181 to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time enrollment;*

(ii) *from 360 to 539 aggregate hours of pupil instruction per school year is counted as half-time enrollment;*

(iii) *from 540 to 719 aggregate hours of pupil instruction per school year is counted as three-quarter-time enrollment; and*

(iv) *720 or more aggregate hours of pupil instruction per school year is counted as full-time enrollment.*

(b) *Enrollment in a program intended to provide fewer than 180 aggregate hours of pupil instruction per school year may not be included for purposes of ANB.*

(c) *Enrollment in a self-paced program or course may be converted to an hourly equivalent based on the hours necessary and appropriate to provide the course within a regular classroom schedule.*

(d) *A pupil in grades 1 through 12 who is concurrently enrolled in more than one public school, program, or district may not be counted as more than one full-time pupil for ANB purposes.*

(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment ~~at in a regular session of the program for at least 2 hours of either a morning or an afternoon session that provides 360 or more aggregate hours of pupil instruction per school year~~ must be counted as one-half pupil for ANB purposes. ~~The ANB for a kindergarten student may not exceed one-half for each kindergarten pupil.~~

(6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of prekindergarten pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more elementary districts consolidate or annex under the provisions of 20-6-203, 20-6-205, or 20-6-208, two or more high school districts consolidate or annex under the provisions of 20-6-315 or 20-6-317, or two or more K-12 districts consolidate or annex under Title 20, chapter 6, part 4, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

(A) 75% of the basic entitlement for the fourth year;

(B) 50% of the basic entitlement for the fifth year; and

(C) 25% of the basic entitlement for the sixth year.

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not

eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) The district shall provide the superintendent of public instruction with semiannual reports of school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent.

(10) (a) *Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education program provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes only if the pupil is offered access to the complete range of educational services for the basic education program required by the accreditation standards adopted by the board of public education.*

(b) *Access to school programs and services for a student placed by the trustees in a private program for special education may be limited to the programs and services specified in an approved individual education plan supervised by the district.*

(c) *Access to school programs and services for a student who is incarcerated in a facility, other than a youth detention center, may be limited to the programs and services provided by the district at district expense under an agreement with the incarcerating facility.*

(d) *This subsection (10) may not be construed to require a school district to offer access to activities governed by an organization having jurisdiction over interscholastic activities, contests, and tournaments to a pupil who is not otherwise eligible under the rules of the organization.*

(11) *A district may only include, for ANB purposes, an enrolled pupil who is otherwise eligible under this title and who is:*

(a) *a resident of the district or a nonresident student admitted by trustees under a student attendance agreement and who is attending a school of the district;*

(b) *unable to attend school due to a medical reason certified by a medical doctor and receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;*

(c) *unable to attend school due to the student's incarceration in a facility, other than a youth detention center, and who is receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;*

(d) *receiving special education and related services, other than day treatment, under a placement by the trustees at a private nonsectarian school or private program if the pupil's services are provided at the district's expense under an approved individual education plan supervised by the district;*

(e) *participating in the running start program at district expense under 20-9-706;*

(f) *receiving educational services, provided by the district, using appropriately licensed district staff at a private residential program or private residential facility licensed by the department of public health and human services;*

(g) enrolled in an educational program or course provided at district expense using electronic or offsite delivery methods, including but not limited to tutoring, distance learning programs, online programs, and technology delivered learning programs, while attending a school of the district or any other nonsectarian offsite instructional setting with the approval of the trustees of the district. The pupil shall:

(i) meet the residency requirements for that district as provided in 1-1-215;

(ii) live in the district and must be eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; or

(iii) attend school in the district under a mandatory attendance agreement as provided in 20-5-321.

(h) a resident of the district attending a Montana job corps program under an interlocal agreement with the district under 20-9-707.”

Section 4. Effective date — applicability. [This act] is effective July 1, 2005, and applies to school budgets for the school fiscal years beginning on or after July 1, 2006.

Approved April 8, 2005

CHAPTER NO. 216

[HB 688]

AN ACT ESTABLISHING THE PATRICK G. GALVIN MEMORIAL HIGHWAY BETWEEN GREAT FALLS AND THE INTERSECTION OF MONTANA HIGHWAY 3 AND U.S. HIGHWAY 89 AT ARMINGTON; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Patrick G. Galvin worked tirelessly to improve transportation and roads in the State of Montana; and

WHEREAS, Patrick G. Galvin believed strongly that Montana Highway 3 was an important link in the vitality of the economy of the state; and

WHEREAS, Montana Highway 3 is a crucial artery between North Central Montana and Eastern Montana for commercial entities and private citizens alike; and

WHEREAS, Patrick G. Galvin served the people of Montana with integrity and compassion during his four terms as a state representative; and

WHEREAS, Patrick G. Galvin had vast experience running freight trains from Great Falls to Laurel and saw on a daily basis the critical connection that Montana Highway 3 provides to all Montana citizens and businesses.

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

Section 1. Patrick G. Galvin memorial highway. (1) There is established the Patrick G. Galvin memorial highway composed of the existing Montana highway 3 from the boundary of the city of Great Falls to the intersection of Montana highway 3 and U.S. highway 89 at Armington.

(2) When existing road signs between Great Falls and the intersection of Montana highway 3 and U.S. highway 89 at Armington need replacement, the department shall erect road signs reflecting the memorial designation in subsection (1).

(3) Maps that identify roadways in Montana must be updated to reflect the memorial designation in subsection (1) when the maps are updated or replaced.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

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

Approved April 10, 2005

CHAPTER NO. 217

[SB 375]

AN ACT REVISING THE PLACE OF TRIAL FOR A TORT ACTION SUBJECT TO THE FEDERAL EMPLOYERS' LIABILITY ACT; AMENDING SECTION 25-2-122, 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 25-2-122, MCA, is amended to read:

“25-2-122. Torts. (1) Except as provided in subsections (2) ~~and (3)~~ through (4), the proper place of trial for a tort action is:

(a) the county in which the defendants or any of them reside at the commencement of the action; or

(b) the county in which the tort was committed. If the tort is interrelated with and dependent upon a claim for breach of contract, the tort was committed, for the purpose of determining the proper place of trial, in the county in which the contract was to be performed.

(2) ~~If~~ *Except as provided in subsection (4), if* the defendant is a corporation incorporated in a state other than Montana, the proper place of trial for a tort action is:

(a) the county in which the tort was committed;

(b) the county in which the plaintiff resides; or

(c) the county in which the corporation's resident agent is located, as required by law.

(3) ~~If~~ *Except as provided in subsection (4), if* the defendant is a resident of a state other than Montana, the proper place of trial for a tort action is:

(a) the county in which the tort was committed; or

(b) the county in which the plaintiff resides.

(4) *If the defendant is a railroad, as defined in 69-14-101, and the plaintiff is a Montana resident, the proper place of trial of a claim subject to the federal Employers' Liability Act, 45 U.S.C. 51, et seq., is any county in which the railroad does business.”*

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

Section 3. Applicability. [This act] applies to causes of action occurring on or after [the effective date of this act].

Approved April 13, 2005

CHAPTER NO. 218

[SB 470]

AN ACT CLARIFYING THAT MEETINGS OF THE SUPREME COURT ARE SUBJECT TO THE OPEN MEETING LAW; PROVIDING AN EXCEPTION FOR JUDICIAL DELIBERATIONS IN AN ADVERSARIAL PROCEEDING; AMENDING SECTION 2-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-3-203, MCA, is amended to read:

“2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public — exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, *including the supreme court*, must be open to the public.

(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

(3) ~~Provided, however, the~~ *The* presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

(4) (a) ~~However, except~~ *Except* as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.

(b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2).

(5) *The supreme court may close a meeting that involves judicial deliberations in an adversarial proceeding.*

~~(5)~~(6) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business ~~which~~ *that* is within the jurisdiction of that agency is subject to the requirements of this section.”

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

Approved April 14, 2005

CHAPTER NO. 219

[HB 150]

AN ACT ALLOWING A PUBLIC OFFICIAL TO HAVE A MONTANA FLAG DRAPED OVER THE OFFICIAL'S CASKET.

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

Section 1. Use of Montana flag at funerals. (1) A public official has the right to have a Montana state flag draped over the casket of the public official. The family of the public official is responsible for providing the flag.

(2) As used in this section, "public official" means a person who was ever elected to a statewide office, a state office from a district, or a countywide office.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 16, and the provisions of Title 2, chapter 16, apply to [section 1].

Approved April 15, 2005

CHAPTER NO. 220

[HB 153]

AN ACT CLARIFYING THE PUBLIC SERVICE COMMISSION'S EXISTING AUTHORITY TO REVIEW AND APPROVE MATERIAL AFFILIATE TRANSACTIONS OF REGULATED ENERGY UTILITIES; DEFINING CERTAIN TERMS; REQUIRING THAT A REGULATED ENERGY UTILITY MAY NOT ENTER INTO A MATERIAL AFFILIATE TRANSACTION WITHOUT THE COMMISSION'S REVIEW AND APPROVAL; PROVIDING AN EXEMPTION; PROVIDING THE PUBLIC SERVICE COMMISSION WITH RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Definitions. As used in [sections 1 through 3], unless the context requires otherwise, the following definitions apply:

(1) "Affiliate" means an entity closely connected or associated with a regulated energy utility.

(2) "Affiliate transaction" means a financial transaction between the utility operations of a regulated energy utility and an affiliate.

(3) "Material affiliate transaction" means an affiliate transaction that has a significant potential impact on the financial stability of a regulated energy utility, including but not limited to:

(a) dividend payments from a regulated energy utility to a corporate parent company if those payments would place the regulated energy utility's credit quality or property in jeopardy;

(b) intercompany loans or other extensions of credit or advances of working capital between a regulated energy utility and an affiliate if those activities would place the regulated energy utility's credit quality or property in jeopardy;

(c) the use of proceeds in issuing securities for which the assets of the regulated energy utility are pledged; or

(d) external borrowing by a regulated energy utility with a term greater than 120 days if the loan would place the regulated energy utility's credit quality or property in jeopardy.

(4) "Regulated energy utility" means a public utility with more than 100 customers that owns distribution facilities for the distribution of electricity or

natural gas to the public and that is regulated by the commission pursuant to this title.

Section 2. Commission approval of material affiliate transactions — rulemaking authority. (1) In addition to the commission's existing regulatory authority under this title and except as provided in [section 3] and subsection (4) of this section, a regulated energy utility may not enter into a material affiliate transaction without the commission's review and approval.

(2) The commission shall approve or deny the material affiliate transaction. Upon a showing of good cause, the commission shall hold a public hearing on the proposed material affiliate transaction within 45 days of an official notification by the regulated energy utility to the commission that the utility is intending to enter into a material affiliate transaction.

(3) If a material affiliate transaction involves dividend payments from a regulated energy utility to a corporate parent company, the commission may limit those dividend payments if the payments would place the regulated energy utility's credit quality or property in jeopardy.

(4) A regulated energy utility may request an exemption from any of the provisions in this section, and the commission may grant the exemption on a case-by-case basis upon a showing of good cause and after notice and an opportunity for hearing.

(5) The commission may promulgate rules that implement the provisions of [sections 1 through 3].

Section 3. Exemption. A regulated energy utility that has entered into a stipulation agreement with the commission regarding the separation of its nonregulated utility business is exempt from the provisions of [sections 1 through 3] as long as the stipulation agreement remains effective under a federal bankruptcy court order.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 3].

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

Approved April 15, 2005

CHAPTER NO. 221

[HB 199]

AN ACT REVISING LAWS RELATED TO ENERGY POLICY DEVELOPMENT AND LEGISLATIVE OVERSIGHT; PROVIDING THAT THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE HAS ADMINISTRATIVE RULE REVIEW, DRAFT LEGISLATION REVIEW, PROGRAM EVALUATION, AND MONITORING FUNCTIONS FOR THE PUBLIC SERVICE COMMISSION; REQUIRING THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE INSTEAD OF THE ENVIRONMENTAL QUALITY COUNCIL TO MAINTAIN A CONTINUAL PROCESS TO DEVELOP THE COMPONENTS OF A COMPREHENSIVE STATE ENERGY POLICY; AMENDING SECTIONS 5-5-230, 90-4-1002, AND 90-4-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 5-5-230, MCA, is amended to read:

“5-5-230. Energy and telecommunications interim committee. The energy and telecommunications interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the department of public service regulation and the ~~entities attached to the department for administrative purposes~~ *public service commission.*”

Section 2. Section 90-4-1002, MCA, is amended to read:

“90-4-1002. Definitions. As used in 90-4-1003, the following definitions apply:

(1) ~~“Council” means the environmental quality council established in 5-16-101~~ *“Committee” means the energy and telecommunications interim committee established in 5-5-230.*

(2) *“Department” means the department of environmental quality established in 2-15-3501.*”

Section 3. Section 90-4-1003, MCA, is amended to read:

“90-4-1003. Energy policy development process. (1) The department and the ~~council committee~~, in cooperation with the consumer counsel and the public service commission, shall maintain a continual process to develop the components of a comprehensive state energy policy.

(2) Because of limited state resources and the need to focus intensive effort on specific issues of importance, the development of a comprehensive state energy policy must occur on an incremental basis. As the need arises, the department, in cooperation with the appropriate state agencies and with extensive public involvement, shall identify and recommend to the ~~council committee~~ specific components of a state energy policy for development under the consensus process described in subsection (3).

(3) (a) Upon selection of a specific energy policy component, the ~~council committee~~ shall assign to a working group composed of representatives of the parties with a stake in that specific component the task of developing consensus recommendations for that component of state energy policy.

(b) The working group must include the broadest possible representation of stakeholders in the issues to be included within the specific component of state energy policy.

(c) Whenever possible, the working group shall use a consensus process to develop recommendations for a specific energy policy component to be submitted to the ~~council committee~~. Recommendations that are not based upon consensus must be so noted by the working group. Upon consideration of the working group’s recommendations, the ~~council committee~~ shall forward its recommendations to the legislature and to the appropriate state agencies for adoption.

(d) The department shall:

(i) provide staff support to the working group, including policy analysis, data gathering, research, technical analysis, and administrative support;

(ii) provide administrative coordination among the appropriate state agencies in the energy policy development process;

(iii) prepare reports for and make recommendations to the ~~council committee~~; and

(iv) consult regularly with the ~~council~~ *committee* to coordinate each agency's activities.

(4) In carrying out their responsibilities under this section, the department and the ~~council~~ *committee* may contract with experts, consultants, and facilitators and may seek funding from a variety of private and public sources for technical and other assistance necessary to accomplish their responsibilities."

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

Approved April 15, 2005

CHAPTER NO. 222

[HB 280]

AN ACT EXPANDING THE AUTHORIZED USE OF TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION TO INCLUDE ALL ARRAIGNMENTS, ACCEPTANCE OF PLEAS, AND SENTENCING HEARINGS; CLARIFYING THE REQUIREMENTS FOR AUDIO-VIDEO COMMUNICATIONS; REQUIRING THE COURT TO INFORM THE DEFENDANT THAT THE DEFENDANT HAS THE RIGHT TO OBJECT TO THE USE OF AUDIO-VIDEO COMMUNICATIONS; AMENDING SECTIONS 46-12-201, 46-12-211, 46-16-105, 46-16-123, 46-18-102, AND 46-18-115, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 46-12-201, MCA, is amended to read:

"46-12-201. Manner of conducting arraignment — use of two-way electronic audio-video communication — exception. (1) Arraignment must be conducted in open court and must consist of reading the charge to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead to the charge. The defendant must be given a copy of the charging document before being called upon to plead. For purposes of this chapter, an arraignment that is conducted by the use of two-way electronic audio-video communication, allowing all of the participants to be ~~observed and~~ heard in the courtroom by all present *and allowing the party to be seen*, is considered to be an arraignment in open court.

(2) The court shall inquire of the defendant or the defendant's counsel the defendant's true name, and if the defendant's true name is given as any other than that used in the charge, the court shall order the defendant's name to be substituted for the name under which the defendant is charged.

(3) The court shall determine whether the defendant is under any disability that would prevent the court, in its discretion, from proceeding with the arraignment. The arraignment may be continued until the court determines the defendant is able to proceed.

(4) Whenever the law requires that a defendant in a misdemeanor or felony case be taken before a court for an arraignment, this requirement may, ~~in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by~~ *be satisfied by two-way electronic audio-video communication if neither party objects and the court agrees to its use and has informed the defendant that the defendant has the right to object to its use.* The audio-video communication must operate so that the defendant and the judge

can see each other simultaneously and converse with each other, so that the defendant and the defendant's counsel, if any, can communicate privately, and so that the defendant and the defendant's counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that the defendant's counsel be in the defendant's physical presence during the two-way electronic audio-video communication.

(5) A judge may order a defendant's physical appearance in court for arraignment. In a felony case, a judge may not accept a plea of guilty or nolo contendere from a defendant ~~who is not~~ *unless the defendant is physically present in the courtroom or is appearing before the court by means of two-way electronic audio-video communication.*"

Section 2. Section 46-12-211, MCA, is amended to read:

"46-12-211. Plea agreement procedure — use of two-way electronic audio-video communication. (1) The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

- (a) move for dismissal of other charges;
- (b) agree that a specific sentence is the appropriate disposition of the case; or
- (c) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding upon the court.

(2) Subject to the provisions of subsection (5), if a plea agreement has been reached by the parties, the court shall, on the record, require a disclosure of the agreement in open court or, on a showing of good cause in camera, at the time that the plea is offered. If the agreement is of the type specified in subsection (1)(a) or (1)(b), the court may accept or reject the agreement or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subsection (1)(c), the court shall advise the defendant that, if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the plea.

(3) If the court accepts a plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) If the court rejects a plea agreement of the type specified in subsection (1)(a) or (1)(b), the court shall, on the record, inform the parties of this fact and advise the defendant that the court is not bound by the plea agreement, afford the defendant an opportunity to withdraw the plea, and advise the defendant that if the defendant persists in the guilty or nolo contendere plea, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(5) For purposes of this section, ~~in cases in which the defendant is charged with a misdemeanor offense,~~ a disclosure of the agreement through the use of two-way electronic audio-video communication, allowing all of the participants to be ~~observed and~~ heard in the courtroom by all present *and allowing the party speaking to be seen*, is considered to be a disclosure in open court. Audio-video communication may be used if neither party objects and the court agrees to its

use *and has informed the defendant that the defendant has the right to object to its use.* The audio-video communication must operate as provided in 46-12-201.”

Section 3. Section 46-16-105, MCA, is amended to read:

“46-16-105. Plea of guilty — use of two-way electronic audio-video communication. (1) Before or during trial, a plea of guilty or nolo contendere must be accepted when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) At any time before judgment or, except when a claim of innocence is supported by evidence of a fundamental miscarriage of justice, within 1 year after judgment becomes final, the court may, for good cause shown, permit the plea of guilty or nolo contendere to be withdrawn and a plea of not guilty substituted. A judgment becomes final for purposes of this subsection (2):

(a) when the time for appeal to the Montana supreme court expires;

(b) if an appeal is taken to the Montana supreme court, when the time for petitioning the United States supreme court for review expires; or

(c) if review is sought in the United States supreme court, on the date that that court issues its final order in the case.

(3) For purposes of this section, ~~in cases in which the defendant is charged with a misdemeanor offense,~~ an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be ~~observed and~~ heard in the courtroom by all present *and allowing the party speaking to be seen*, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use *and has informed the defendant that the defendant has the right to object to its use.* The audio-video communication must operate as provided in 46-12-201.”

Section 4. Section 46-16-123, MCA, is amended to read:

“46-16-123. Absence of defendant on receiving verdict or at sentencing. (1) In all misdemeanor cases, the verdict may be returned and the sentence imposed without the defendant being present.

(2) (a) In all felony cases, the defendant shall appear in person when the verdict is returned or the sentence is imposed unless, after the exercise of due diligence to procure the defendant’s presence, the court finds that it is in the interest of justice that the verdict be returned and the sentence be pronounced in the defendant’s absence.

(b) *For purposes of subsection (2)(a), the defendant’s appearance may be through the use of two-way electronic audio-video communication, allowing all of the participants to be heard in the courtroom by all present and allowing the party speaking to be seen. Audio-video communication may be used if neither party objects and the court agrees to its use and has informed the defendant that the defendant has the right to object to its use. The audio-video communication must operate as provided in 46-12-201.”*

Section 5. Section 46-18-102, MCA, is amended to read:

“46-18-102. Rendering judgment and pronouncing sentence — use of two-way electronic audio-video communication. (1) The judgment must be rendered in open court. For purposes of this section, ~~in cases in which the defendant is charged with a misdemeanor offense,~~ a judgment rendered through the use of two-way electronic audio-video communication, allowing all of the participants to be ~~observed and~~ heard in the courtroom by all present *and allowing the party speaking to be seen*, is considered to be a judgment rendered in open court. Audio-video communication may be used if neither party objects and the court agrees to its use *and has informed the defendant that the defendant has the right to object to its use*. The audio-video communication must operate as provided in 46-12-201.

(2) If the verdict or finding is not guilty, judgment must be rendered immediately and the defendant must be discharged from custody or from the obligation of a bail bond.

(3) (a) Except as provided in 46-18-301, if the verdict or finding is guilty, sentence must be pronounced and judgment rendered within a reasonable time.

(b) When the sentence is pronounced, the judge shall clearly state for the record the reasons for imposing the sentence.”

Section 6. Section 46-18-115, MCA, is amended to read:

“46-18-115. Sentencing hearing — use of two-way electronic audio-video communication. Before imposing sentence or making any other disposition upon acceptance of a plea or upon a verdict or finding of guilty, the court shall conduct a sentencing hearing, without unreasonable delay, as follows:

(1) The court shall afford the parties an opportunity to be heard on any matter relevant to the disposition, including the imposition of a sentence enhancement penalty and the applicability of mandatory minimum sentences, persistent felony offender status, or an exception to these matters.

(2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided by 46-18-301.

(3) Except as provided in 46-11-701 and 46-16-120 through 46-16-123, the court shall address the defendant personally to ascertain whether the defendant wishes to make a statement and to present any information in mitigation of punishment or reason why the defendant should not be sentenced. If the defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to do so. For purposes of this section, ~~in cases in which the defendant is charged with a misdemeanor offense,~~ the requirement that the court address the defendant personally may be satisfied by the use of two-way electronic audio-video communication. Audio-video communication may be used if neither party objects and the court agrees to its use *and has informed the defendant that the defendant has the right to object to its use*. The audio-video communication must operate as provided in 46-12-201.

(4) (a) The court shall permit the victim to present a statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim’s opinion regarding appropriate sentence. At the victim’s option, the victim may present the statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or both.

(b) The court shall give copies of any written statements of the victim to the prosecutor and the defendant prior to imposing sentence.

(c) The court shall consider the victim's statement along with other factors. However, if the victim's statement includes new material facts upon which the court intends to rely, the court shall allow the defendant adequate opportunity to respond and may continue the sentencing hearing if necessary.

(5) The court shall impose sentence or make any other disposition authorized by law.

(6) In felony cases, the court shall specifically state all reasons for the sentence, including restrictions, conditions, or enhancements imposed, in open court on the record and in the written judgment."

Section 7. Effective date. [This act] is effective July 1, 2005.

Approved April 15, 2005

CHAPTER NO. 223

[HB 301]

AN ACT AUTHORIZING THE CONTINUING SALE OF LEWIS AND CLARK BICENTENNIAL SPECIALTY LICENSE PLATES; PROVIDING THAT REVENUE FROM THE LICENSE PLATE SALES BE ALLOCATED TO THE DEPARTMENT OF COMMERCE AND THE MONTANA HISTORICAL SOCIETY AS THE SUCCESSORS TO THE LEWIS AND CLARK BICENTENNIAL COMMISSION TO BE ALLOCATED TO CERTAIN PRIVATE, NONPROFIT ASSOCIATIONS THAT SUPPORT LEWIS AND CLARK DESTINATION SITES AND TO BE USED FOR PROJECTS RELATED TO LEWIS AND CLARK; ESTABLISHING STATE SPECIAL REVENUE ACCOUNTS FOR THE RECEIPT OF LICENSE PLATE REVENUE; PROVIDING FOR THE ALLOCATION AND USE OF THE REVENUE IN THE ACCOUNTS; REVISING THE DEFINITION OF "SPONSOR" WITH REGARD TO GENERIC SPECIALTY LICENSE PLATES TO INCLUDE A SUCCESSOR TO A SPONSOR TERMINATING BY LAW; ELIMINATING CERTAIN STATUTORY REFERENCES TO THE LEWIS AND CLARK BICENTENNIAL COMMISSION; AMENDING SECTIONS 2-15-150, 2-15-151, 2-17-808, 17-7-502, 61-3-473, 61-3-476, 61-3-477, AND 61-3-480, MCA; REPEALING SECTION 2-17-809, MCA, SECTION 17, CHAPTER 414, LAWS OF 2001, AND SECTION 135, CHAPTER 114, LAWS OF 2003; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Section 2-15-150, MCA, is amended to read:

"2-15-150. (Temporary) Lewis and Clark bicentennial commission — membership — purpose — account. (1) There is a Lewis and Clark bicentennial commission.

(2) The commission consists of 12 members, as follows:

(a) nine members who must be appointed by the governor, at least three of whom must be enrolled members of a Montana Indian tribe and live on a Montana Indian reservation, who shall serve 3-year staggered terms, who shall represent Montana's different geographical areas, and who must have an interest in the history of the Lewis and Clark expedition;

(b) the director of the Montana historical society, established in 22-3-101;

(c) the administrator of the parks division within the department of fish, wildlife, and parks, established in 2-15-3401; and

(d) the administrator of the Montana promotions division within the department of commerce, established in 2-15-1801.

(3) The commission is responsible for coordinating and promoting observance of Montana's bicentennial commemoration of the Lewis and Clark expedition and the importance of the roles played by Montana's Indian people to the Lewis and Clark expedition. The commission may:

(a) cooperate with national, regional, statewide, and local events promoting the bicentennial;

(b) plan and coordinate or assist in planning and coordinating bicentennial events;

(c) engage in fundraising activities, including revenue-earning enterprises and the solicitation of grants, gifts, and donations;

(d) promote public education concerning the Lewis and Clark expedition and the history and culture of Montana's Indian people at the time of the Lewis and Clark expedition; and

(e) perform other related duties.

~~(4) (a) The Lewis and Clark bicentennial commission is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed \$3 million, payable over a term not to exceed 6 years, for the purposes identified in subsection (3).~~

~~(b) The Lewis and Clark bicentennial commission shall pledge to the repayment of any indebtedness the proceeds from the sale of Lewis and Clark bicentennial license plates as provided in 2-15-151.~~

~~(c) The proceeds of any loan from the board of investments to the Lewis and Clark bicentennial commission must be deposited in the account established in subsection (5).~~

~~(5)(4)~~ There is a Montana Lewis and Clark bicentennial account. Money in the account may include money from revenue-earning enterprises, grants, gifts, or donations, money appropriated by the legislature, and interest earned on the account. Account funds must be used for the purposes described in this section.

~~(6)(5)~~ The commission is attached to the Montana historical society for administrative purposes only as provided in 2-15-121. ~~(Subsections (1) through (3), (5), and (6) terminate (Terminates December 31, 2007—sec. 2, Ch. 428, L. 1997; subsection (4) terminates December 31, 2006—sec. 17, Ch. 414, L. 2001).)~~

Section 2. Section 2-15-151, MCA, is amended to read:

“2-15-151. (Temporary) Lewis and Clark bicentennial license plates — authorization to apply as sponsor — use of proceeds. (1) The Lewis and Clark bicentennial commission may:

~~(a) apply to the department of justice to sponsor a generic specialty license plate as provided in 61-3-476; and~~

~~(b) require an~~ An applicant for a generic specialty license plate sponsored that was sponsored by the former Lewis and Clark bicentennial commission to shall make a donation of \$20 to the department of commerce and the Montana historical society as the successors to the Lewis and Clark bicentennial

commission upon initial issuance of the license plates and a donation of \$20 upon each annual renewal of the license plates.

(2) The donation provided for in subsection ~~(1)(b)~~ (1) must be paid to the county treasurer, who shall remit the entire amount to the department of revenue for deposit in the special revenue ~~account~~ *accounts* established in ~~2-15-150~~ [section 3].

~~(3) The Lewis and Clark bicentennial commission shall establish the criteria that entities or organizations are required to meet in order to receive proceeds from the special revenue account established in 2-15-150, and the commission may distribute the money in a manner and in any amount that it determines appropriate.~~

~~(4) The Lewis and Clark bicentennial commission may retain any amount of money collected in the special revenue account that it determines necessary to fulfill its responsibilities and carry out the activities provided in 2-15-150.~~

~~(5) Entities receiving funds under subsection (3) may not use the funds for purposes other than those prescribed by the Lewis and Clark bicentennial commission and subject to 2-15-150.~~

~~(3) Beginning January 1, 2007, the department of commerce and the Montana historical society shall use money in the special revenue accounts established in [section 3] to support projects related to Lewis and Clark.~~

~~(6) Proceeds from license plate donations and proceeds from any loan from the board of investments that are received in the special revenue account established in 2-15-150 are statutorily appropriated, as provided in 17-7-502, to the Lewis and Clark bicentennial commission. (Terminates December 31, 2006—see. 17, Ch. 414, L. 2001.)”~~

Section 3. Department of commerce Lewis and Clark bicentennial account — Montana historical society Lewis and Clark bicentennial account. (1) (a) There is a department of commerce Lewis and Clark bicentennial account in the state special revenue fund. Three-fourths of the revenue from the sales of Lewis and Clark bicentennial license plates under 2-15-151 must be placed into the account and must be used as provided in 2-15-151. The revenue in the account is statutorily appropriated, as provided in 17-7-502, to the department of commerce.

(b) There is a Montana historical society Lewis and Clark bicentennial account in the state special revenue fund. One-fourth of the revenue from the sales of Lewis and Clark bicentennial license plates under 2-15-151 must be placed into the account and must be used as provided in 2-15-151. The revenue in the account is statutorily appropriated, as provided in 17-7-502, to the Montana historical society.

(2) The department of commerce shall allocate the proceeds that are deposited in the account established in subsection (1)(a) as grants, as follows:

- (a) one-third to the Lewis and Clark interpretive center foundation;
- (b) one-third to the Pompeys pillar historical association;
- (c) one-third to the travelers' rest preservation and heritage association.

Section 4. Section 2-17-808, MCA, is amended to read:

“2-17-808. Placement of certain busts, statues, memorials, monuments, and art displays. (1) The following busts, statues, memorials,

monuments, and art displays are to be placed for up to 50 years, subject to renewal, in the capitol:

- (a) the busts of Thomas J. Walsh, Burton K. Wheeler, and Joseph Dixon;
- (b) the plaques commemorating Theodore Brantley, Fred Whiteside, the first Montana volunteers who fought in the Spanish-American War, the construction of the capitol from 1899 to 1902, and the 1972 Montana constitutional convention;
- (c) the murals by Edgar S. Paxson, Ralph E. DeCamp, Charles M. Russell, Amedee Joullin, and F. Pedretti and sons;
- (d) the portraits of Joseph K. Toole and Wilbur Fiske Sanders;
- (e) the statues of Wilbur Fiske Sanders, ~~Jeanette~~ *Jeanette* Rankin, and Mike and Maureen Mansfield;
- (f) the Montana statehood centennial bell;
- (g) the gallery of outstanding Montanans;
- (h) the Montana constitutional exhibit; and
- (i) the biographical descriptions of Montana's governors, to be placed near the portraits of the governors.

(2) The following busts, statues, memorials, monuments, and art displays are to be placed for up to 50 years, subject to renewal, on the grounds of the capitol:

- (a) the statue of Thomas Francis Meagher;
 - (b) the plaque commemorating Donald Nutter; and
 - (c) two benches with plaques recognizing contributors to the 1997-2000 capitol restoration, repair, and renovation project.
- (3) The statue by Robert Scriver entitled "symbol of the pros" is to be placed for up to 50 years, subject to renewal, on the capitol complex grounds.
- (4) The senate sculpture ~~provided for in 2-17-809~~ *depicting the Lewis and Clark expedition* is to be placed for up to 50 years, subject to renewal, on the west wall in the senate chambers.
- (5) The council shall determine the specific placement of the items identified in subsections (1) through (3)."

Section 5. Section 17-7-502, MCA, is amended to read:

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

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

- (a) The law containing the statutory authority must be listed in subsection (3).
- (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: ~~2-15-151~~; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312;

10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 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; [section 3]; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; 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; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005; and pursuant to sec. 12, [LC 1693], L. 2005, the inclusion of [section 3] becomes effective December 31, 2006.)"

Section 6. Section 61-3-473, MCA, is amended to read:

"61-3-473. Definitions. As used in 61-3-472 through 61-3-481, the following definitions apply:

(1) "Generic specialty license plate" means a license plate that bears the name, identifying phrase, or graphic of a sponsor, approved by the department, and that is issued by the department.

(2) "Governmental body" means a tribal government, state agency, local government, school district, or other political subdivision within this state.

(3) "Organization" means an association, corporation, group, or other entity:

(a) recognized by the internal revenue service as tax-exempt under 26 U.S.C. 501(c)(3); and

(b) that does not have as its primary focus sectarian activities, including but not limited to activities aimed at promoting the adoption of one or more religious or political viewpoints.

(4) "Sponsor" means the governmental body, *the governmental body's successor*, or *an* organization approved by the department to promote the sale and issuance of a generic specialty license plate.

(5) "Tribal government" means the officially recognized government of an Indian tribe, nation, or other organized Indian group or community located in Montana that is exercising self-government powers and that is recognized as

being eligible for services provided by the United States to Indians because of their status as Indians.”

Section 7. Section 61-3-476, MCA, is amended to read:

“61-3-476. Qualification and approval of governmental body as sponsor. (1) To qualify for sponsorship of a generic specialty license plate, a governmental body shall:

(1)(a) apply for sponsorship through the executive body of a tribal government, the state agency director or department head, the commission or council of a local government or political subdivision, or the board of trustees of a school district on a form or in a format approved by the department;

(1)(b) if the governmental body is a state agency, identify the statutory authority under which it is relying to seek sponsorship of a generic specialty license plate and specify the account in which any generic specialty license plate donations must be placed;

(1)(c) designate one of its officers or employees as the governmental body’s generic specialty license plate liaison. The liaison is responsible for all communications with the department regarding the governmental body’s sponsorship of generic specialty license plates and shall file the liaison’s name, address, and telephone number with the department.

(2) *The legislature may designate a governmental body to be a successor to a governmental body that is terminated. The successor governmental body shall succeed to all rights and responsibilities of the original sponsor.*”

Section 8. Section 61-3-477, MCA, is amended to read:

“61-3-477. Generic specialty license plate liaison — responsibilities.

(1) Upon the department’s approval of an organization’s or a governmental body’s proposed sponsorship of a generic specialty license plate, the generic specialty license plate liaison designated under 61-3-475(1)(c) and ~~61-3-476(3) 61-3-476(1)(c)~~ shall submit to the department the sponsor’s name, identifying phrase, and graphic that will appear on the generic specialty license plate.

(2) The generic specialty license plate liaison shall:

(a) verify and approve in writing the prototype or mockup of the sponsor’s generic specialty license plate before it may be manufactured or issued by the department; and

(b) confirm, in writing, the donation fee established by the sponsor for initial purchase of the sponsor’s generic specialty license plate and for renewal of the sponsor’s generic specialty license plate if the fee is required on renewal.

(3) Once a sponsor’s generic specialty license plate has been approved for manufacture and distribution, the donation fee established by the sponsor and confirmed by the liaison may not be changed unless a new plate design is authorized in accordance with 61-3-475.”

Section 9. Section 61-3-480, MCA, is amended to read:

“61-3-480. Fees for generic specialty license plates — disposition. (1)

In addition to the other fees and taxes imposed by law, an eligible person who applies for a generic specialty license plate shall pay an administrative fee of \$15 and, except as provided in 61-3-479(1)(b), the donation fee specified by the sponsor.

(2) The county treasurer shall, upon receipt of the fees:

(a) deposit \$5 of the \$15 administrative fee in the county general fund;

(b) notwithstanding any other provisions of Title 7, Title 17, or this title and unless otherwise provided in 61-3-479(1)(b), accept the donation fee paid by the plate purchaser; and

(c) as provided in 15-1-504, once each month, transmit to the department of revenue for distribution:

(i) \$10 of the \$15 administrative fee to the state general fund; and

(ii) all donation fees provided for in subsections (1) and (3), along with a schedule showing the number and type of generic specialty license plates issued and total donations received for the benefit of each sponsor of a generic specialty license plate issued or renewed, to each respective sponsor.

(3) If the donation fee is required by a sponsor upon renewal of generic specialty license plates, the fee must be paid to the county treasurer upon renewal of registration and transmitted to the department of revenue as prescribed in subsection (2).

(4) Once each month, the department of revenue shall distribute to the generic specialty license plate liaison designated by a sponsor under 61-3-475(1)(c) or ~~61-3-476(3)~~ 61-3-476(1)(c) an amount equal to the total donations credited to that sponsor and transferred to the department of revenue by the county treasurers during the preceding month.”

Section 10. Repealer. Section 2-17-809, MCA, section 17, Chapter 414, Laws of 2001, and section 135, Chapter 114, Laws of 2003, are repealed.

Section 11. Performance of administration. It is the intent of the legislature that costs of administration to implement the functions required in [this act] be funded within existing appropriation levels.

Section 12. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 90, chapter 1, part 1, and the provisions of Title 90, chapter 1, part 1, apply to [section 3].

Section 13. Effective dates. (1) [Sections 1 through 5 and 10] are effective December 31, 2006.

(2) [Sections 6 through 9, 11, and 12 and this section] are effective July 1, 2005.

Approved April 15, 2005

CHAPTER NO. 224

[HB 316]

AN ACT REVISING LAWS RELATED TO FEES CHARGED BY THE PUBLIC SERVICE COMMISSION; ELIMINATING A REQUIREMENT THAT FEES OF THE DEPARTMENT OF PUBLIC SERVICE REGULATION BE COMMENSURATE WITH COSTS; REQUIRING THAT FEES SET BY THE DEPARTMENT MUST BE REASONABLE; PROVIDING ADDITIONAL EXCEPTIONS TO THE REQUIREMENT THAT FEES OF THE DEPARTMENT NOT EXCEED \$500; REQUIRING FEES COLLECTED BY THE DEPARTMENT BE DEPOSITED IN A STATE REVENUE FUND TO THE CREDIT OF THE DEPARTMENT; AMENDING SECTIONS 69-1-114 AND 69-1-402, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 69-1-114, MCA, is amended to read:

“69-1-114. Fees. (1) Each fee charged by the commission must be commensurate with the costs incurred in administering the function for which the fee is charged except those fees set by federal statute *reasonable*.

(2) Except for a fee assessed pursuant to 69-3-204(2), 69-8-421(7), or 69-12-423(2), ~~no~~ a fee set by the commission may *not* exceed \$500.

(3) All fees collected by the department under 69-8-421(7) must be deposited in an account in the special revenue fund. Funds in this account must be used as provided in 69-8-421(7).”

Section 2. Section 69-1-402, MCA, is amended to read:

“69-1-402. Funding of the department of public service regulation.

(1) All fees collected under this section *and any other fees, except as provided in 69-1-114(3)*, must be deposited in an account in the state special revenue fund to the credit of the department. An appropriation to the department may consist of a base appropriation for regular operating expenses and a contingency appropriation for expenses due to an unanticipated caseload.

(2) In addition to all other licenses, fees, and taxes imposed by law, all regulated companies shall, within 30 days after the close of each calendar quarter, pay to the department of revenue a fee based on a percentage of gross operating revenue reported pursuant to 69-1-223(2)(a), as determined by the department of revenue under 69-1-403.

(3) The amount of money that may be raised by the fee on the regulated companies during a fiscal year may not be increased, except as provided in 69-1-224(1)(c), from the amount appropriated to the department by the legislature for that fiscal year, including both base and contingency appropriations. Any additional money required for operation of the department must be obtained from other sources in a manner authorized by the legislature.”

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 July 1, 2005.

Approved April 15, 2005

CHAPTER NO. 225

[HB 483]

AN ACT PROHIBITING POLICE OFFICERS FROM GOING ON STRIKE; PROVIDING FOR BINDING ARBITRATION IN LABOR NEGOTIATIONS INVOLVING POLICE OFFICERS; PROVIDING PROCEDURES FOR BINDING ARBITRATION; AMENDING SECTION 7-32-4114, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Strikes by police officers prohibited. (1) It is unlawful for a police officer to strike or recognize a picket line of a labor organization while in the performance of official duties.

(2) (a) As used in this section, “strike” means an action listed in subsection (2)(b), in concerted action with others, for the purpose of inducing, influencing, or coercing a change in the conditions of employment, compensation, rights, privileges, or obligations of employment of a police officer.

(b) A police officer may not engage in the following actions in concert with others:

(i) refusal to report for duty;

(ii) willful absence from the police officer’s position;

(iii) stoppage of work; or

(iv) departure from the full, faithful, or proper performance of duties of employment.

Section 2. Mediation of disputes. (1) If after a 150-calendar day period of good faith negotiation over the terms of an agreement, or 150 days after certification or recognition of an exclusive representative, an agreement has not been signed, either or both of the parties may notify the board of personnel appeals of the status of the negotiations and of the need for a mediator. The parties may agree to request a mediator before the end of the 150-day period. The 150-day period begins when the parties meet for the first bargaining session and each party has received the other party’s initial proposal. Upon receipt of the notification, the board of personnel appeals shall appoint a mediator and notify the parties of the appointment.

(2) (a) After 15 days of mediation, either party may declare an impasse. The mediator may declare an impasse at any time during the mediation process. Written notification of an impasse must be filed with the board of personnel appeals.

(b) Within 7 days of the declaration of an impasse, each party shall submit to the mediator the final written offer of the party, including a cost summary of the offer. Within 7 days of receipt of the final offers, the mediator shall make public the final offers, including any proposed contract language and each party’s cost summary addressing those issues on which the parties have failed to reach an agreement. Each party’s proposed contract language must be titled “Final Offer”.

(c) Within 30 days after the mediator makes public the parties’ final offers, the parties may agree to and, upon agreement, shall jointly petition the board of personnel appeals to appoint a fact finder. The fact finder must be appointed as provided in 39-31-308(2).

(d) If an agreement is not reached within 30 days after the mediator makes the final offers public or, if the parties participated in fact finding, within 30 days after the receipt of the fact finder’s report, either party may petition the board of personnel appeals for binding arbitration. The petition must include a copy of each party’s “Final Offer”, as provided in subsection (2)(b).

Section 3. Binding arbitration — policy. (1) It is the policy of the state that because the right of police officers to strike is prohibited by [section 1], it is necessary to the high morale of police officers and to the efficient operation of police departments to provide an alternative, expeditious, and effective procedure for the resolution of labor disputes through binding arbitration.

(2) Binding arbitration must be scheduled by mutual agreement no earlier than 30 days following the submission of the petition seeking binding arbitration under [section 2(2)(d)].

Section 4. Selection of arbitrator — procedure — cost-sharing. (1) (a) After receipt of the petition to arbitrate under [section 2(2)(d)], the board of personnel appeals shall submit a list of five qualified, disinterested, and unbiased individuals to the parties. Each party shall alternately strike two names from the list. The order of striking names must be determined by a coin toss. The remaining individual is the arbitrator.

(b) If the parties have not designated the arbitrator and notified the board of personnel appeals of their choice within 5 days of receipt of the list, the board of personnel appeals shall appoint the arbitrator from the names on the list. However, if one of the parties strikes names from the list, as provided in subsection (1)(a), the board of personnel appeals shall appoint the arbitrator from the names remaining on the list.

(2) The arbitrator shall establish the dates, times, and places of hearings. The arbitrator may issue subpoenas. Within 14 calendar days prior to the date of a hearing, each party shall submit to the other party a written last best offer package on all unresolved mandatory subjects. The last best offer package may not be changed. The arbitrator may administer oaths and shall afford the parties the opportunity to examine and cross-examine all witnesses and to present evidence relevant to the dispute.

(3) The arbitrator shall decide the unresolved mandatory subjects contained in the last best offer package. The arbitrator shall base findings and opinions on the criteria listed in subsections (3)(a) through (3)(h). Primary consideration must be given to the criteria in subsection (3)(a). The criteria are:

- (a) the interest and welfare of the public;
- (b) the reasonable financial ability of the unit of government to meet the costs of the proposed contract, giving consideration and weight to the other services provided by the unit of government, as determined by the governing body of the unit of government;
- (c) the ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided;
- (d) the overall compensation presently received by the police officers, including direct wage compensation, holiday pay, other paid excused time, insurance, and all other direct or indirect monetary benefits;
- (e) comparison of the overall compensation of other police officers in comparable communities with similar populations in Montana and contiguous states;
- (f) inflation as measured by the consumer price index, U.S. city average, commonly known as the cost of living;
- (g) the stipulations of the parties; and
- (h) other factors, consistent with subsections (3)(a) through (3)(g), that are traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of employment. However, the arbitrator may not use other factors if, in the judgment of the arbitrator, the factors listed in subsections (3)(a) through (3)(g) provide a sufficient basis for an award.

(4) Within 30 days after the conclusion of the hearings or an additional period agreed upon by the parties, the arbitrator shall select only one of the last best offer packages submitted by the parties and shall make written findings along with an opinion and order. The opinion and order must be served on the parties and the board of personnel appeals. Service may be made by personal

delivery or by certified mail. The findings, opinion, and order must be based upon the criteria listed in subsection (3).

(5) The cost of arbitration must be borne equally by the parties.

Section 5. Arbitration decision final. Subject to Title 27, chapter 5, part 3, the decision of the arbitrator is final and is binding on the parties, and the board of personnel appeals shall issue an order containing the decision. Refusal or failure to comply with any provision of a final and binding arbitration award is an unfair labor practice. An order issued by the board of personnel appeals pursuant to this section may be enforced by either party or the board of personnel appeals in the district court for any county in which the dispute arose.

Section 6. Section 7-32-4114, MCA, is amended to read:

“7-32-4114. Restrictions on activities of ~~policemen~~ police officers. (1) Except as provided in subsection (2), a member of the police force may not hold any other office or be employed in any other department of the city or town government. *A member of the police force may not strike, as provided in [section 1].*

(2) A member of the police force of a third-class city or of a town may be employed in another department of the city or town government. However, the member may not hold political office in the city or town government.

(3) The fact that a person is an officer or member of the police department does not deprive the person's spouse or any member of the person's family of the right to participate in political activity or to hold public or political office.

(4) An officer or member of the police department may participate in political activity ~~provided that~~ *if the officer does not do so while on duty or in uniform or that it if the activity does not otherwise interfere with the performance of duties.*”

Section 7. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 39, chapter 31, and the provisions of Title 39, chapter 31, apply to [sections 1 through 5].

Section 8. 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 9. Effective date. [This act] is effective July 1, 2005.

Approved April 15, 2005

CHAPTER NO. 226

[HB 492]

AN ACT PROVIDING FOR THE ABANDONMENT OF A PORTION OF THE RIGHT-OF-WAY OR FOR ABANDONMENT OF HIGHWAY PROPERTY WHEN THE CONTIGUOUS PROPERTY HAS BEEN SUBDIVIDED PRIOR TO ABANDONMENT AND WHEN IT IS DETERMINED TO NOT BE NECESSARY TO THE LAYING OUT, ALTERING, CONSTRUCTION, IMPROVEMENT, OR MAINTENANCE OF A ROAD OR HIGHWAY; PROVIDING CRITERIA AND PROCEDURES FOR THE ABANDONMENT; AMENDING SECTIONS 60-2-107, 60-4-201, 60-4-202, 60-4-203, AND 60-4-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Purpose. The purpose of [sections 1 through 6] is to provide for the abandonment of an interest in real property that the department has determined is not necessary to the laying out, altering, construction, improvement, or maintenance of a road or highway. The current abandonment statute, 60-4-209, does not provide for abandonment of only a portion of the right-of-way or for abandonment of highway property where the contiguous property has been subdivided prior to abandonment.

Section 2. Definitions. As used in [sections 1 through 6], unless the context requires otherwise, the following definitions apply:

(1) "Abandoned interest" means the fee simple or lesser interest in the subject property after the abandonment has been ordered by the commission.

(2) "Abandonment" means cessation of use of right-of-way or activity on the right-of-way with no intention to reclaim or use the right-of-way again.

(3) "Contiguous property" means subdivided parcels along one side of the length of the remainder.

(4) "Remainder" means the area lying between the centerline and the new right-of-way line as determined by the department, in its sole discretion, as necessary for the reconstruction and maintenance of a road or highway.

(5) "Subject property" means that portion of highway right-of-way for which abandonment is sought.

Section 3. Application of other laws. (1) The provisions of 60-2-107(1) through (3), 60-4-201, 60-4-202, 60-4-203, and 60-4-209(1) and (3) through (5) do not apply to abandonment under [sections 1 through 6].

(2) The provisions of 60-2-107(4) and (5) apply to abandonment under [sections 1 through 6] to the extent that reasonable access must remain after the abandonment.

Section 4. Procedure for abandonment. (1) Upon receipt of a petition, in writing, for the abandonment of the subject property from three or more owners of contiguous property, the department shall prepare an exhibit, setting forth the boundaries of the subject property and identifying the remainder.

(2) The department shall prepare an order of abandonment to propose to the commission.

(3) The proposed order must state that the subject property is subject to all easements and utilities apparent or of record.

(4) Before abandoning the subject property, the commission shall notify the board of county commissioners in writing of its intent to abandon the subject property and shall hold a public hearing in the county or counties affected by the abandonment.

(5) The commission shall publish the notice of proposed abandonment and public hearing for 3 successive weeks in local newspapers within the county.

(6) The commission, in its sole discretion, may enter an order abandoning the subject property.

(7) The order with exhibits attached must be recorded by the department in the office of the clerk and recorder in the county or counties in which the subject property is located.

Section 5. Criteria for abandonment. (1) Subject to subsection (2), the commission shall enter an order abandoning the subject property upon finding that:

(a) the department has determined that the cost of disposing of the subject property by sale pursuant to 60-4-202 or exchange pursuant to 60-4-201 exceeds the fair market value of the subject property;

(b) a remainder exists to provide reasonable access; and

(c) at least one of the following applies:

(i) the disposal qualifies as an exception to 23 CFR 710.403(d);

(ii) reimbursement of federal funds is not required; or

(iii) the commission agrees to any required reimbursement of federal funds.

(2) An owner of contiguous property who does not object to the proposed receipt of title to the abandoned interest is considered to have consented to the receipt of title.

Section 6. Title. (1) The department is not responsible for apportioning the abandoned interest among the owners of the contiguous property, and the provisions of 60-4-209(3) do not apply to this abandonment.

(2) By consummating the abandonment, neither the department nor the commission gives the covenants set forth in 30-11-110 or warrants title.

(3) The interest acquired by each owner of contiguous property is the abandoned interest in the subject property between the extension of the boundaries of the contiguous property, extending on the same course and intersecting with the linear boundary of the remainder.

Section 7. Section 60-2-107, MCA, is amended to read:

“60-2-107. Abandonment of highways — exchange of roadways — public notice required. (1) ~~The~~ *Except as provided in [sections 1 through 6],* the commission may abandon highways on the federal-aid systems and state highways.

(2) ~~Before~~ *Except as provided in [sections 1 through 6],* before abandoning or discontinuing maintenance on a highway, the commission shall hold a public hearing in the county or counties affected by the abandonment. The commission may elect to offer to transfer the liability for and the maintenance of a highway to another agency or agencies that may in turn elect to take responsibility for the highway. The commission shall notify the board of county commissioners in writing of its intent to abandon a highway and hold a public hearing. The commission shall publish for 3 consecutive weeks in local newspapers within the county the notice of abandonment and public hearing.

(3) ~~The~~ *Except as provided in [sections 1 through 6],* the commission may enter into an agreement with a unit of local government, on mutually beneficial terms, to exchange property interests or responsibilities, including maintenance, on any portion of a federal-aid or state highway and on any portion of a county road or city street.

(4) The commission may not abandon a highway, road, or right-of-way used to access public land unless another highway, road, or right-of-way provides substantially the same access.

(5) The commission may not abandon a highway, road, or right-of-way used to access private land if the access benefits two or more landowners unless all the landowners agree to the abandonment.”

Section 8. 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. ~~The~~ *Except as provided in [sections 1 through 6], 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) ~~Prior~~ *Except as provided in [sections 1 through 6], 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.”

Section 9. Section 60-4-202, MCA, is amended to read:

“60-4-202. Sale of interest in real property. (1) The department may sell an interest in real property if the department determines that the property is not necessary to the laying out, altering, construction, improvement, or maintenance of a highway. *Except as provided in [sections 1 through 6] and subsection (2) of this section,* if the interest is reasonably of a value in excess of \$10,000, sale must be made to the highest bidder at public auction. The sale of an interest at auction must be conducted as provided in 77-2-321.

(2) (a) The department may sell an interest in real property without a public auction directly to:

- (i) a federal, state, tribal, or local government;
- (ii) an agency of government;
- (iii) a school district; or
- (iv) a unit of the Montana university system.

(b) The department shall obtain fair market value for the property.

(3) ~~Before~~ *Except as provided in [sections 1 through 6], before* the department sells an interest in real property as provided in subsection (2), the department shall notify all landowners whose property is adjacent to the land proposed for sale. If any of the landowners are interested in buying the land proposed for sale, the landowners shall notify the department of their interest by registered letter within 30 days of the receipt of the notice of sale from the department. Upon receipt of a notice of interest, the department shall offer the land for sale as provided in 60-4-203 and this section.”

Section 10. Section 60-4-203, MCA, is amended to read:

“60-4-203. Conduct of sale. (1) ~~The~~ *Except as provided in [sections 1 through 6], the* department shall publish notice of the sale once a week for 4 successive weeks in a newspaper published in the county in which the interest is

located. The notice of sale must contain the information required by 77-2-322. Sale must be held in the county where the property is located.

(2) ~~Before~~ *Except as provided in [sections 1 through 6], before* the sale of an interest having a value in excess of \$10,000, the department must have the interest appraised at a price representing a fair market value. The appraised value must be stated in the published notice.

(3) ~~A~~ *Except as provided in [sections 1 through 6], a* sale of an interest may not be made unless it has been appraised within 3 months prior to the date of the sale. A sale may not be made for less than 90% of the appraised value.

(4) ~~Title~~ *Except as provided in [sections 1 through 6], title* to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department.”

Section 11. Section 60-4-209, MCA, is amended to read:

“60-4-209. Abandoned highway property — title vests in contiguous owner. (1) ~~Upon~~ *Except as provided in [sections 1 through 6], upon* abandonment by the state in the manner provided in subsection (2) of an interest in real property acquired for the purpose of establishment of a highway, the owner of contiguous real property or ~~his~~ *the owner’s* successor in interest is vested with the abandoned interest to the extent provided in subsection (3).

(2) For the purposes of this section:

(a) a fee simple interest may be abandoned only by the proper order of the commission; and

(b) an interest of less than fee simple may be abandoned in the manner provided in subsection (2)(a), by operation of law, and by judgment of a court of competent jurisdiction.

(3) ~~The~~ *Except as provided in [sections 1 through 6], the* interest acquired by the contiguous property owner under subsection (1) is the abandoned interest or portion of ~~such~~ *the* interest:

(a) if there are different contiguous property owners on each side of the abandoned interest, bounded on one side by the contiguous property and on the remaining two opposite sides by lines following the shortest distance from the extreme ends of the contiguous property abutting upon the abandoned interest to the center of the abandoned interest; and

(b) if the owners of the contiguous property on each side of the abandoned interest are ~~one and~~ the same, bounded on two opposite sides by the contiguous properties and on the two remaining opposite sides by lines following the shortest distance from the extreme ends of the contiguous property on one side of the abandoned interest to the extreme ends of the contiguous property on the other side of the abandoned interest.

(4) For the purpose of this section, an interest in property abandoned by a proper order of the commission includes an interest in property that the commission determines to be unnecessary to the laying out, altering, construction, improvement, or maintenance of a highway, whether or not the commission determines to sell ~~such~~ *the* interest.

(5) ~~The~~ *Except as provided in [sections 1 through 6], the* interest acquired by a contiguous property owner under subsection (3) is conditioned upon the use of the property for agricultural or noncommercial purposes. If the property is used for commercial purposes or for purposes of future subdivision or other similar

development, the property ~~shall~~ *must* revert to the state for sale pursuant to this part. This restriction applies to all subsequent holders of title to the property.”

Section 12. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 60, chapter 4, part 2, and the provisions of Title 60, chapter 4, part 2, apply to [sections 1 through 6].

Section 13. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2005

CHAPTER NO. 227

[HB 514]

AN ACT INCREASING THE RESTITUTION FOR THE ILLEGAL TAKING OF A GRIZZLY BEAR; AMENDING SECTIONS 87-1-111 AND 87-1-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, grizzly bears in the Yellowstone ecosystem have achieved recovery goals established by the United States Fish and Wildlife Service; and

WHEREAS, the United States Fish and Wildlife Service has indicated that it intends to remove grizzly bears in the Yellowstone ecosystem from the list of threatened and endangered species in 2005; and

WHEREAS, once delisted, grizzlies will be managed by the State of Montana; and

WHEREAS, illegal taking of a grizzly bear constitutes a theft of valuable state property and could delay delisting.

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

Section 1. 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, ~~grizzly bear~~, and endangered species, \$2,000;

(b) elk, caribou, bald eagle, black bear, 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 2. Section 87-1-115, MCA, is amended to read:

“87-1-115. Restitution for illegal killing or possession of trophy wildlife. In addition to other penalties provided by law, a person convicted or forfeiting bond or bail on a charge of the purposeful or knowing illegal killing, taking, or possession of a trophy animal listed in this section shall reimburse the state for each trophy animal according to the following schedule:

(1) bighorn sheep with at least one horn equal to or greater than three-fourth curl as defined by commission regulation, \$30,000;

(2) elk with at least six points on one antler, as defined by commission regulation, *or any grizzly bear*, \$8,000;

(3) moose having antlers with a total spread of at least 30 inches, as defined by commission regulation, or any mountain goat, \$6,000;

(4) antlered deer with at least four points on one antler as defined by commission regulation, \$8,000;

(5) antelope with at least one horn greater than 14 inches in length as defined by commission regulation, \$2,000.”

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

Approved April 15, 2005

CHAPTER NO. 228

[HB 746]

AN ACT CLARIFYING MOTOR VEHICLE REGISTRATION REQUIREMENTS FOR NATIONAL GUARD AND RESERVE MEMBERS WHO ARE STATIONED OUTSIDE MONTANA; AND AMENDING SECTION 61-3-456, MCA.

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

Section 1. Section 61-3-456, MCA, is amended to read:

“61-3-456. Registration of motor vehicle owned and operated by Montana resident on active military duty stationed outside Montana.

(1) As an incentive for military service, an owner of a motor vehicle who is a Montana resident who entered active military duty from Montana, *including a national guard or reserve member*, and who is stationed outside Montana may file with the department an application for the registration of the motor vehicle. The application must be sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the make, the gross weight, the year and number of the model, and the manufacturer’s identification number and serial number of the motor vehicle; and

(c) that the vehicle is owned and operated by a Montana resident who meets the qualifications of subsection (1) and is on active military duty and stationed outside Montana.

(2) The registration fee for a motor vehicle registered under subsection (1) is as provided in 61-3-311 and 61-3-321.

(3) A vehicle registered under this section is not subject to:

(a) the taxes described in 61-3-303(5)(b);

(b) assessment under 15-8-202 or 61-3-503, the fee in lieu of tax under 61-3-529, or the registration fee under 61-3-560 through 61-3-562; or

(c) any of the fees provided in part 5 of this chapter.”

Approved April 15, 2005

CHAPTER NO. 229

[SB 21]

AN ACT REGULATING DAMAGES THAT MAY BE GRANTED FOR MEDICAL MALPRACTICE THAT REDUCES A PATIENT'S CHANCE OF RECOVERY; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Liability of health care provider for reduced chance of recovery caused by malpractice. (1) For purposes of a malpractice claim, as defined in 27-6-103, damages may be awarded against a health care provider, as defined in 27-6-103, if a negligent act or omission during diagnosis or treatment for a medical condition reduces a patient's chance of recovering and the negligent act or omission is a contributing cause of:

(a) death;

(b) survival for a shorter period of time;

(c) no recovery;

(d) a recovery that is of lesser extent or quality or that takes longer to occur;

or

(e) other injury.

(2) The damages must be determined based on which of the events referred to in subsections (1)(a) through (1)(e) occurred and the resulting types of injury, damage, and loss.

(3) (a) If the evidence establishes that the chance of recovering prior to the negligent act or omission was more likely than not, the damages awarded must be 100% of the damages determined under subsection (2).

(b) If the evidence establishes that the chance of recovering prior to the negligent act or omission was not more likely than not, the damages awarded must be the difference between the chance of recovering prior to the negligent act or omission and the chance of recovering after the negligent act or omission multiplied by the total damages determined under subsection (2).

Section 2. Effective date. [This act] is effective July 1, 2005.

Section 3. Applicability. [This act] applies to causes of action that arise on or after [the effective date of this act].

Approved April 15, 2005

CHAPTER NO. 230

[SB 29]

AN ACT EXEMPTING INDIVIDUALS CONVICTED OF A FELONY DRUG OFFENSE FROM THE FEDERAL PROHIBITION ON ELIGIBILITY FOR BENEFITS UNDER FOOD STAMPS OR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES UNDER CERTAIN CONDITIONS; AUTHORIZING THE ADOPTION OF RULES GOVERNING TESTING AND REPORTING REQUIREMENTS TO ALLOW FELONY DRUG OFFENDERS TO RECEIVE BENEFITS; AMENDING SECTIONS 53-4-212 AND 53-4-231, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 53-4-212, MCA, is amended to read:

“53-4-212. Department to make rules. (1) The department shall make rules and take action as necessary or desirable for the administration of public assistance programs.

(2) The department shall adopt rules that may include but are not limited to rules concerning:

(a) eligibility requirements, including gross and net income limitations, resource limitations, and income and resource exclusions;

(b) amounts of assistance, methods for computing benefit amounts, and the length of time for which benefits may be granted;

(c) the degree of kinship required for a person to qualify as a specified caretaker relative in order to be eligible for assistance;

(d) procedures and policies for employment and training programs, requirements for participation in employment and training programs, and exemptions, if any, from participation requirements;

(e) requirements for specified caretaker relatives, including cooperation with assessments, the number of hours of participation required for each month, specific activities required to address employment barriers, and other terms of performance;

(f) eligibility for and terms and conditions of child-care assistance for financial assistance recipients, including maximum amounts of assistance payable and amounts of copayments required by specified caretaker relatives;

(g) eligibility criteria and participation requirements for nonfinancial assistance recipients;

(h) terms of ineligibility or sanctions against a specified caretaker relative or other family member who fails to enter into a family investment agreement, as provided for in 53-4-606, or to comply with the individual’s obligations under the agreement, including the length of the period of ineligibility, if any;

(i) requirements, if any, for participation in the employment and training demonstration project;

(j) eligibility for and terms and conditions of extended medical assistance benefits;

(k) reporting requirements;

(l) sanctions, disqualification, or other penalties for failure or refusal to comply with the rules or requirements of a public assistance program;

(m) exemptions from the 60-month limitation on assistance provided in 53-4-231 based on hardship or for families that include an individual who has been battered or subjected to extreme cruelty, as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608, including but not limited to the duration of the exemption;

(n) individuals who must be included as members of an assistance unit;

(o) categories of aliens who may receive assistance, if any;

(p) requirements relating to the assignment of child and medical support rights and cooperation in establishing paternity and obtaining child and medical support;

(q) requirements for eligibility and other terms and conditions of other programs to strengthen and preserve families;

(r) special eligibility or participation requirements applicable to teenage parents, if any; ~~and~~

(s) conditions under which assistance may be continued when an adult or a dependent child is temporarily absent from the home and the length of time for which assistance may be continued; *and*

(t) any random drug testing or reporting requirements for persons who are required to comply with the conditions provided under 53-4-231(3) and graduated sanctions that may include terms of ineligibility for violations of conditions of supervision or treatment requirements. The department may enter into agreements with the department of corrections regarding testing and reporting on offenders under the supervision of the department of corrections."

Section 2. Section 53-4-231, MCA, is amended to read:

"53-4-231. Eligibility. (1) Subject to the provisions of subsections (2) through ~~(5)~~ (6), assistance may be granted under this part to:

(a) a dependent child;

(b) a specified caretaker relative or relatives, including but not limited to the natural or adoptive parents of a dependent child who:

(i) enters into a family investment agreement, as provided for in 53-4-606, if required by the department; and

(ii) cooperates in all assessments and screening required by the department;

(c) the stepparent of a dependent child who lives with the child and the child's natural or adoptive parent;

(d) persons under 18 years of age who live in the home with a dependent child, including but not limited to siblings related to the dependent child by blood, marriage, or adoption or by law;

(e) a needy pregnant woman with no other children who is receiving payments. Payments may begin no earlier than the third month prior to the month in which the child is expected to be born.

(2) Persons who are not citizens of the United States are eligible for assistance only as provided in sections 401 through 435 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as codified in Title 8 of the United States Code.

(3) A person who has been convicted of a felony offense, an element of which involves the possession, use, or distribution of a controlled substance, as defined in 21 U.S.C. 802, is eligible for public assistance if the person is actively

complying with the conditions of supervision or has discharged the sentence associated with the felony conviction and if the person is actively participating in treatment, if required.

~~(3)~~(4) The following are not eligible for assistance:

(a) persons who are receiving supplemental security income payments under the Social Security Act;

(b) an adult or a dependent child who is or is expected to be absent from the home of the specified caretaker relative continuously for a period of time prescribed by the department by rule;

(c) a specified caretaker relative who fails to comply with requirements for reporting the absence of a dependent child from the specified caretaker relative's home as prescribed by the department by rule;

(d) families in which the specified caretaker relative fails or refuses to assign child and medical support rights to the department or to cooperate in establishing paternity or obtaining child or medical support as required by the department by rule;

(e) families in which the specified caretaker relative or other adult household member, as specified by the department by rule, fails or refuses to:

(i) cooperate in any required screening or assessment; or

(ii) enter into a family investment agreement required by the department under 53-4-606;

(f) teenage parents who fail or refuse to attend secondary school or another training program as required by the department by rule;

(g) teenage parents who are not living in an adult-supervised setting as defined by the department by rule;

(h) a fugitive felon or probation or parole violator as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608; *and*

(i) individuals who have fraudulently misrepresented their place of residence, as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608. The ineligibility continues for a period of 10 years beginning on the date of conviction.

~~(j) an individual convicted after August 22, 1996, of any offense that is classified as a felony and that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(G) of the Controlled Substance Act, 21 U.S.C. 802(G).~~

~~(4)~~(5) A family is not eligible for financial assistance if the family includes an adult who has received financial assistance in a program funded under temporary assistance for needy families in any state or states for 60 months or more, whether or not the months are consecutive, unless an exception is expressly granted by federal law.

~~(5)~~(6) This part may not be interpreted to entitle any individual or family to assistance under programs funded by temporary assistance for needy families."

Section 3. Effective date. [This act] is effective July 1, 2005.

Approved April 15, 2005

CHAPTER NO. 231

[SB 32]

AN ACT INCLUDING MINOR SIDEWALK REPAIR IN STREET MAINTENANCE DISTRICTS; AND AMENDING SECTION 7-12-4401, MCA.

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

Section 1. Section 7-12-4401, MCA, is amended to read:

“7-12-4401. Street maintenance district authorized — definition. (1) Whenever the council of ~~any~~ a city or town desires to create a district for the maintenance of all or ~~any~~ part of the streets or avenues of its city or town as provided in this part, it shall provide by ordinance a method of doing the maintenance and of paying for the maintenance under the restrictions and regulations provided in this part.

(2) “Maintenance” as used in this part includes but is not limited to sprinkling, graveling, oiling, chip sealing, seal coating, overlaying, treating, general cleaning, sweeping, flushing, snow removal, leaf and debris removal, the operation, maintenance, and repair of traffic signal systems, the repair of traffic signs, the placement and maintenance of pavement markings, ~~and~~ curb and gutter repair, *and minor sidewalk repair that includes cracking, chipping, sinking, and replacement of not more than 6 feet of sidewalk in any 100-foot portion of sidewalk.*”

Approved April 15, 2005

CHAPTER NO. 232

[SB 38]

AN ACT DOUBLING THE PENALTIES FOR VIOLATION OF SPECIAL SPEED LIMITS IMPOSED NEAR SCHOOLS; PROVIDING THAT A PORTION OF MONEY COLLECTED FROM THE FINES BE USED FOR PURPOSES OF ERECTING SIGNS OR OTHER LAW ENFORCEMENT NEEDS; AND AMENDING SECTIONS 3-10-601, 46-17-402, AND 46-18-235, MCA.

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

Section 1. Violating speed limit near school — penalty doubled — disposition of fines. (1) A person convicted of violating a special speed limit near a school imposed by a local authority pursuant to 61-8-310(1)(d) is guilty of a misdemeanor. Upon arrest and conviction, the person shall be punished by a fine of not less than double the penalty provided for the violation in 61-8-711.

(2) The fine proceeds must be allocated as follows:

(a) 50% of the fine collected must be distributed as provided in 3-10-601, 46-17-402, or 46-18-235; and

(b) 50% must be forwarded to the local authority that adopted the special speed limit as provided in 61-8-310(1)(d) for the purposes of erecting signs providing notification of the penalty or for other local law enforcement needs.

Section 2. Section 3-10-601, MCA, is amended to read:

“3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees. (1) Except as provided in *[section 1]* and 75-7-123, a justice’s court shall collect the fees prescribed by law for justices’ courts and shall pay them into the county treasury of the county in which the justice of the peace holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) Except as provided in *[section 1]*, 75-7-123, and subsection (4) of this section, all fines, penalties, and forfeitures that are required to be imposed, collected, or paid in a justice’s court must, for each calendar month, be paid by the justice’s court on or before the 5th day of the following month to the treasurer of the county in which the justice’s court is situated, except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.

(3) Except as provided in 46-18-236(7), *[section 1]*, and 75-7-123, the county treasurer shall, as provided in 15-1-504, distribute money received under subsection (2) as follows:

(a) 50% to the department of revenue for deposit in the state general fund; and

(b) 50% to the county general fund.

(4) (a) The justice’s court may contract with a private person or entity for the collection of any final judgment that requires a payment to the justice’s court.

(b) In the event that a private person or entity is retained to collect a judgment, the justice’s court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute a suit or other lawful collection procedure and other postjudgment remedies in its own name.

(c) The justice’s court may pay the private person or entity a reasonable fee for collecting the judgment. The fee incurred by the justice’s court must be added to the judgment amount.”

Section 3. Section 46-17-402, MCA, is amended to read:

“46-17-402. Fees and fines — collection. (1) The fees and fines in municipal court must be the same as the fees and fines provided by law or ordinance, and except as provided in *[section 1]* and subsection (2) of this section, all fees and fines collected by the court must be paid into the city treasury.

(2) (a) The municipal court may contract with a private person or entity for the collection of any final judgment that requires a payment to the municipal court.

(b) In the event that a private person or entity is retained to collect a judgment, the municipal court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful collection procedure and other postjudgment remedies in its own name.

(c) The municipal court, after deducting the charges provided for in 46-18-236, may pay the private person or entity a reasonable fee for collecting the judgment.”

Section 4. Section 46-18-235, MCA, is amended to read:

“46-18-235. Disposition of money collected as fines and costs. ~~The~~ *Except as provided in [section 1], the money collected by a court as a result of the*

imposition of fines or assessment of costs under the provisions of 46-18-231 and 46-18-232 must be paid:

(1) by the clerk of district court to:

(a) the department of revenue for deposit into the state general fund; or

(b) if the fine was imposed for a violation of Title 45, chapter 9 or 10, and at the court's discretion, the drug forfeiture account maintained under 44-12-206 for the law enforcement agency that made the arrest from which the conviction and fine arose; and

(2) by a justice's court pursuant to 3-10-601."

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 7, and the provisions of Title 61, chapter 8, part 7, apply to [section 1].

Approved April 15, 2005

CHAPTER NO. 233

[SB 39]

AN ACT PROVIDING THAT A PERSON USING A WHEELCHAIR MUST BE CONSIDERED TO BE A PEDESTRIAN; CLARIFYING THAT WHEELCHAIRS ARE NOT VEHICLES OR MOTOR VEHICLES; PROVIDING, WITH CERTAIN EXCEPTIONS, THAT A PERSON USING A WHEELCHAIR IS SUBJECT TO THE PRIVILEGES AND RESTRICTIONS ACCORDED A PEDESTRIAN; REMOVING THE PROVISION ALLOWING THE USE OF CERTAIN WHEELCHAIRS TO BE REGULATED BY CITIES AND TOWNS; AMENDING SECTIONS 61-1-102, 61-1-103, 61-1-308, 61-8-501, AND 61-8-506, MCA; AND REPEALING SECTIONS 49-4-311 AND 49-4-312, MCA.

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

Section 1. Section 61-1-102, MCA, is amended to read:

"61-1-102. Motor vehicle. (1) "Motor vehicle":

(a) means a vehicle propelled by its own power and designed or used to transport persons or property upon the highways of the state;

(b) for the purpose of chapter 3, includes trailers and semitrailers;

(c) for the purpose of chapter 3, parts 1 and 2, includes campers, as defined in 61-1-129, motorboats and personal watercraft, as defined in 23-2-502, sailboats, as defined in 23-2-502, that are 12 feet in length or longer, and snowmobiles, as defined in 23-2-601.

(2) The term does not include a bicycle as defined in 61-1-123 *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.*"

Section 2. Section 61-1-103, MCA, is amended to read:

"61-1-103. Vehicle. (1) Except as provided in ~~subsection~~ *subsections (2) and (3)*, "vehicle" means every 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.

(2) (a) In chapters 3 and 4, vehicle means “motor vehicle” as defined in this part.

(b) (i) In chapter 8, part 4, vehicle does not include a bicycle as defined in 61-1-123.

(ii) In chapter 8, part 4, except 61-8-440 through 61-8-442, vehicle includes a snowmobile.

(3) *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.*”

Section 3. Section 61-1-308, MCA, is amended to read:

“61-1-308. Pedestrian. “Pedestrian” means any person ~~on~~ *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.*”

Section 4. Section 61-8-501, MCA, is amended to read:

“61-8-501. Pedestrians subject to traffic regulations. (1) A pedestrian shall obey the instructions of any traffic control device that is specifically applicable to the pedestrian unless otherwise directed by a police officer.

(2) Pedestrians are subject to traffic control signals and pedestrian control signals at intersections as provided in 61-8-207 and 61-8-208.

(3) At all other places, pedestrians are accorded the privileges and are subject to the restrictions provided in this part.

(4) Local authorities may by ordinance prohibit pedestrians from crossing a roadway within a local government’s jurisdiction, except in a marked crosswalk or in an unmarked crosswalk at an intersection.

(5) *Except as provided in 61-8-506(3) and except when provisions by their nature can have no application, a person operating a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person is accorded the privileges and is subject to the restrictions applicable to pedestrians provided in this part.*”

Section 5. Section 61-8-506, MCA, is amended to read:

“61-8-506. Pedestrians on roadways and highways — wheelchair use on highways. (1) Where sidewalks are provided and their use is practicable, a pedestrian may not walk along and upon an adjacent roadway.

(2) Where sidewalks are not provided, a pedestrian, other than an intoxicated pedestrian referred to in 61-8-508, who is walking along and upon a highway may walk only on the shoulder, as far as practicable from the edge of the roadway.

(3) *A person using a wheelchair or other vehicle designed specifically for use by a physically disabled person shall use sidewalks if use of sidewalks is practicable. If use of sidewalks is unsafe or not practicable, the person may use the wheelchair or other vehicle on a highway, as far as practicable from the center of the roadway.*”

Section 6. Repealer. Sections 49-4-311 and 49-4-312, MCA, are repealed.

Section 7. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then the code commissioner shall include the revisions to the definitions of “motor vehicle”, “vehicle”, and “pedestrian” in [this act] in the definitions of those terms in Senate Bill No. 285.

Approved April 15, 2005

CHAPTER NO. 234

[SB 76]

AN ACT ALLOWING THE LIMITED DEVELOPMENT OF LOST CREEK STATE PARK TO INCLUDE A CAMP HOST PAD; AMENDING SECTION 23-1-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 23-1-117, MCA, is amended to read:

“23-1-117. Limit on development of primitive parks. (1) ~~As of October 1, 1993, Except as permitted in Lost Creek state park for the limited purposes provided in subsection (3),~~ the only development allowed in primitive parks designated in 23-1-116 is:

(a) necessary improvements required to meet minimum public health standards regarding sanitation, which may include necessary access to outhouses, vaults, and water;

(b) improvements necessary to ensure the safe public use of existing boat ramps;

(c) addition of gravel to existing unpaved roads and the resurfacing of paved roads when necessary to ensure safe public access;

(d) establishment of new hiking trails or improvement of existing hiking trails; and

(e) installation of minimal signage indicating that the park is a designated primitive park in which development has been limited and encouraging the public to help in maintaining the park’s primitive character by packing out trash.

(2) The following development of designated primitive parks is prohibited:

(a) installation of electric lines or facilities, except when necessary to comply with subsection (1)(a);

(b) installation of recreational vehicle sanitary dumpsites where they do not presently exist; and

(c) creation of new roads and paving of existing but previously unpaved roads.

(3) *Lost Creek state park may be developed to include a camp host pad, with necessary water, electric, and sewage disposal facilities to meet minimum public health standards for the camp host. The camp host pad must be completed by September 30, 2007, and must be accomplished in the least intrusive manner possible in order to retain the primitive character of Lost Creek state park as a whole, in keeping with the spirit of the Montana Primitive Parks Act.”*

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

Approved April 15, 2005

CHAPTER NO. 235

[SB 77]

AN ACT MAKING PERMANENT THE HUNTER MANAGEMENT AND THE HUNTING ACCESS ENHANCEMENT PROGRAMS, WHICH ENCOURAGE PUBLIC ACCESS TO PRIVATE AND PUBLIC LANDS FOR HUNTING PURPOSES BY PROVIDING INCENTIVES TO LANDOWNERS AND BY PROVIDING RESTRICTIONS ON LANDOWNER LIABILITY; MAKING PERMANENT THE PROGRAMS' FUNDING SOURCES FROM VARIOUS LICENSE FEES; MAKING PERMANENT THE PRIVATE LANDS/PUBLIC WILDLIFE REVIEW COMMITTEE AND REQUIRING BIENNIAL REPORTS ON PROGRAM SUCCESS AND COMMITTEE SUGGESTIONS; AMENDING SECTION 87-1-269, MCA, SECTION 18, CHAPTER 459, LAWS OF 1995, AND SECTION 6, CHAPTER 544, LAWS OF 1999; REPEALING SECTION 8, CHAPTER 544, LAWS OF 1999, SECTION 9, CHAPTER 216, LAWS OF 2001, AND SECTION 29, CHAPTER 407, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-1-269, MCA, is amended to read:

“87-1-269. (Temporary) Report required — review committee. (1) The governor shall appoint a committee of persons interested in issues related to hunters, anglers, landowners, and outfitters, including but not limited to the hunting access enhancement program, the fishing access enhancement program, landowner-hunter relations, outfitting industry issues, and other issues related to private lands and public wildlife. The committee must have broad representation of landowners, outfitters, and sportspersons. The department may provide administrative assistance as necessary to assist the review committee.

(2) (a) The review committee shall report to the governor and to ~~the 58th~~ *each* legislature regarding the success of various elements of the hunting access enhancement program, including a report of annual landowner participation, the number of acres annually enrolled in the program, hunter harvest success on enrolled lands, the number of qualified applicants who were denied enrollment because of a shortfall in funding, and an accounting of program expenditures, and make suggestions for funding, modification, or improvement needed to achieve the objectives of the program.

(b) The review committee shall report to the governor and to ~~the 58th~~ *each* legislature regarding the success of the fishing access enhancement program and make suggestions for funding, modification, or improvement needed to achieve the objectives of the program.

(3) The director may appoint additional advisory committees that are considered necessary to assist in the implementation of the hunting access enhancement program and the fishing access enhancement program and to advise the commission regarding the development of rules implementing the hunting access enhancement program and the fishing access enhancement program. ~~(Terminates March 1, 2006—sec. 6, Ch. 544, L. 1999; sec. 6, Ch. 196, L. 2001.)”~~

Section 2. Section 18, Chapter 459, Laws of 1995, is amended to read:

“Section 18. Termination. (1) ~~[Sections 1 through 10] terminate October 1, 2001.~~

~~(2)~~ [Section 11] terminates ~~June 30, 1999~~ *July 1, 2002*.”

Section 3. Section 6, Chapter 544, Laws of 1999, is amended to read:

“**Section 6.** Section 18, Chapter 459, Laws of 1995, is amended to read:

“**Section 18. Termination.** (1) ~~[Sections 1 through 10] terminate October 1, 2001~~ *March 1, 2006*.”

~~(2)~~ [Section 11] terminates ~~June 30, 1999~~ *July 1, 2002*.””

Section 4. Repealer. Section 8, Chapter 544, Laws of 1999, section 9, Chapter 216, Laws of 2001, and section 29, Chapter 407, Laws of 2001, are repealed.

Section 5. Coordination instruction. If House Bill No. 56 is not passed and approved, then [section 1 of this act] is void and 87-1-269 must be amended as follows:

“**87-1-269. ~~(Temporary)~~ Report required — review committee.** (1) The governor shall appoint a committee of persons interested in issues related to hunters, ~~anglers~~, landowners, and outfitters, including but not limited to the hunting access enhancement program, ~~the fishing access enhancement program~~, landowner-hunter relations, outfitting industry issues, and other issues related to private lands and public wildlife. The committee must have broad representation of landowners, outfitters, and sportspersons. The department may provide administrative assistance as necessary to assist the review committee.

(2) ~~(a)~~ The review committee shall report to the governor and to ~~the 58th~~ *each* legislature regarding the success of various elements of the hunting access enhancement program, including a report of annual landowner participation, the number of acres annually enrolled in the program, hunter harvest success on enrolled lands, the number of qualified applicants who were denied enrollment because of a shortfall in funding, and an accounting of program expenditures, and make suggestions for funding, modification, or improvement needed to achieve the objectives of the program.

~~(b) The review committee shall report to the governor and to the 58th legislature regarding the success of the fishing access enhancement program and make suggestions for funding, modification, or improvement needed to achieve the objectives of the program.~~

(3) The director may appoint additional advisory committees that are considered necessary to assist in the implementation of the hunting access enhancement program ~~and the fishing access enhancement program~~ and to advise the commission regarding the development of rules implementing the hunting access enhancement program ~~and the fishing access enhancement program~~. ~~(Terminates March 1, 2006—sec. 6, Ch. 544, L. 1999; sec. 6, Ch. 196, L. 2001.)~~”

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

Approved April 15, 2005

CHAPTER NO. 236

[SB 95]

AN ACT DEFINING THE TERM “OIL OR GAS WELL FACILITY”;
DELAYING THE REQUIREMENT TO APPLY FOR AN AIR QUALITY

PERMIT FOR AN OIL OR GAS WELL FACILITY TO JANUARY 3, 2006, OR 60 DAYS AFTER THE INITIAL WELL COMPLETION DATE, WHICHEVER IS LATER; REQUIRING ADOPTION OF RULES TO REGULATE FACILITIES UNTIL A PERMIT IS ISSUED; TRANSFERRING RULEMAKING AUTHORITY FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO THE BOARD OF ENVIRONMENTAL REVIEW; AMENDING SECTIONS 75-2-103, 75-2-211, AND 75-2-218, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

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

Section 1. Section 75-2-103, MCA, is amended to read:

“75-2-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Advisory council” means the air pollution control advisory council provided for in 2-15-2106.

(2) “Air contaminant” means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(3) “Air pollutants” means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(4) “Air pollution” means the presence of air pollutants in a quantity and for a duration that are or tend to be injurious to human health or welfare, animal or plant life, or property or that would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(5) “Board” means the board of environmental review provided for in 2-15-3502.

(6) (a) “Commercial hazardous waste incinerator” means:

(i) an incinerator that burns hazardous waste; or

(ii) a boiler or industrial furnace subject to the provisions of 75-10-406.

(b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies.

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

(8) “Emission” means a release into the outdoor atmosphere of air contaminants.

(9) “Environmental protection law” means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

(10) “Hazardous waste” means:

(a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4; or

(b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

(11) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of any portion of the input material.

(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters that burn used oil;

(iii) wood-fired boilers; or

(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

(12) "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:

(a) cultures and stocks of infectious agents;

(b) human pathological wastes;

(c) waste human blood or products of human blood;

(d) sharps;

(e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;

(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

(g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

(13) (a) "Oil or gas well facility" means a well that produces oil or natural gas. The term includes:

(i) equipment associated with the well and used for the purpose of producing, treating, separating, or storing oil, natural gas, or other liquids produced by the well; and

(ii) a group of wells under common ownership or control that produce oil or natural gas and that share common equipment used for the purpose of producing, treating, separating, or storing oil, natural gas, or other liquids produced by the wells.

(b) The equipment referred to in subsection (13)(a) includes but is not limited to wellhead assemblies, amine units, prime mover engines, phase separators, heater treater units, dehydrator units, tanks, and connecting tubing.

(c) The term does not include equipment such as compressor engines used for transmission of oil or natural gas.

~~(13)~~(14) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.

~~(14)~~(15) "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer, parent corporation, or subsidiary corporation.

~~(15)~~(16) "Small business stationary source" means a stationary source that:

(a) is owned or operated by a person who employs 100 or fewer individuals;

(b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

(c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(d) emits less than 50 tons per year of an air pollutant;

(e) emits less than a total of 75 tons per year of all air pollutants combined; and

(f) is not excluded from this definition under 75-2-108(3).

~~(16)~~(17) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, or slash and forest debris regulated under laws administered by the department of natural resources and conservation."

Section 2. Section 75-2-211, MCA, is amended to read:

"75-2-211. (Temporary) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) (a) Except as provided in 75-1-208(4)(b), ~~and 75-2-234~~, and subsections (2)(b) and (2)(c) of this section, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department except as provided in subsection (12).

(b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file the permit application with the department no later than January 3, 2006, or 60 days after the initial well completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas well facility is:

(i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run; and

(ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

(c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator may not operate the oil or gas well facility and is liable for a violation of this section for every day of construction, installation, or operation of the facility.

(d) The board shall adopt rules establishing air emission control requirements applicable to an oil or gas well facility during the time from the initial well completion date until the department's decision on the application is final.

(e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to the federal air permitting provisions of 42 U.S.C. 7475 or 7503.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall prepare a

single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) (a) The department's decision on the application is not final until 15 days have elapsed from the date of the decision.

(b) The filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) (a) Except as provided in subsections (12)(b) and (12)(c), an applicant who has received a written notice that its application is considered filed pursuant to subsection (8) may:

(i) for a temporary power generation unit or units with a total electrical generation capacity of not more than 125 megawatts, construct the unit or units. Operation of the unit or units may commence upon the department's issuance of a permit under this section.

(ii) for a temporary power generation unit or units with a total electrical generating capacity of 10 megawatts or less, construct and operate the unit or units.

(b) The construction or operation of a temporary power generation unit or units described in subsection (12)(a) is not in violation of this part unless the operation of the temporary power generation unit or units continues after a

department decision to deny the permit application becomes final as provided in this section.

(c) (i) A permit applicant shall discontinue construction or operation of a temporary power generation unit or units if the applicant is notified by the department in writing that the applicant has failed to submit by the department's deadline any additional information that is necessary to process the permit application.

(ii) The operation of a permit applicant's temporary power generation unit or units described in subsection (12)(a) may not violate ambient air quality standards.

(d) A permit issued under this part and pursuant to the provisions of this subsection (12) must expire no later than 2 years from the date that the department received the permit application and must require removal of the temporary power generation unit or units upon expiration of the permit unless an air quality permit for permanent operation has been issued.

(13) The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(14) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (14)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department. (Terminates July 1, 2005—sec. 4, Ch. 588, L. 2001.)

75-2-211. (Effective July 1, 2005) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) (a) Except as provided in 75-1-208(4)(b), ~~and 75-2-234~~, and subsections (2)(b) and (2)(c) of this section, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file the permit application with the department no later than January 3, 2006, or 60 days after the initial well completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas well facility is:

(i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run; and

(ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

(c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator may not operate the oil or gas well facility and is liable for a violation of this section for every day of construction, installation, or operation of the facility.

(d) The board shall adopt rules establishing air emission control requirements applicable to an oil or gas well facility during the time from the initial well completion date until the department's decision on the application is final.

(e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to the federal air permitting provisions of 42 U.S.C. 7475 or 7503.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

(6) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(7) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

(8) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, is not subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(c) If an application does not require the preparation of an environmental impact statement and is subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its approval or denial of the application.

(d) Except as provided in subsection (9)(e), if an application does not require the preparation of an environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8).

(e) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall prepare a

single environmental review document pursuant to Title 75, chapter 1, for the permit required under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications within the time period provided for in 75-2-215(3)(e).

(f) The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(g) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(10) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(11) (a) The department's decision on the application is not final until 15 days have elapsed from the date of the decision.

(b) The filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(12) The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(13) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (13)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department.”

Section 3. Section 75-2-218, MCA, is amended to read:

“75-2-218. Permits for operation — application completeness — action by department — application shield — review by board. (1) An application for an operating permit or renewal is not considered filed until the department has determined that it is complete. An application is complete if all fees required under 75-2-220 and all information and completed application forms required under 75-2-217 have been submitted. A complete application must contain all of the information required for the department to begin processing the application. If the department fails to notify the applicant in writing within 60 days after submittal of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed on the date of the department’s receipt of the application. The department may request additional information after a completeness determination has been made. ~~The department~~ *board* shall adopt rules that contain criteria for use in determining both when an application is complete and when additional information is required after a completeness determination has been made.

(2) Except as provided in 75-1-208(4)(b) and subsection (3) of this section, the department shall, consistent with the procedures established under 75-2-217, approve or disapprove a complete application for an operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of filing. Failure of the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(3) The board may by rule provide for a transition schedule for both the submittal to the department of initial applications for operating permits by existing sources and action by the department on these initial permit applications. The board may require that one-third of all operating permit applications required for existing sources be submitted within the first calendar year after the adoption of rules implementing an operating permit program under 75-2-217.

(4) If an applicant submits a timely and complete application for an operating permit, the applicant’s failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and complete application for an operating permit renewal, the expiration of the applicant’s existing operating permit is not a violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the expired operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The applicant is not entitled to the protection of this subsection if the delay in final action by the department on the application results from the applicant’s failure to submit in a timely manner information requested by the department to process the application.

(5) Except as provided in subsection (8), if the department approves or denies an application for an operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any person that participated in the public comment process required under 75-2-217(7) may request a hearing before the board. The request for a hearing must be filed

within 30 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(6) (a) Except as provided in subsection (8), the department's decision on any application is not final until 30 days have elapsed from the date of the decision.

(b) Except as provided in subsection (8), the filing of a request for hearing does not stay the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for an informal hearing, that:

(i) the person requesting the hearing is entitled to the relief demanded in the request for a hearing; or

(ii) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the hearing.

(c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

(7) The requirements of subsections (5) and (6) also apply to any action initiated by the department to suspend, revoke, modify, or amend an operating permit issued under this section.

(8) The denial by the department of an application under 75-2-217 and this section is not subject to review by the board or judicial review if the basis for denial is the written objection of the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is considered to be compliance with the requirements of this chapter only if the permit expressly includes those requirements or an express determination that those requirements are not applicable. This subsection does not apply to general permits provided for under 75-2-217."

Section 4. Effective date. [This act] is effective January 1, 2006.

Approved April 15, 2005

CHAPTER NO. 237

[SB 126]

AN ACT REQUIRING THE OWNER OF A MOTORBOAT, SAILBOAT, OR PERSONAL WATERCRAFT TO VERIFY USE OF THE ORIGINAL IDENTIFYING NUMBER EVERY 3 YEARS BY OBTAINING VALIDATION DECALS AT NO COST; REQUIRING THE OWNER OF A VESSEL TO AFFIX THE VALIDATION DECALS TO THE FORWARD HALF OF THE VESSEL; ESTABLISHING LIMITS ON PENALTIES FOR NONCOMPLIANCE; DEFINING "VALIDATION DECAL"; ALLOWING ALL NEW OWNERS 40 DAYS TO OBTAIN AND DISPLAY REGISTRATION AND VALIDATION DECALS AND TO APPLY FOR A NEW CERTIFICATE OF NUMBER; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO

PAY FOR INITIAL PROGRAMMING COSTS; AMENDING SECTIONS 23-2-502, 23-2-511, 23-2-512, AND 23-2-513, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. 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 county treasurer to the owner of a motorboat or by the department of justice to dealers or manufacturers, assigning the motorboat 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) “Department” means the department of fish, wildlife, and parks of the state of Montana.

(4) “Documented vessel” means a vessel that has and is required to have a valid marine document as a vessel of the United States.

(5) “Identifying number” means the boat number set forth in the certificate of number and properly displayed on the motorboat.

(6) “Lienholder” means a person holding a security interest.

(7) “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) (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) “Operate” means to navigate or otherwise use a motorboat or a vessel.

(10) “Operator” means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

(11) (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) “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) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(14) "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) "Registration decal" means an adhesive sticker produced by the department of justice and issued by the department of justice, its authorized agent, or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft as proof of payment of all fees *in lieu of tax* imposed on the motorboat, sailboat, or personal watercraft for the registration period indicated on the ~~sticker~~ *decal* as recorded by the department of justice under 61-3-101.

(16) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

(17) "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation and is valid against third parties generally.

(18) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

(19) "*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.

~~(19)~~(20) "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.

~~(20)~~(21) "Waters of this state" means any waters within the territorial limits of this state."

Section 2. Section 23-2-511, MCA, is amended to read:

"23-2-511. Operation of unnumbered motorboats prohibited — display of registration and validation decals decal. (1) A motorboat on the waters of this state, propelled by a motor or an engine of any description, must be properly numbered and display a valid registration ~~and validation decal~~ *decals*. A person may not operate or give permission for the operation of any motorboat on the waters of this state unless the motorboat is numbered and

displays a valid registration *and validation decal decals* in accordance with this part and applicable federal law or with a federally approved numbering system of another state and unless:

- (a) the certificate of number assigned to the motorboat is in effect;
- (b) the identifying number set forth in the certificate of number and the valid license decals are displayed on the motorboat; and
- (c) a temporary permit has been obtained from the county in which the boat is being operated if that county requires a temporary permit for out-of-state motorboats, as provided in 7-16-2121.

(2) Upon transfer of ownership of a motorboat ~~from a registered boat dealer or manufacturer~~, the transferred motorboat may be operated on the waters of this state for ~~30~~ 40 consecutive calendar days immediately following the transfer of ownership without displaying the ~~numbers and~~ registration *and validation decal decals* required by subsection (1) if when the motorboat is operated during those ~~30~~ 40 consecutive calendar days, a bill of sale or other evidence of transfer ~~reciting~~ *showing* the date of the transfer of ownership is retained in the motorboat and is exhibited to a warden or other officer upon request.”

Section 3. Section 23-2-512, MCA, is amended to read:

“23-2-512. Identifying number. (1) The owner of each motorboat, sailboat, or personal watercraft 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, or personal watercraft is owned, on forms prepared and furnished by the department of justice. The application must be signed by the owner of the motorboat, sailboat, or personal watercraft and be accompanied by a fee of \$3.50 in calendar year 2004 and, in each subsequent year, \$15.50. Any alteration, change, or false statement contained in the application renders the certificate of number void. Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the department of justice, stating the number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner. *Validation decals verifying the identifying number for each motorboat, sailboat, or personal watercraft must be issued along with the certificate of number and must be displayed on the motorboat, sailboat, or personal watercraft.*

(2) The applicant, upon the filing of the application, shall pay to the county treasurer the fee in lieu of tax required under 23-2-517 for a motorboat 10 feet in length or longer, a sailboat 12 feet in length or longer, or a personal watercraft before the application for certification or, if applicable, recertification may be accepted by the county treasurer.

(3) *The fine for failing to display the validation decals may not be more than the cost incurred by the justice court.*

(4) *The department may give only verbal or written warnings until December 31, 2007, for failing to display validation decals in an attempt to educate the boating public.*

~~(3)~~(5) If the ownership of a motorboat, sailboat, or personal watercraft changes, a new application form with the certification fee must be filed within ~~a reasonable time~~ 40 days with the county treasurer and a new certificate of number assigned in the same manner as provided for in an original assignment of number. *New validation decals must be issued simultaneously.*

~~(4)~~(6) If an agency of the United States government has in force a comprehensive system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this part by the department of justice must be in conformity.

~~(5)~~(7) A certificate of number and a ~~registration validation decal~~ *decal* issued under this part are effective unless terminated or discontinued in accordance with the provisions of this part. *All motorboats, sailboats, or personal watercraft already numbered must exhibit validation decals by December 31, 2005. All validation decals expire on February 28, 2008. Validation decals must be obtained by the expiration date at any regional office of the department or through the department website and are in effect for another 3-year period ending February 28, 2011. The requirement of renewal validation decals must continue in subsequent 3-year periods, and renewal validation decals must be identified by color in accordance with the federal numbering system. Except as provided in 23-2-511(2) and subsection (5) of this section, the operation of a motorboat, sailboat, or personal watercraft is prohibited without current validation decals.*

(8) *Validation decals must be approximately 3 square inches. The validation decals must be serially numbered in accordance with the federal numbering system and must be displayed on each side of the vessel.*

~~(6)~~(9) If ownership is transferred, the purchaser shall notify the county treasurer within a ~~reasonable time~~ *40 days* of the acquisition of all or any part of the purchaser's interest, other than the creation of a security interest, in a motorboat, sailboat, or personal watercraft numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat, sailboat, or personal watercraft. The transfer, loss, theft, destruction, or abandonment terminates the certificate of number for the motorboat, sailboat, or personal watercraft. Recovery from theft or transfer of a part interest that does not affect the owner's right to operate the motorboat, sailboat, or personal watercraft does not terminate the certificate of number.

~~(7)~~(10) A holder of a certificate of number shall notify the county treasurer within a reasonable time if the holder's address no longer conforms to the address appearing on the certificate and shall furnish the county treasurer with the new address. The department of justice may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

~~(8)~~(11) (a) The *identifying* number assigned must be painted on or attached to each outboard side of the forward half of the motorboat, sailboat, or personal watercraft or, if there are no sides, at a corresponding location on both outboard sides of the foredeck of the motorboat, sailboat, or personal watercraft. The *identifying* number assigned must read from left to right in Arabic numerals and block characters of good proportion at least 3 inches tall excluding border or trim of a color that contrasts with the color of the background and be so maintained as to be clearly visible and legible. The *identifying* number may not be placed on the obscured underside of the flared bow where it cannot be easily seen from another vessel or ashore. Numerals, letters, or devices other than those used in connection with the identifying number issued may not be placed in the proximity of the identifying number. Numerals, letters, or devices that might interfere with the ready identification of the motorboat, sailboat, or personal watercraft by its identifying number may not be carried in a manner

that interferes with the motorboat's, sailboat's, or personal watercraft's identification. A number other than the *identifying* number assigned to a motorboat, sailboat, or personal watercraft or granted reciprocity under this part may not be painted, attached, or otherwise displayed on either side of the forward half of the motorboat, sailboat, or personal watercraft. A registration decal issued under this part must be placed next to the identifying number located on the left side of a motorboat, sailboat, or personal watercraft or, if there are no sides, at the corresponding location on the left outboard side of the foredeck of the motorboat, sailboat, or personal watercraft. *The validation decal must be placed immediately aft of the registration decal on the left side and immediately aft of the identifying number on the right side of a motorboat, sailboat, or personal watercraft.*

(b) The certificate of number must be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat, sailboat, or personal watercraft whenever the motorboat, sailboat, or personal watercraft is on waters of this state.

(c) Boat liveries are not required to have the certificate of number on board each motorboat, sailboat, or personal watercraft, but a rental agreement must be carried on board livery motorboats, sailboats, or personal watercraft in place of the certificate of number.

~~(9)~~(12) Fees, other than the fee in lieu of tax, collected under this section must be transmitted to the department of revenue, as provided in 15-1-504, for deposit in the state general fund.

~~(10)~~(13) An owner of a motorboat, sailboat, or personal watercraft shall within a reasonable time notify the department of justice, giving the motorboat's, sailboat's, or personal watercraft's identifying number and the owner's name if the motorboat, sailboat, or personal watercraft is transferred, lost, destroyed, or abandoned or within 60 days after a change of the state of principal use or if a motorboat becomes documented as a vessel of the United States.

(14) *The department shall reimburse the department of justice for any programming costs necessary to implement the provisions of this section that are incurred in fiscal year 2005.*

Section 4. Section 23-2-513, MCA, is amended to read:

“23-2-513. Dealer's or manufacturer's identifying number — premises — inspection — bond — judgment — temporary registration permit. (1) A dealer or manufacturer may apply directly to the department of justice for one identifying number and one or more certificates of number. A dealer's or manufacturer's identifying number *and the registration decal* must be displayed on a dealer's or manufacturer's boat while the boat is operating for a purpose related to the buying, selling, ~~or~~ exchanging, *or performance testing* of the boat by the dealer, ~~or~~ manufacturer, *or potential buyer*.

(2) The application for a dealer's or manufacturer's identifying number must include the dealer's or manufacturer's name and business address. Each dealer or manufacturer must have one identifying number assigned to the dealer's or manufacturer's business.

(3) An application for a dealer's or manufacturer's identifying number and a certificate of number must be accompanied by the following fees:

(a) for the identifying number, first certificate of number, and registration decal, \$5;

(b) for each additional certificate of number and registration decal applied for in any application, \$2.

(4) The department of justice shall issue certificates of number for the identifying number assigned to a dealer or manufacturer in the same manner as provided in 23-2-512(1) and (8), except that a boat may not be described in a certificate and each certificate must state that the identifying number has been assigned to a dealer or manufacturer. A dealer's or manufacturer's certificate of number expires on December 31 of the year for which it is issued.

(5) A dealer's or manufacturer's identifying number *and the registration decal* must be displayed in the same manner as provided in 23-2-512(8), except that the number may be temporarily attached. The last three letters must be "DLR" for dealer and "MFR" for manufacturer. These letters must be included, respectively, in dealer or manufacturer identification numbers.

(6) ~~A person other than a dealer or manufacturer or an employee of a dealer or manufacturer may not display or use a dealer's or manufacturer's identifying number.~~ A dealer's or manufacturer's identifying number *and the registration decal* may be displayed only on motorboats or sailboats that are for sale, owned, or on consignment by the dealer or manufacturer. *Consignment boats displaying a dealer's or a manufacturer's identifying number and a registration decal must have a signed and dated consignment contract available for verification that the boat is on consignment.*

(7) A dealer or manufacturer or an employee of a dealer or manufacturer may not use a dealer's or manufacturer's identifying number for any purpose other than the purpose described in subsection (1).

(8) A dealer shall maintain a principal place of business, coinciding with the business address listed on the application, where all business records are maintained and where the dealer displays, sells, and services merchandise. The dealer shall display a sign at the place of business that clearly states the name of the business. The premises of the dealer's principal place of business must be inspected by an official of the department of justice to ensure compliance with this section.

(9) To qualify for renewal of a boat dealer's license, the dealer shall certify to the department of justice, upon application for renewal, that the dealer sold five or more boats during the previous license year. If five or more boats were not sold, an additional fee of \$50 is required for renewal of the dealer's license.

(10) (a) The applicant for a boat dealer's license shall file with the application a bond of \$5,000. The bond must be conditioned that the applicant will conduct the business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department of justice and filed in its office, and must be renewed annually.

(b) A person who suffers loss or damage because of the unlawful conduct of a dealer licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. The judgment must determine a specific loss or damage amount and conclude that the licensee's unlawful operation caused the loss or damage before payment on the bond is required.

(11) Prior to the delivery of a motorboat or a sailboat 12 feet in length or longer to a purchaser, the dealer shall issue and affix to a motorboat or a sailboat constructed after October 31, 1972, a temporary registration permit, as defined in 61-1-603. The temporary registration permit expires ~~30~~ 40 days after the date

of issuance. The dealer shall keep a copy of the temporary registration permit for the dealer's records and shall send a copy of the temporary registration permit to the department of justice. *The dealer shall remove any registration decal prior to selling any used boat.*"

Section 5. Effective date. [This act] is effective July 1, 2005.

Approved April 15, 2005

CHAPTER NO. 238

[SB 206]

AN ACT PROVIDING THAT THE PAY INCREASE FOR THE FIRST COMPLETE PAY PERIOD THAT INCLUDES JANUARY 1, 2005, APPLIES TO ALL STATE EMPLOYEES; ENSURING THAT STATE EMPLOYEES WHO WERE PAID LESS THAN 25 CENTS PER HOUR LESS THAN THE MAXIMUM SALARY ACCORDING TO THE PAY SCHEDULE CONTAINED IN 2-18-312, MCA, WILL CONTINUE TO RECEIVE THE FULL BENEFIT OF THE PAY INCREASE FOR ALL STATE EMPLOYEES THAT OCCURRED ON JANUARY 1, 2005; AMENDING SECTION 2-18-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Section 2-18-303, MCA, is amended to read:

"2-18-303. Procedures for using pay schedules. (1) The pay schedule provided in 2-18-312 must be implemented as follows:

(a) The pay schedule provided in 2-18-312 indicates the entry salary and market salary for each grade for positions classified under the provisions of part 2 of this chapter.

(b) Each employee newly hired by the state of Montana must be hired at the entry rate, except as provided in subsections (6) through (9).

(c) On the first day of the first complete pay period in fiscal year 2004, each employee is entitled to the amount of the employee's base salary as it was on June 30, 2003.

(d) Effective on the first day of the first complete pay period that includes January 1, 2005, the base salary of each employee must be increased by an amount equal to 25 cents an hour ~~or by a lesser amount so that the employee's base salary after the increase does not exceed the maximum salary of the pay grade as provided in subsection (1)(f).~~

(e) An employee's base salary may be no less than the entry salary for the employee's assigned grade.

(f) ~~The Subject to subsection (1)(d),~~ the maximum salary for each grade is determined by subtracting the entry salary from the market salary and adding that amount *plus an amount equal to 25 cents an hour* to the market salary.

(2) The pay schedule provided in 2-18-312 and the provisions of subsection (1) of this section do not apply to those teachers or blue-collar occupations compensated under the pay schedules provided in 2-18-313 and 2-18-315.

(3) The pay schedules provided in 2-18-313 and 2-18-315 must be implemented as follows:

(a) (i) The pay schedules provided for in 2-18-313 indicate the annual compensation for teachers employed under the authority of the department of corrections or the department of public health and human services for fiscal years 2004 and 2005.

(ii) The compensation of each teacher on July 1, 2003, is the same as it was on June 30, 2003.

(iii) Effective on the first day of the first complete pay period that includes January 1, 2005, the base salary of each teacher employed in the department of public health and human services and the department of corrections is the amount provided for the teacher's step and education level under 2-18-313(2). This subsection (3)(a)(iii) does not provide for a step advancement.

(b) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, 2004, and June 30, 2005, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(c) The compensation of each employee on the first day of the first pay period in each fiscal year is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) If the legislature authorizes a pay increase for state employees, a member of a bargaining unit may not receive a pay increase until the employer's collective bargaining representative receives written notice that the employee's bargaining unit has ratified a completely integrated collective bargaining agreement.

(ii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, retroactivity to that date may be negotiated.

(iii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by the date on which a legislatively authorized pay increase is implemented, members of the bargaining unit must continue to receive the compensation that they were receiving until an agreement is ratified.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules and adjustments provided in 2-18-312, 2-18-313, 2-18-315, and this section may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee may not be reduced by the implementation of the pay schedules provided for in 2-18-312, 2-18-313, and 2-18-315.

(6) The department may authorize a separate pay schedule for classes of medical professionals if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified professionals.

(7) (a) The department may develop and implement an alternative pay and classification plan for certain classes, occupations, and work units. Pay for employees in the alternative pay and classification plan may be established and changed based on demonstrated competencies and accomplishments, on the labor market, and on other situations defined by the department.

(b) To the extent that the plan applies to employees within a collective bargaining unit, the implementation of the plan is a negotiable subject under 39-31-305.

(8) The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. To the extent that the program applies to employees within a collective bargaining unit, it is a negotiable subject under 39-31-305.

(9) The department shall review the competitiveness of the compensation provided to all occupations under this part. If the department finds that substantial problems exist with recruitment and retention because of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. To the extent that these adjustments apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305.”

Section 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 January 1, 2005.

Approved April 15, 2005

CHAPTER NO. 239

[SB 214]

AN ACT CLARIFYING THE DAMAGES TO BE AWARDED FOR THE TAKING OF TIMBER WITHOUT LAWFUL AUTHORITY; STATING THE DAMAGES FOR AN INADVERTENT TAKING; STATING THE DAMAGES FOR A TAKING BY PUBLIC OFFICERS OR EMPLOYEES FOR THE PURPOSES OF A HIGHWAY; STATING THE DAMAGES FOR A WILLFUL, WANTON, OR MALICIOUS TAKING; AMENDING SECTION 70-16-107, MCA; AND REPEALING SECTION 70-16-108, MCA.

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

Section 1. Section 70-16-107, MCA, is amended to read:

“70-16-107. Trespass for taking timber. ~~(1) Any~~ A person who cuts down or carries off any wood, ~~or~~ underwood, tree, or timber or girdles or otherwise injures any tree or timber on the land of another person, ~~or~~ on the street or highway in front of any person’s house; ~~or~~ ~~village town~~ or city lot, ~~or~~ on cultivated grounds or on the commons or public grounds of any city or town, or on the street or highway ~~in front thereof~~ of any city or town, without lawful authority, is liable to the owner of ~~such~~ the land or to ~~such~~ the city or town for:

(1) the amount of the damages incurred if the trespass was casual and inadvertent or committed under the belief that the land belonged to the trespasser or if the wood was taken by the authority of state or local government officers or employees for the purposes of a highway; or

(2) for treble the amount of damages ~~which may be assessed therefor in a civil action in any court having jurisdiction~~ incurred if the trespass was willful, wanton, or malicious.

~~(2) Nothing in subsection (1) authorizes the recovery of more than the just value of the timber taken from uncultivated woodland for the repair of a public highway or bridge upon the land or adjoining it.~~

Section 2. Repealer. Section 70-16-108, MCA, is repealed.

Approved April 15, 2005

CHAPTER NO. 240

[SB 225]

AN ACT AUTHORIZING COUNTIES, CITIES, AND TOWNS TO INVEST IN CERTIFICATES OF DEPOSIT IN IN-STATE FEDERALLY INSURED FINANCIAL INSTITUTIONS THAT ARRANGE FOR THE DEPOSIT OF FUNDS IN OTHER FEDERALLY INSURED FINANCIAL INSTITUTIONS ON A RECIPROCAL BASIS; AMENDING SECTION 7-6-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-6-206, MCA, is amended to read:

“7-6-206. Time deposits — repurchase agreement. (1) Public money not necessary for immediate use by a county, city, or town that is not invested as authorized in 7-6-202 may be placed in time or savings deposits with a bank, savings and loan association, or credit union in the state or placed in repurchase agreements as authorized in 7-6-213. Money placed in repurchase agreements is subject to subsection (2).

(2) The local governing body may solicit bids for time or savings deposits from a bank, savings and loan association, or credit union in the state. The local governing body may deposit public money in the institutions unless a local financial institution agrees to pay the same rate of interest bid by a financial institution not located in the county, city, or town. The governing body may solicit bids by notice sent by mail to the investment institutions that have requested that their names be listed for bid notice with the department of administration.

(3) *In addition to other investments authorized under 7-6-202 and this section, public money not necessary for immediate use by a county, city, or town may be invested in accordance with the following conditions:*

(a) the money is initially invested through a federally insured financial institution in the state selected by the governing body;

(b) the selected in-state financial institution arranges for the deposit of the funds in certificates of deposit for the account of the county, city, or town in one or more federally insured financial institutions, regardless of location;

(c) the full amount of principal and accrued interest on each certificate of deposit is covered by federal deposit insurance;

(d) the selected in-state financial institution acts as the custodian for the county, city, or town with respect to the certificates of deposit issued for its account; and

(e) at the same time that the county, city, or town money is deposited and the certificates of deposit are issued, the selected in-state financial institution receives an amount of deposits from customers of other federally insured

financial institutions, regardless of location, equal to or greater than the amount of money initially invested by the county, city, or town through the selected in-state financial institution.”

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

Approved April 15, 2005

CHAPTER NO. 241

[SB 244]

AN ACT ALLOWING RECREATIONAL VEHICLES AND CAMPERS USED FOR NONCOMMERCIAL PURPOSES TO EXCEED VEHICLE WIDTH LIMITS UNDER CERTAIN CIRCUMSTANCES; REVISING THE DEFINITION OF “TRAVEL TRAILER”; AMENDING SECTIONS 61-1-129, 61-1-131, 61-1-132, AND 61-10-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 61-1-129, MCA, is amended to read:

“61-1-129. Camper. (1) The term “camper” as used in 61-1-102 and 61-10-102 includes but is not limited to truck camper, chassis-mounted camper, cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

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

Section 2. Section 61-1-131, MCA, is amended to read:

“61-1-131. Travel trailer. “Travel trailer” as used in 61-1-132, 61-3-521, and 61-3-523 means a ~~trailer vehicle:~~

(1) ~~that is 45~~ 40 feet or less in length; ~~and 8 feet or less in width originally designed or permanently altered~~

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

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

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

Section 3. Section 61-1-132, MCA, is amended to read:

“61-1-132. Recreational vehicle. The term “recreational vehicle” as used in chapter 4, part 1, of this title, 61-10-102, and 61-10-141 includes travel trailers as defined in 61-1-131, motor homes as defined in 61-1-130, and other self-propelled vehicles originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use.”

Section 4. Section 61-10-102, MCA, is amended to read:

“61-10-102. Width. (1) Except as provided in ~~subsection (2)~~ subsections (2) and (3), a vehicle, including a bus, unloaded or with load, may not have a total outside width in excess of 102 inches. This width for buses is allowed only on paved highways 20 feet or more in width.

(2) (a) Subsection (1) does not apply to an implement of husbandry or a vehicle used for hauling hay that is moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is

incidental to the farming operations of the owner of the implement of husbandry or the vehicle used for hauling hay. If the implement or vehicle is more than 12 1/2 feet wide, it must be preceded by flag vehicle escorts to warn other highway users. This restriction does not apply to dual-wheel tractors under 15 feet overall width that are used in farming operations or to movement on a county road within 100 miles of the farming operation of the owner of an implement of husbandry or a vehicle used for hauling hay. Lights that meet the requirements of 61-9-219(4) must be displayed on the rear of the implement of husbandry or vehicle used for hauling hay. However, if the highway passes through a hazardous area, the implements or vehicles must be preceded and followed by flag vehicle escorts unless the movement of the implements or vehicles is restricted to a county road within 100 miles of the farming operation of the owner.

(b) An implement of husbandry or a vehicle used for hauling hay that exceeds 16 1/2 feet in width and that is traveling on an interstate or a four-lane highway must be followed by a flag vehicle escort.

(c) A commercial vehicle that is hauling hay but does not qualify under subsection (2)(a) may be granted a permit subject to the provisions of 61-10-121 through 61-10-127 and the following requirements:

(i) travel during daylight hours only for an oversize shipment of large round bales of hay, whether the vehicle is loaded or with an empty hay rack, up to 144 inches; when empty, a square red or orange flag measuring 12 inches on each side must be attached to each corner of the hay rack; and

(ii) travel day or night for any other shipment of baled hay, whether the vehicle is loaded or with an empty hay rack, up to 114 inches.

(d) Subsection (1) does not apply to a commercial hay grinder moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is incidental to operations of the commercial hay grinder. A commercial hay grinder exceeding 102 inches in width must have a permit issued under 61-10-124. If the commercial hay grinder is more than 12 1/2 feet wide, it must be preceded by flag vehicle escorts to warn other highway users. Lights that meet the requirements of 61-9-219(4) must be displayed on the rear of the commercial hay grinder. Movement of a commercial hay grinder that does not exceed 138 inches in width may occur on any day of the week, including holidays, and is restricted to movement during daylight hours. Movement of a commercial hay grinder may not exceed the posted speed limit, including the speed limit on an interstate highway.

(3) (a) *The width of a recreational vehicle, as defined in 61-1-132, and a camper, as defined in 61-1-129, that is being operated for noncommercial purposes may exceed 102 inches if:*

(i) *the excess width is attributable to recreational vehicle or camper appurtenances that do not extend beyond the exterior rearview mirrors of the recreational vehicle, the camper, a vehicle being towed by the recreational vehicle, or the motor vehicle providing motive power; and*

(ii) *the rearview mirrors extend only the distance necessary to provide the appropriate field of view for the vehicle before the recreational vehicle or camper appurtenances are attached.*

(b) *For the purposes of this section, "recreational vehicle or camper appurtenances" means an awning and its support hardware or any appendage*

that is intended to be an integral part of the recreational vehicle or camper and that is installed by the manufacturer or dealer.

~~(3)~~(4) A safety device that the department determines by rule adopted pursuant to 61-9-504 to be necessary for safe and efficient operation of motor vehicles is not included in the calculation of width provided in subsection (1).

~~(4)~~(5) For the purposes of this section, "county road" has the same meaning as ~~the term is defined~~ provided in 60-1-103."

Section 5. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then the code commissioner shall include the revisions to the definition of "travel trailer" in [this act] in the definition of that term in Senate Bill No. 285.

Section 6. Effective date. [This act] is effective May 1, 2005.

Approved April 15, 2005

CHAPTER NO. 242

[SB 264]

AN ACT PROHIBITING ARREST OR CITATION QUOTAS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Arrest or citation 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 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.

(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 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 6, part 4, and the provisions of Title 46, chapter 6, part 4, apply to [section 1].

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

Approved April 15, 2005

CHAPTER NO. 243

[SB 282]

AN ACT REVISING THE LAW PROHIBITING RACIAL PROFILING; REQUIRING WRITTEN POLICIES AND COMPLAINT PROCEDURES; REQUIRING TRAINING FOR LAW ENFORCEMENT OFFICERS; AND AMENDING SECTION 44-2-117, MCA.

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) (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.*

(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) *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.*

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

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

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

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

(7) *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.”*

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.

Approved April 15, 2005

CHAPTER NO. 244

[SB 286]

AN ACT REVISING CERTAIN NOTIFICATION AND RETAINAGE PROVISIONS WITH RESPECT TO PUBLIC CONSTRUCTION CONTRACTS; ELIMINATING THE REQUIREMENT ON NONPUBLIC CONSTRUCTION CONTRACTS THAT A PERSON RESPONSIBLE FOR CONSTRUCTION PAYMENTS TO A CONTRACTOR OR SUBCONTRACTOR MUST BE INFORMED THAT INTEREST ACCRUES ON LATE CONSTRUCTION PAYMENTS; REDUCING THE AMOUNT OF RETAINAGE ON NONPUBLIC CONSTRUCTION CONTRACTS FROM 10 PERCENT TO 5 PERCENT; AND AMENDING SECTIONS 28-2-2104 AND 28-2-2110, MCA.

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

Section 1. Section 28-2-2104, MCA, is amended to read:

“28-2-2104. Obligations upon delay of payment. (1) If a periodic or final payment that is required by a construction contract to be paid by an owner to a contractor is delayed by more than 30 days from the date the payment is required by the contract to be made, the owner shall pay to the contractor interest, beginning on the day following the date when the payment is due, at the rate of 1 1/2% a month or a pro rata fraction of that amount on the unpaid balance. If the contractor receives interest from the owner for a delayed payment by the owner, the contractor shall ensure that any interest accrued on a delayed payment is distributed by the contractor to subcontractors on a pro rata basis.

(2) If a periodic or final payment required by a subcontract to be paid by a contractor to a subcontractor is delayed for more than 30 days plus 3 working days from the date the payment is required by the subcontract to be made, the contractor shall pay to the subcontractor interest beginning on the day following the date when the payment is due, at the rate of 1 1/2% a month or a pro rata fraction of that amount on the unpaid balance. If a subcontractor receives interest from the contractor for a delayed payment by the contractor, the subcontractor shall ensure that any interest accrued on the delayed payment is distributed by the subcontractor to other subcontractors, if any, on a pro rata basis.

~~(3) Interest is not required to be paid pursuant to this section unless the owner, contractor, or subcontractor, as appropriate, has been notified of the requirements of this section at the time the request for payment is made. Acceptance of progress payments or final payment releases any claim for interest on the payment.”~~

Section 2. Section 28-2-2110, MCA, is amended to read:

“28-2-2110. Limit on retainage. (1) The maximum retainage applied to construction contracts subject to the provisions of this part may not exceed 5% ~~10% if the construction contractor is performing by the terms of the contract.~~

(2) The retainage percentage withheld by an owner, as provided in subsection (1), from a construction contractor is the maximum retainage that a construction contractor may withhold from a subcontractor.

(3) *Retainage must be released upon the final acceptance of each portion of work for which a separate price is stated in the construction contract.*

Approved April 15, 2005

CHAPTER NO. 245

[SB 298]

AN ACT ADDRESSING THE PRODUCTION OF FISH AT AND PLANTING OF FISH FROM THE FORT PECK MULTISPECIES FISH HATCHERY; CLARIFYING THAT PRODUCTION OF FISH SPECIES AT THE FORT PECK MULTISPECIES FISH HATCHERY INCLUDES PALLID STURGEON, PADDLEFISH, AND CERTAIN CLASSIFIED WARM WATER SPECIES; PROVIDING THAT ANY WATERS LISTED IN THE 2005 MONTANA FISHING REGULATIONS THAT REQUIRE A WARM WATER STAMP AND WATERS PLANTED WITH FISH FROM THE FORT PECK MULTISPECIES FISH HATCHERY BE PERMANENTLY INCLUDED IN THE LIST OF WATERS FOR WHICH A WARM WATER GAME FISH STAMP IS REQUIRED; AMENDING SECTIONS 87-3-235 AND 87-3-236, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-3-235, MCA, is amended to read:

“87-3-235. Fort Peck multispecies fish hatchery established. (1) There is a multispecies fish hatchery near Fort Peck dam. The purpose of the hatchery is to provide healthy warm water game fish to improve the warm water fishing opportunities in Montana with minimal impact on cold water fish populations. Administration of the hatchery must be by the department, consistent with the department’s authority provided for in 87-3-201.

(2) The multispecies hatchery is intended to use 96 acres of rearing ponds to produce warm water species. The hatchery is to employ land available through long-term lease from the U.S. army corps of engineers. It is intended that the hatchery use free, high-quality water from the dredge cut adjacent to Fort Peck dam. Electric power for the hatchery may be purchased from Fort Peck dam at the lowest available rate.

(3) Warm water species to be propagated at the hatchery may include 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*), tiger muskellunge, *other warm water species classified as species of special concern, threatened, or endangered*, and bait fish, including cisco (*Coregonus artedii*). The hatchery may also include raceways for salmon.

(4) Costs for hatchery construction, operation, maintenance, and personnel are to be funded with revenue in the warm water game fish accounts established in 87-3-236. It is intended that the hatchery be constructed in stages as revenue becomes available in the warm water game fish accounts established in 87-3-236.”

Section 2. 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 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 3. Effective date. [This act] is effective on passage and approval.

Approved April 15, 2005

CHAPTER NO. 246

[SB 322]

AN ACT PROVIDING FOR THE DUTY OF A HEALTH CARE PROVIDER WHO PERFORMS A MEDICAL EXAM AT THE REQUEST OF A PARTY OTHER THAN THE EXAMINEE; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Duty of health care provider performing third-party medical examination. A health care provider who is retained by a third party to perform a medical examination and advises the examinee about a medical condition during or after the examination has an obligation to exercise ordinary care to ensure that the advice complies with the standard of care for the health care provider’s profession, but has no duty to discover the presence of an unrelated medical condition. The health care provider has an obligation to inform the examinee of likely diagnoses that the health care provider reasonably considers. A health care provider who provides actual medical care or treatment incident to a third-party medical examination shall exercise the standard of care that the health care provider would have exercised if the examinee had retained the health care provider. For purposes of this section, “health care provider” has the meaning provided in 27-6-103.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 27, chapter 1, part 7, and the provisions of Title 27, chapter 1, apply to [section 1].

Section 3. Effective date. [This act] is effective July 1, 2005.

Section 4. Applicability. [This act] applies to medical examinations performed after July 1, 2005.

Approved April 15, 2005

CHAPTER NO. 247

[SB 325]

AN ACT REVISING THE PROVISION OF INTERIOR ADVERTISING MATERIAL BY BREWERS, BEER IMPORTERS, AND WHOLESALERS TO RETAILERS; AND AMENDING SECTION 16-3-241, MCA.

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

Section 1. Section 16-3-241, MCA, is amended to read:

“16-3-241. Furnishing of fixtures or interior advertising matter to retailers by brewers, beer importers, and wholesalers unlawful — exceptions.

(1) (a) It ~~shall be~~ *is* unlawful for any brewer, beer importer, or wholesaler to lease, furnish, give, or pay for any premises, furniture, fixtures, equipment, ~~signs,~~ or any other advertising matter or any other property to ~~any~~ a retail licensee, used or to be used in the dispensation of beer in and about the interior ~~or exterior~~ of the place of business of ~~any~~ the licensed retailer, or to furnish, give, or pay for any repairs, improvements, ~~or painting, or decorating~~ on or within ~~such the~~ premises; ~~provided, however, that it~~

(b) It ~~shall be~~ *is* lawful for a brewer, beer importer, or wholesaler to furnish, give, or loan to a retail licensee:

(a)(i) bottle openers, can openers, ~~and~~ trays, *tap handles, menus, apparel, coasters, glassware, cups, napkins, or other functional advertising matter that does not exceed \$300 in value in any 1 calendar year to any one retail establishment for display use on the interior of the retail establishment; with or without advertising matter thereon;*

(b) ~~advertising matter or novelties, of a value of not to exceed \$50 per brewery or beer importer in any calendar year to any one retailer, for display use on the interior of said retailer's place of business;~~

(c) ~~not more than two illuminated or electrical signs, each of not more than 630 square inches in area, which signs may bear the name, brand name, trade name, trademark, or other designation indicating the name of the manufacturer of beer and the place of manufacture, for display by the retail licensee on and within the interior of his place of business or in the windows inside the place of business of the licensed retailer and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises at the time of such display; and~~

(ii) *not more than six illuminated or electrical signs, neon signs, lamps, or lighted clocks for each brand of beer in any 1 calendar year to any one retailer for display use within the interior of the retailer's place of business. These signs, displays, lamps, or lighted clocks may bear the name, brand name, trade name, trademark, or other designation indicating the name of the manufacturer of beer and the place of manufacture. Any beer advertised must be available for sale on the retailer's premises at the time the displays are used unless the displays are the property of the retailer or, if supplied by a brewer, beer importer, or wholesaler, a display has been in the retailer's possession for more than 9 months.*

(iii) *permanent or temporary advertising matter of a decorative nature, excluding items described in subsection (1)(b)(ii) but including nonelectric clocks, mirrors, banners, flags, and pennants; and*

(d) ~~(iv)~~ maintenance or repair services on draft beer equipment to keep it sanitary and in good working condition.

(2) A wholesaler may furnish portable equipment used for the temporary cooling, handling, and dispensing of draft beer to a special permittee or a retailer for use:

(a) in catering an event *that is off his the permittee's or retailer's regular premises; or*

(b) *up to three times a year, on a retailer's regular premises, for a period not to exceed 72 hours.”*

Approved April 15, 2005

CHAPTER NO. 248

[SB 329]

AN ACT CLARIFYING THE STATE'S ROLE IN PROMOTING "MADE-IN-MONTANA" PRODUCTS; AND AMENDING SECTION 90-1-105, MCA.

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

Section 1. Section 90-1-105, MCA, is amended to read:

"90-1-105. Functions of department of commerce — economic development. The department of commerce shall:

(1) provide coordinating services to aid state and local groups and Indian tribal governments in the promotion of new economic enterprises and conduct publicity and promotional activities in connection with new economic enterprises;

(2) collect and disseminate information regarding the advantages of developing agricultural, recreational, commercial, and industrial enterprises within this state;

(3) serve as ~~the state's~~ *an official state liaison* between persons interested in locating new economic enterprises in Montana and state and local groups and Indian tribal governments seeking new enterprises;

(4) aid communities and Indian tribal governments interested in obtaining new business or expanding existing business;

(5) (a) study and promote means of expanding markets for Montana products; *and*

(b) *provide training and assistance for Montana small businesses and entrepreneurs to expand markets for made-in-Montana products;*

(6) encourage and coordinate public and private agencies or bodies in publicizing the facilities and attractions of the state;

(7) explore the use of cooperative agreements, as provided in Title 18, chapter 11, part 1, for the promotion and enhancement of economic opportunities on the state's Indian reservations; and

(8) assist the state-tribal economic development commission established in 90-1-131 in:

(a) identifying federal government and private sector funding sources for economic development on Indian reservations in Montana; and

(b) fostering and providing assistance to prepare, develop, and implement cooperative agreements, in accordance with Title 18, chapter 11, part 1, with each of the tribal governments in Montana. (Subsection (8) terminates June 30, 2005—sec. 5, Ch. 69, L. 2001.)"

Approved April 15, 2005

CHAPTER NO. 249

[SB 335]

AN ACT REVISING THE BLIND VENDOR VOCATIONAL OPPORTUNITIES PROGRAM TO INCLUDE MILITARY RESERVATIONS; AND AMENDING SECTION 18-5-402, MCA.

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

Section 1. Section 18-5-402, MCA, is amended to read:

“18-5-402. Definitions. As used in this part, the following definitions apply:

(1) “Blind person” means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision in the better eye to such a degree that the widest diameter of the visual field subtends an angle ~~no~~ *that is not* greater than 20 degrees as determined by an ophthalmologist or a physician skilled in diseases of the eye.

(2) “Blind vendor” means a person certified as a blind person for the purpose of this part and who is operating a vending facility administered by the department.

(3) “Certified blind person” means a blind person whom the department has determined to be a blind person as defined in this part, who is in need of vocational opportunities, and who is qualified to operate a vending facility.

(4) “Department” means the department of public health and human services.

(5) “Federal property” means buildings or portions of buildings or other real property owned or leased by the federal government ~~excluding military reservations~~ upon which the department may administer vending facilities by an agreement entered into under the authority of the federal Randolph-Sheppard Act, as amended.

(6) “Other property” means all real property other than state or federal property as defined in this part.

(7) “State property” means those buildings or portions of buildings or other real property owned or leased under a lease-purchase agreement; or, in the case of a building, leased in its entirety by the state or agencies of the state ~~that are and utilized~~ *used* in the conduct of state matters and occupied principally by state employees. ~~State property for the purpose of this part does not include vocational institutions or institutions of higher education. State property for the purpose of this part does not include vocational institutions or institutions of higher education.~~

(8) “Vending facility” means an area and equipment inclusive of vending machines on state property ~~which~~ *that* is or may be ~~utilized~~ *used* in providing a food, beverage, or other service to employees and other persons present on the property.

(9) (a) “Vending machine” means a device for the dispensing of foodstuffs, liquids, or other products when money is inserted into the device. ~~Vending machine~~

(b) *The term* does not include postage stamp machines or coin-operated telephones.

(10) “Vocational rehabilitation programs” means those programs provided for under the federal Randolph-Sheppard Act, as amended, and Title 53, chapter 7, part 3.”

Approved April 15, 2005

CHAPTER NO. 250

[SB 347]

AN ACT REVISING LOBBYING REPORTING REQUIREMENTS FOR PRINCIPALS; AND AMENDING SECTION 5-7-208, MCA.

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

Section 1. Section 5-7-208, MCA, is amended to read:

“5-7-208. Principals to file report. (1) A principal subject to this chapter shall file with the commissioner a report of payments made for the purpose of lobbying. A principal is subject to the reporting requirements of this section only if the principal makes *total* payments ~~exceeding~~ *for the purpose of lobbying that exceed* the amount specified under 5-7-112 ~~to one or more lobbyists~~ during a calendar year.

(2) If payments are made solely to influence legislative action, a report must be made:

(a) by February 15th of any year the legislature is in session and must include all payments made in that calendar year prior to February 1;

(b) by the 15th day of the calendar month following a calendar month in which the principal spent \$5,000 or more and must include all payments made during the prior calendar month; and

(c) no later than 30 days following adjournment of a legislative session and must include all payments made during the session, except as previously reported.

(3) If payments are made to influence any other official action by a public official or made to influence other action and legislative action, a report must be made:

(a) by February 15th of the calendar year following the payments and must include all payments made during the prior calendar year; and

(b) by the 15th day of the calendar month following a calendar month in which the principal spent \$5,000 or more and must include all payments made during the prior calendar month.

(4) If payments are not made during the reporting periods provided in subsections (2)(a), (2)(c), and (3)(a), the principal shall file a report stating that fact.

(5) Each report filed under this section must:

(a) list all payments for lobbying in each of the following categories:

(i) printing;

(ii) advertising, including production costs;

(iii) postage;

(iv) travel expenses;

(v) salaries and fees, including allowances, rewards, and contingency fees;

(vi) entertainment, including all foods and refreshments;

(vii) telephone and telegraph; and

(viii) other office expenses;

(b) itemize, identifying the payee and the beneficiary:

(i) each separate payment conferring \$25 or more benefit to any public official when the payment was made for the purpose of lobbying; and

(ii) each separate payment conferring \$100 or more benefit to more than one public official, regardless of individual benefit when the payment was made for the purpose of lobbying, except that in regard to a dinner or other function to which all senators or all representatives have been invited, the beneficiary may be listed as all members of that group without listing separately each person who attended;

(c) list each contribution and membership fee ~~which~~ *that* amounts to \$250 or more when aggregated over the period of 1 calendar year paid to the principal for the purpose of lobbying, with the full address of each payer and the issue area, if any, for which the payment was earmarked;

(d) list each official action on which the principal or the principal's agents exerted a major effort to support, oppose, or modify, together with a statement of the principal's position for or against the action; and

(e) be kept by the commissioner for a period of 10 years."

Approved April 15, 2005

CHAPTER NO. 251

[SB 349]

AN ACT PROVIDING THAT AN INSURANCE COMPANY MAY NOT REQUIRE A PERSON ENTITLED TO A CAR RENTAL WHILE THE PERSON'S OWN CAR IS BEING REPAIRED TO SELECT ANY ONE CAR RENTAL BUSINESS; AND PROVIDING THAT AN INSURANCE COMPANY THAT PROVIDES FOR DIRECT PAYMENT TO ANY ONE OR MORE CAR RENTAL BUSINESSES IN THIS STATE MUST PROVIDE FOR DIRECT PAYMENT TO ANY CAR RENTAL BUSINESS CHOSEN BY A PERSON FOR WHOM THE INSURANCE COMPANY IS OBLIGATED TO PROVIDE A CAR RENTAL.

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

Section 1. Designation of specific car rental business prohibited. (1)

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) require that a person, whether or not insured by the insurance company, for whom the insurance company is obligated to provide a car rental while the person's own car is being repaired use a particular car rental business; or

(b) engage in any act or practice that intimidates, coerces, or threatens a person to use a particular car rental business.

(2) (a) An insurance company that is subject to the provisions of this section and that provides for direct payment to any one or more car rental businesses in this state must provide for direct payment to any car rental business selected by a person described in subsection (1)(a).

(b) For the purposes of this section, "direct payment" means a method by which an insurance company makes a direct payment on behalf of an insured or

a third party either through electronic means or by check to a car rental business.

(c) The insurance company may approve the daily rate to be paid by the insurance company based on the car classification.

(d) The insurance company is not obligated to pay more to the car rental business than is provided in the insured's policy limits pursuant to 33-23-203.

(3) This section does not require an insurer to pay more for a comparable car rental than the lowest price negotiated between a car rental business and the insurer.

(4) This section does not prohibit an insurer, its producers, or its adjusters from providing to a customer the name of a car rental business with which arrangements may have been made to provide car rental services as long as the ultimate choice is left to the person described in subsection (1)(a).

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 1].

Approved April 15, 2005

CHAPTER NO. 252

[SB 350]

AN ACT PROVIDING THAT DIVISIONS OF LAND THAT ARE EXEMPT FROM REVIEW AS SUBDIVISIONS ARE SUBJECT TO APPLICABLE LOCAL ZONING REGULATIONS; AND AMENDING SECTION 76-3-207, MCA.

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

Section 1. Section 76-3-207, MCA, is amended to read:

“76-3-207. ~~Subdivisions~~ Divisions of land exempted from review but subject to survey requirements and zoning regulations — exceptions — fees for examination of division. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions *and are subject to applicable zoning regulations adopted under Title 76, chapter 2:*

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; and

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body and an amended plat must be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination.”

Approved April 15, 2005

CHAPTER NO. 253

[SB 352]

AN ACT CLARIFYING THE INADMISSIBILITY OF MEDICAL MALPRACTICE LEGAL PANEL DECISIONS AND THE BASIS FOR THEM; AMENDING SECTION 27-6-704, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 27-6-704, MCA, is amended to read:

“27-6-704. Panel proceedings and decision privileged from disclosure in court actions. (1) A panel member may not be called to testify in a proceeding concerning the deliberations, discussions, decisions, and internal proceedings of the panel.

(2) The decision and the reasoning and basis for the decision of the panel are not admissible as evidence in an action subsequently brought in a court of law

and are not evidence for any purpose in an action brought under 33-18-201, 33-18-242, or common law.”

Section 2. Effective date. [This act] is effective July 1, 2005.

Section 3. Applicability. [This act] applies to causes of action that arise on or after [the effective date of this act].

Approved April 15, 2005

CHAPTER NO. 254

[SB 355]

AN ACT REVISING THE PAYMENT OF TRANSCRIPT FEES TO COURT REPORTERS IN CRIMINAL CASES; AMENDING SECTION 3-5-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, stenographic court reporters are important to the efficient functioning of the courts and save the court time and money during trial and appeals; and

WHEREAS, in 2001, the state assumed the costs of funding District Courts; and

WHEREAS, as part of state assumption, court reporters were given the option of becoming state employees, foregoing transcript fees, having the state provide and maintain all equipment and supplies, and receiving overtime for time spent in transcript preparation; becoming state employees, purchasing and maintaining their own equipment, receiving transcript fees, and foregoing overtime for time spent in transcript preparation; or being independent contractors; and

WHEREAS, the court reporters in this state entered into written agreements that incorporated the options available to them under the 2001 state assumption; and

WHEREAS, the Legislature, in 2003, changed the law relating to compensation of court reporters and provided that all reporters shall provide transcripts to County Attorneys and the Attorney General at “actual cost”, which has been interpreted by the District Court Council as meaning the cost of paper, printing, and photocopying.

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

Section 1. Section 3-5-604, MCA, is amended to read:

“3-5-604. Court reporters — transcript of proceedings — costs. (1) Each court reporter shall furnish, upon request, with all reasonable diligence, to a party or a party’s attorney in a case in which the court reporter has attended the trial or hearing a transcript from stenographic notes of the testimony and proceedings of the trial or hearing or a part of a trial or hearing upon payment by the person requiring the transcript of \$2 a page for the original transcript, 50 cents a page for the first copy, and 25 cents a page for each additional copy.

(2) If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees required by subsection (1) must be paid to the clerk of district court who shall forward the amount to the department of revenue for deposit in the state general fund.

(3) ~~(a)~~ If the *county attorney, attorney general, or judge* requires a transcript in a criminal case, the reporter shall furnish it. The transcription fee must be paid by the state as provided in 3-5-901.

~~(b) If the county attorney or the attorney general requires a transcript in a criminal case, the reporter shall furnish the transcript and only the reporter's actual cost of preparation may be paid by the county or the office of the attorney general.~~

(4) If the judge requires a copy in a civil case to assist in rendering a decision, the reporter shall furnish the copy without charge. In civil cases, all transcripts required by the county must be furnished, and only the reporter's actual costs of preparation may be paid by the county.

(5) If it appears to the judge that a defendant in a criminal case or a parent or guardian in a proceeding brought pursuant to Title 41, chapter 3, part 4 or 6, is unable to pay for a transcript, it must be furnished to the party and paid for by the state as provided in 3-5-901."

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

Approved April 15, 2005

CHAPTER NO. 255

[SB 363]

AN ACT GENERALLY REVISING THE LAWS RELATING TO SPECIAL EDUCATION; CLARIFYING THAT SCHOOL DISTRICTS MAY OFFER SPECIAL EDUCATION PROGRAMS FOR STUDENTS WHO ARE OUTSIDE OF THE REQUIRED AGES; REMOVING REQUIREMENTS THAT THE SUPERINTENDENT OF PUBLIC INSTRUCTION RECOMMEND AND APPROVE SCHOOL DISTRICT SPECIAL EDUCATION PROGRAMS; REPLACING THE TERM "DIAGNOSING" WITH "IDENTIFYING"; REVISING SPECIAL EDUCATION TUITION AND TRANSPORTATION STATUTES TO BE CONSISTENT WITH OTHER TUITION AND TRANSPORTATION STATUTES; CLARIFYING THAT SCHOOL DISTRICTS DO NOT NEED APPROVAL TO PROVIDE A FREE AND APPROPRIATE EDUCATION FOR SPECIAL EDUCATION STUDENTS; ENSURING THAT SCHOOL DISTRICTS MAY RECEIVE FUNDING FOR SPECIAL EDUCATION FOR STUDENTS WITH DISABILITIES WHO ARE UNDER 6 YEARS OF AGE; SHORTENING THE TIME PERIOD FOR APPOINTING A SURROGATE PARENT; MAKING THE REVISIONS NECESSARY TO COMPLY WITH THE REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT; AMENDING SECTIONS 20-7-402, 20-7-403, 20-7-411, 20-7-414, 20-7-420, 20-7-431, 20-7-443, 20-7-461, AND 20-10-144, MCA; REPEALING SECTIONS 20-7-412, 20-7-441, AND 20-7-442, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 20-7-402, MCA, is amended to read:

"20-7-402. Special education to comply with board policies. (1) The conduct of special education programs ~~shall~~ *must* comply with the policies recommended by the superintendent of public instruction and adopted by the board of public education. These policies ~~shall assure~~ *must ensure* and include but are not limited to:

- (a) placement of a child with a disability in the least restrictive ~~alternative setting environment~~;
- (b) due process for a child with a disability, including the appointment of a surrogate parent if necessary;
- (c) use of ~~child study teams~~ *an evaluation team* to identify a child with a disability and ~~use of instructional teams~~ to plan individual education programs;
- (d) ~~comprehensive evaluation for each child with a disability~~ *an evaluation process consistent with the requirements of the Individuals with Disabilities Education Act*; and
- (e) other policies needed to ensure a free appropriate public education.

(2) The superintendent of public instruction shall promulgate rules to administer the policies of the board of public education.”

Section 2. Section 20-7-403, MCA, is amended to read:

“20-7-403. Duties of superintendent of public instruction. The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

- (1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;
- (2) administering the policies adopted by the board of public education;
- (3) certifying special education teachers on the basis of the special qualifications for the teachers as prescribed by the board of public education;
- (4) establishing procedures to be used by school district personnel in identifying a child with a disability;
- (5) ~~recommending to districts the type of special education class or program needed to serve the child with a disability of the districts and preparing appropriate guides for developing individualized education programs~~ *technical assistance documents to assist local districts in implementing special education policies and procedures*;
- (6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in ~~diagnosing~~ *identifying* the special education needs of children, in planning programs, and in admitting and discharging children from those programs;
- (7) assisting local school districts, institutions, and other agencies in developing full-service programs for a child with a disability;
- (8) ~~approving, as they are proposed and annually after approval, those special education classes or programs that comply with the laws of the state of Montana, policies of the board of public education, and the regulations of the superintendent of public instruction~~;
- (9)(8) providing technical assistance to district superintendents, principals, teachers, and trustees;
- (10)(9) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;
- (11)(10) ensuring appropriate training and instructional material for persons appointed as surrogate parents that outlines their duties toward the child, limitations on what they may do for the child, duties in relation to the child’s records, sources of assistance available to the surrogate parent, and the

need to seek competent legal assistance in implementing hearing or appeal procedures;

~~(12)~~(11) ensuring that the requirements of the Individuals With Disabilities Education Act are met and that each educational program for a child with a disability, *including a homeless child with a disability*, administered within the state, including each program administered by any other agency, is under the general supervision of the superintendent of public instruction, meets the education standards of the board of public education, and meets the requirements of the superintendent of public instruction, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education or for providing or paying for some or all of the costs of a free appropriate public education to a child with a disability within the state;

~~(13)~~(12) contracting for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education; and

~~(14)~~(13) except for those children who qualify for residential services under the Montana public mental health program pursuant to Title 53, chapter 6, contracting with a public school district or a private residential facility for the provision of a free appropriate public education for a child placed in an in-state residential facility or children's psychiatric hospital."

Section 3. Section 20-7-411, MCA, is amended to read:

"20-7-411. Regular classes preferred — obligation to establish special education program. (1) A child with a disability in Montana is entitled to a free appropriate public education provided in the least restrictive ~~alternative setting~~ *environment*. To the maximum extent appropriate, a child with a disability, including a child in a public or private institution or other care facility, must be educated with children who do not have disabilities. Separate schooling or other removal of a child with a disability from the regular educational environment may occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) The board of trustees of every school district shall provide or establish and maintain a special education program for each child with a disability ~~between the ages of 6 and 18, inclusive~~ *who is 6 years of age or older and under 19 years of age*.

(3) The board of trustees of each elementary district shall provide or establish and maintain a special education program for each preschool child with a disability ~~between the ages of 3 and 6, inclusive~~ *who is 3 years of age or older and under 7 years of age*.

(4) (a) *The board of trustees of a school district may provide or establish and maintain a special education program for a child with a disability who is 2 years of age or under or who is 19 years of age or older and under 22 years of age.*

(b) *Programs established pursuant to subsection (4)(a) do not obligate the state or a school district to offer regular educational programs to a similar age group unless specifically provided by law.*

~~(4)~~(5) The board of trustees of a school district may meet its obligation to serve persons with disabilities by establishing its own special education program, by establishing a cooperative special education program, or by participating in a regional services program.

~~(5)~~(6) The trustees of a school district shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education services, related services, or supplementary aids."

Section 4. Section 20-7-414, MCA, is amended to read:

"20-7-414. Determination of children in need and type of special education needed — approval of classes and programs by superintendent. (1) The determination of the children requiring special education and the type of special education needed by these children is the responsibility of the school district, and the determination must be made in compliance with the procedures established in the rules of the superintendent of public instruction. The school district shall make available a free appropriate public education, *in accordance with 20-7-411*, to all children who are eligible under the Individuals With Disabilities Education Act and who reside in the school district.

~~(2) Whenever the trustees of a district intend to establish a special education class or program, they shall apply for approval and funding of the class or program by the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the application for the special education class or program on the basis of its compliance with the laws of the state of Montana, the special education policies adopted by the board of public education, and the rules of the superintendent of public instruction. A special education class may not be operated by the trustees without the approval of the superintendent of public instruction. Each special education class or program must be approved annually to be funded as part of the allowable cost payment for special education. The trustees of a school district shall establish and implement policies and procedures for the conduct of special education that are consistent with the Individuals with Disabilities Education Act and with state laws and rules of the board of public education and the superintendent of public instruction."~~

Section 5. Section 20-7-420, MCA, is amended to read:

"20-7-420. Residency requirements — financial responsibility for special education. (1) In accordance with the provisions of 1-1-215, a child's district of residence for special education purposes is the residence of the child's parents or of the child's guardian if the parents are deceased, unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last-known district of residence is the child's district of residence.

(2) The county of residence is financially responsible for tuition and transportation as established under 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401, who attends school outside the district and county of residence because the student has been placed ~~by a state agency~~ in a foster care or group home licensed by the state. The county of residence is not financially responsible for tuition and transportation for a child who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public instruction shall reimburse the district providing the

services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from available funds. However, the amount spent from available funds for this purpose may not exceed \$500,000 during a biennium.

(4) A state agency that makes a placement of a child with a disability is responsible for the financial costs of room and board and the treatment of the child. The state agency that makes an out-of-state placement of a child with a disability is responsible for the education fees required to provide a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4."

Section 6. Section 20-7-431, MCA, is amended to read:

"20-7-431. Allowable cost schedule for special programs — superintendent to make rules — annual accounting. (1) For the purpose of determining the allowable cost payment amount for special education as defined in 20-9-321, the following allowable costs and reports must be reviewed by the superintendent of public instruction for the purposes of determining the amount of the allowable cost payment for special education payments and a district's special education expenditures:

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses, including:

(i) the cost of salaries and benefits of special program teachers, regular program teachers, and teacher aides, corresponding to the working time that each person devotes to the special program;

(ii) the total cost of teaching supplies and textbooks for special programs;

(iii) the purchase, rental, repair, and maintenance of instructional equipment required to implement a student's individualized education program;

(iv) activities associated with teacher assistance teams that provide prereferral intervention;

(v) the cost of contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies;

(vi) transportation costs for special education instructional personnel who travel on an itinerant basis from school to school or district to district or to in-state ~~child-study~~ *evaluation* team meetings or in-state individualized education program meetings;

(b) related services, including:

(i) the cost of salaries and benefits of professional supportive personnel, corresponding to the working time that each person devotes to the special program. Professional supportive personnel may include special education supervisors, speech-language pathologists, audiologists, counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) the cost of salaries and benefits of clerical personnel who assist professional personnel in supportive services, corresponding to the working time that each person devotes to the special program;

(iii) the cost of supplies for special programs;

(iv) activities associated with teacher assistance teams that provide prereferral interventions;

(v) the cost of contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies;

(vi) transportation costs for special education-related services personnel who travel on an itinerant basis from school to school or district to district or to in-state ~~child study~~ *evaluation* team meetings or in-state individualized education program meetings;

(vii) equipment purchase, rental, repair, and maintenance required to implement a student's individualized education program;

(viii) the additional cost of special education cooperatives or joint boards, including operation and maintenance, travel, recruitment, and administration.

(2) The superintendent of public instruction shall adopt rules in accordance with the policies of the board of public education for keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs.

(3) An annual accounting of all expenditures of school district general fund money for special education must be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for the accounting.

(4) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, or the federal social security system or the costs for unemployment compensation insurance.

(5) Notwithstanding other provisions of the law, the superintendent of public instruction may not approve an allowable cost payment amount for special education that exceeds legislative appropriations. However, any unexpended balance from the first year of a biennial appropriation may be spent in the second year of the biennium in addition to the second year appropriation."

Section 7. Section 20-7-443, MCA, is amended to read:

"20-7-443. Financial assistance for under-six-year-old special education class or program. Any district ~~operating an approved special education class or program~~ *providing special education services* for children under ~~the age of 6 years~~ *shall be of age* is eligible for financial assistance in accordance with 20-7-431 and for transportation reimbursement ~~under 20-7-442~~ *in accordance with Title 20, chapters 7 and 10, and rules adopted by the superintendent of public instruction.*"

Section 8. Section 20-7-461, MCA, is amended to read:

"20-7-461. Appointment and termination of appointment of surrogate parent. (1) A school district or institution that provides education to a child with a disability shall adopt procedures to assign an individual to act as a surrogate parent for a child with a disability whenever the parents or guardian cannot be identified or, after reasonable efforts, the location of the parents

cannot be discovered or if the child is a ward of the state. ~~The determination of need for a surrogate parent must be made within 10 days of the date on which the school district or its designee or the governing authority of an institution or its designee learns of the presence of the child in the district. If the child is in need of a surrogate parent, the trustees of a school district or their designee or the governing authority of an institution or its designee shall nominate a surrogate for the child within 30 days of that determination.~~ *Within 10 days of determining that a child is in need of a surrogate parent, the school district or its designee or the governing authority of an institution or its designee shall nominate a surrogate parent and deliver the appropriate documentation to the youth court.*

(2) The person nominated as a surrogate parent must be an adult who is not an employee of a state or local educational agency that is providing educational services to the child. The surrogate parent may not have a vested interest that will conflict with the person's representation and protection of the child. The surrogate, whenever practicable, must be knowledgeable about the educational system, special education requirements, and the legal rights of the child in relation to the educational system. Whenever practicable, the surrogate parent must be familiar with the cultural or language background of the child.

(3) The nomination for appointment of a surrogate parent, along with all necessary supporting documents, must be submitted to the youth court for official appointment of the surrogate parent by the court. The trustees of a school district or their designee or the governing authority of an institution or its designee shall take all reasonable action to ensure that the youth court appoints or denies the appointment of a person nominated as a surrogate parent within ~~45~~ 20 days of the court's receipt of all necessary supporting documents. If the youth court denies an appointment, the trustees of a district or their designee or the governing authority of an institution or its designee shall nominate another person to be appointed as the surrogate parent. *If the youth court fails to act within 20 days, the individual nominated is the surrogate parent for the child.*

(4) The superintendent of public instruction shall adopt rules for a procedure to terminate the appointment of a surrogate parent when:

- (a) a child's parents are identified;
- (b) the location of the parents is discovered;
- (c) the child is no longer a ward of the state; or
- (d) the surrogate parent wishes to discontinue the appointment."

Section 9. Section 20-10-144, MCA, is amended to read:

"20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget. Before the second Monday of August, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate for each bus mile by the

total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by the district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted in the budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or \$100, whichever is larger, the contingency amount on the budget must be reduced to the limitation amount and used in this determination of the schedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule amount determined in subsection (1) or the total transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement, ~~except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be 50% of the schedule amount attributed to the transportation of special education pupils;~~ and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of fund balance for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and fund balance reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of 20 U.S.C. 7701, et seq., or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated revenue from coal gross proceeds under 15-23-703;

(f) anticipated oil and natural gas production taxes;

(g) anticipated local government severance tax payments for calendar year 1995 production;

(h) anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

(i) school district block grants distributed under section 244, Chapter 574, Laws of 2001;

(j) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

(k) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142."

Section 10. Repealer. Sections 20-7-412, 20-7-441, and 20-7-442, MCA, are repealed.

Section 11. Effective date. [This act] is effective July 1, 2005.

Approved April 15, 2005

CHAPTER NO. 256

[SB 365]

AN ACT EXTENDING THE UNIVERSAL SYSTEM BENEFITS CHARGE RATES THROUGH DECEMBER 31, 2009; AMENDING SECTION 69-8-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 69-8-402, MCA, is amended to read:

“69-8-402. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance.

(2) Beginning January 1, 1999, 2.4% of each utility’s annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the initial funding level for universal system benefits programs. To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives. These universal system benefits charge rates must remain in effect through December 31, ~~2005~~ 2009.

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) A utility must receive credit toward annual funding requirements for the utility’s internal programs or activities that qualify as universal system benefits programs, including those amortized or nonamortized portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance, and for large customers’ programs or activities as provided in subsection (7). The department of revenue shall review claimed credits of the utilities and large customers pursuant to 69-8-414.

(c) A utility’s distribution services provider at which the sale of power for final end use occurs is the utility that receives credit for the universal system benefits programs expenditure.

(d) A customer’s distribution services provider shall collect universal system benefits funds less any allowable credits.

(e) For a utility to receive credit for low-income-related expenditures, the activity must have taken place in Montana.

(f) If a utility’s or a large customer’s credit for internal activities does not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund established in 69-8-412 for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs and low-income energy assistance.

(4) A utility’s transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility’s level of contribution to each program.

(5) A utility’s minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility’s annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a) A utility must receive credit toward the utility’s low-income energy assistance annual funding requirement for the utility’s internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying load equal to the lesser of:

(A) \$500,000, less the large customer credits provided for in this subsection (7); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection (7);

(ii) must receive credit toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and

(B) those amortized or nonamortized portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) Large customers making these expenditures must receive a credit against the large customer's universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that large customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that large customer's universal system benefits charges.

(8) A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission, the department of revenue, and the energy and telecommunications interim committee provided for in 5-5-230. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the energy and telecommunications interim committee. The statewide cooperative utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of revenue and the energy and telecommunications interim committee. The annual report of a public utility or of the statewide cooperative utility office must include but is not limited to:

(a) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

(b) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

(c) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

(9) A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

(10) (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the department of revenue or the utility is not required, except as provided in subsection (10)(b).

(b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the large customer is financially responsible for the disallowance. A large customer and the large customer's utility may mutually agree that credits claimed by the large customer be first approved by the utility. If the utility approves the large customer credit, the utility may be financially responsible for any subsequent disallowance."

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

Approved April 15, 2005

CHAPTER NO. 257

[SB 368]

AN ACT ELIMINATING THE REQUIREMENT, WITH RESPECT TO THE WORKERS' COMPENSATION SUBSEQUENT INJURY FUND, THAT AN EMPLOYER HIRING OR RETAINING A CERTIFIED PERSON WITH A DISABILITY FILE INFORMATION WITH THE DEPARTMENT; PROVIDING CONDITIONS FOR SUBSEQUENT INJURY FUND ELIGIBILITY; AMENDING SECTION 39-71-905, MCA; REPEALING SECTION 39-71-906, 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 39-71-905, MCA, is amended to read:

"39-71-905. Certification as person with a disability — eligibility for benefits under fund. (1) A person who wishes to be certified as a person with a disability for purposes of this part shall apply to the department on forms furnished by the department. The department shall conduct an investigation and shall issue a certificate to a person who, in the department's discretion, meets the requirements for certification. A person shall apply for certification before employment or within 60 days after the person becomes employed or reemployed and before an injury occurs that is covered by this part. The certification is effective on the date of employment or reemployment. Certification is effective on the date the application is approved for a person who applies for certification more than 60 days after employment or reemployment, but before an injury occurs.

(2) *If a claimant has met the provisions of subsection (1) and a subsequent claim has been accepted by an insurer, the claim is eligible for the benefits under the fund.*"

Section 2. Repealer. Section 39-71-906, MCA, is repealed.

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 workers' compensation claims filed on or after July 1, 2004.

Approved April 15, 2005

CHAPTER NO. 258

[SB 369]

AN ACT PROVIDING THAT A DEALER THAT SELLS NEW AND USED MOTOR VEHICLES OR RECREATIONAL VEHICLES MAY OBTAIN ADDITIONAL DEMONSTRATOR PLATES TO BE PLACED ON VEHICLES BEING MOVED TO OR FROM SERVICE AND REPAIR FACILITIES BEFORE SALE; AND AMENDING SECTION 61-4-129, MCA.

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

Section 1. Section 61-4-129, MCA, is amended to read:

"61-4-129. Assignment of demonstrator plates. (1) A dealer or wholesaler may purchase demonstrator plates at a fee of \$5 a plate. Demonstrator plates must be issued for each 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.

(2) (a) ~~New~~ *Except as provided in subsection (2)(c), new* and used motor vehicle or recreational vehicle demonstrator plates may be used on a vehicle displaying a Monroney label or a buyer's guide label, as required by 61-4-123(2), 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 plates may be used:

(i) on units 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 vehicle, provided that a dated demonstration permit, valid for not more than 72 hours, is carried with the vehicle at all times;

(iv) on any motor vehicle owned by the dealer that is used only to move vehicles legally bearing mobile home and travel trailer dealer's license plates of the dealer owning the motor vehicle; and

(v) on units being moved to or from exhibitions within the state, provided 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 vehicles in the dealer's inventory to and from the dealer's place of business and the service and repair facility prior to sale. A 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 vehicle being operated in accordance with this subsection (2) need only display one demonstrator plate conspicuously on the rear of the 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 2. Coordination instruction. If Senate Bill No. 285 and [this act] are both passed and approved, then the code commissioner shall change all references to vehicle in subsection (2)(c) of 61-4-129 in [this act] to references to motor vehicle.

Approved April 15, 2005

CHAPTER NO. 259

[SB 370]

AN ACT PROVIDING FOR COUNTY DETENTION OFFICER MEMBERSHIP IN THE SHERIFFS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-7-101, 19-7-301, AND 19-7-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 19-7-101, MCA, is amended to read:

"19-7-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid from funds controlled by an employer for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include maintenance, allowances, and expenses.

(2) "*Detention officer*" means any detention officer, as defined in 44-4-302, who is hired by a sheriff, employed in a detention center, and acting as a detention officer for the sheriff and who has received or is expected to receive training to meet the employment standards set by the board of crime control pursuant to 44-4-301 for detention officers.

~~(2)~~(3) "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership

service or, in the event a member has not served at least 36 months, the total compensation earned divided by the number of months of service. Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

~~(3)~~(4) "Investigator" means a person who is employed as a criminal investigator or as a gambling investigator for the department of justice.

~~(4)~~(5) "Sheriff" means any elected or appointed county sheriff or undersheriff or any appointed, lawfully trained, appropriately salaried, and regularly acting deputy sheriff with the requisite professional certification and licensing."

Section 2. Section 19-7-301, MCA, is amended to read:

"19-7-301. Membership — inactive vested members — inactive nonvested members. (1) (a) Except as provided in subsection (1)(b), each sheriff shall become a member of the sheriffs' retirement system.

(b) A sheriff who was a member of the public employees' retirement system on July 1, 1974, may remain a public employees' retirement system member or elect to become a member of the sheriffs' retirement system by filing a written election with the board at any time before retirement.

(2) (a) Except as provided in subsection (2)(b), an investigator shall become a member of the sheriffs' retirement system.

(b) An investigator who was a member of the public employees' retirement system on July 1, 1993, may remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board at any time before retirement.

(3) (a) Except as provided in subsection (3)(b), a detention officer shall become a member of the sheriffs' retirement system.

(b) A detention officer who was a member of the public employees' retirement system on [the effective date of this act] may remain in the public employees' retirement system or elect to become a member of the sheriffs' retirement system by filing a written election with the board before May 1, 2006.

~~(3)~~(4) A member of the public employees' retirement system who begins employment in a position covered by the sheriffs' retirement system may remain in the public employees' retirement system or may elect to become a member of the sheriffs' retirement system by filing a written election with the board no later than 30 days after beginning the employment.

~~(4)~~(5) A sheriff or investigator who elects to become a member of the sheriffs' retirement system must be an active member as long as actively employed in an eligible capacity, except as provided in 19-7-1101(2).

~~(5)~~(6) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

~~(6)~~(7) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 3. Section 19-7-302, MCA, is amended to read:

"19-7-302. Ineligibility for membership in public employees' retirement system. (1) After July 1, 1974, a sheriff may not become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to sheriffs.

(2) After July 1, 1993, an investigator is not eligible to become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to investigators, except as provided in 19-7-301.

(3) *After [the effective date of this act], a detention officer is not eligible to become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to detention officers, except as provided in 19-7-301.*

~~(3)~~(4) This chapter may not be construed to deny any sheriff or investigator any benefits accrued under provisions of the public employees' retirement system prior to membership in this retirement system."

Section 4. Effective date. [This act] is effective July 1, 2005.

Approved April 15, 2005

CHAPTER NO. 260

[SB 373]

AN ACT GENERALLY REVISING LICENSING LAWS FOR PROFESSIONAL EMPLOYER ORGANIZATIONS AND GROUPS; DEFINING "FINANCIAL STATEMENTS"; REQUIRING A \$100,000 SECURITY DEPOSIT IN CERTAIN CASES; PROVIDING THAT A SECURITY BOND, A LETTER OF CREDIT, OR MARKETABLE SECURITIES DEPOSITED WITH THE DEPARTMENT MAY BE USED TO PAY CERTAIN LIABILITIES; ALLOWING FOR AFFIDAVITS BY ASSURANCE ORGANIZATIONS TO VERIFY THAT FINANCIAL REQUIREMENTS ARE MET; PROVIDING FOR PROVISIONAL LICENSING; PROVIDING THAT A CLIENT IS NOT PRECLUDED FROM PROVIDING BENEFITS TO EMPLOYEES COEMPLOYED BY A PROFESSIONAL EMPLOYER ORGANIZATION OR GROUP; AMENDING SECTIONS 39-8-102, 39-8-202, 39-8-204, 39-8-206, 39-8-207, AND 39-8-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 39-8-102, MCA, is amended to read:

"39-8-102. Definitions. As used in this chapter, unless the context indicates otherwise, the following definitions apply:

(1) "Applicant" means a person that seeks to be licensed under this chapter.

(2) "Client" means a person that obtains all or part of ~~its~~ *the person's* workforce from another person through a professional employer arrangement.

(3) "Controlling person" means an individual who possesses the right to direct the management or policies of a professional employer organization or group through ownership of voting securities, by contract or otherwise.

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

(5) "Employee leasing arrangement" means an arrangement by contract or otherwise under which a professional employer organization hires its own employees and assigns the employees to work for another person to staff and manage, or to assist in staffing and managing, a facility, function, project, or enterprise on an ongoing basis.

(6) "*Financial statements*" means accounting information, consisting of balance sheets and income statements, that identifies the financial position of applicants or licensees through their operations.

~~(6)~~(7) "Licensee" means a person licensed as a professional employer organization or group under this chapter.

~~(7)~~(8) "Person" means an individual, association, company, firm, partnership, corporation, or limited liability company.

~~(8)~~(9) (a) "Professional employer arrangement" means an arrangement by contract or otherwise under which:

(i) a professional employer organization or group assigns employees to perform services for a client;

(ii) the arrangement is or is intended to be ongoing rather than temporary in nature; and

(iii) the employer responsibilities are shared by the professional employer organization or group and the client.

(b) The term does not include:

(i) services performed by a temporary service contractor;

(ii) arrangements under which a person shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, if:

(A) that person's principal business activity is not entering into professional employer arrangements; and

(B) that person does not represent to the public that the person is a professional employer organization or group;

(iii) arrangements existing for employment of an independent contractor, as defined in 39-71-120; and

(iv) arrangements by a health care facility, as defined in 50-5-101, to provide its own employees to perform services at and on behalf of another health care facility or at and on behalf of a private office of physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.

~~(9)~~(10) "Professional employer group" or "group" means at least two but not more than five professional employer organizations, each of which is majority-owned by the same person.

~~(10)~~(11) (a) "Professional employer organization" means:

(i) a person that provides services of employees pursuant to one or more professional employer arrangements or to one or more employee leasing arrangements; or

(ii) a person that represents to the public that the person provides services pursuant to a professional employer arrangement.

(b) The term does not include a health care facility, as defined in 50-5-101, that provides its own employees to perform services at and on behalf of another health care facility or at and on behalf of a private office of physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.

~~(11)~~(12) “Temporary service contractor” means a person conducting a business that hires ~~its~~ *the person’s* own employees and assigns them to clients to fulfill 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.”

Section 2. Section 39-8-202, MCA, is amended to read:

“39-8-202. Initial license application — application fee — standards — provisional license. (1) An applicant for initial licensure as a professional employer organization or group shall file with the department a completed application on a form provided by the department.

(2) The application must be accompanied by a nonrefundable application fee and any material or information required by the department that demonstrates compliance with the requirements of this chapter. The application fee is:

(a) \$750 for a resident or nonresident unrestricted license; and

(b) \$500 for a restricted license.

(3) As a condition of licensure under this chapter, an applicant who is not a resident or who is domiciled outside the state must first be licensed as a professional employer organization or group in the state in which the applicant is a resident or is domiciled if licensing is required by that state.

(4) An applicant for licensure as a professional employer organization or group ~~shall~~ *must* meet the following standards:

(a) An individual must be 18 years of age or older.

(b) A partnership or a limited partnership shall provide the names and home addresses of all partners, indicate whether each partner is a general or a limited partner, and include a copy of the partnership agreement or an affidavit signed by all partners acknowledging that ~~no~~ *a* written partnership agreement ~~exists~~ *does not exist*.

(c) A corporation shall state the names and home addresses of all officers, directors, and shareholders who own a 5% or greater interest in the corporation and ~~provide a certificate of good standing from the secretary of state demonstrating that the corporation is qualified to do business in this state. A domestic or foreign corporation must have filed any required documents with the secretary of state and must remain in good standing in order to conduct business pursuant to this chapter.~~

(d) A limited liability company shall state the names and home addresses of those individuals who own a 5% or greater interest in the limited liability company and ~~provide a certificate of good standing from the secretary of state demonstrating that the company is qualified to do business in this state. A~~

domestic or foreign limited liability company must have filed any required documents with the secretary of state and must remain in good standing in order to conduct business pursuant to this chapter.

(e) A group:

(i) must be authorized to act on behalf of the group;

(ii) shall include for each professional employer organization within the group the information required in subsection (4); and

(iii) shall guarantee, on a form provided by the department and executed by each professional employer organization within the group, payment of all financial obligations with respect to wages, payroll-related taxes, insurance premiums, and employee benefits of each other member within the group.

(5) An applicant shall also provide:

(a) the trade name or names under which the applicant conducts business, the business's taxpayer or employer identification number, the address of the business's principal place of business in the state, and the addresses of any other offices within the state through which the applicant intends to conduct business as a professional employer organization or group. If the applicant's principal place of business is located in another state, the address must be provided.

(b) a list by jurisdiction of each name under which the applicant has operated in the preceding 5 years, including any alternative names, names of predecessors, and names of related business entities with common majority ownership, and detailed information on the background of each controlling person to the extent required by the department; and

(c) other information requested by the department to show that the applicant and each controlling person are of good moral character, have business integrity, and are financially responsible. "Good moral character" means a personal history of honesty, trustworthiness, and fairness; a good reputation for fair dealings; and respect for the rights of others and for the laws of this state and nation.

(6) (a) Except for an applicant who is granted a restricted license under subsection ~~(8)~~ (9), an applicant shall maintain a tangible accounting net worth of not less than \$50,000, evidenced by:

(i) ~~providing a financial statement~~ *statements prepared that have been independently audited by a certified public accountant in accordance with generally accepted accounting principles and accompanied by a compilation report by an independent certified public accountant; or*

(ii) *providing independently compiled financial statements and a \$100,000 security deposit in a form that is acceptable to the department.*

(b) *If, after licensure, an applicant defaults in paying wages or payroll-related taxes or in meeting any liability arising pursuant to Title 39, chapters 71 and 72, or this chapter, the security deposit may be used to meet those obligations. The security deposit may not be used in determining the net worth of an applicant.*

(c) (i) Documents submitted to establish net worth must reflect net worth as of a date not more than 6 months prior to the date on which the application is submitted.

~~(ii) A financial statement~~ *Financial statements* submitted must be attested by the president, chief financial officer, and at least one controlling person of the professional employer organization or group.

~~(iii) In meeting the specified~~ *If an applicant is unable to meet the \$50,000 net worth requirement, the applicant may shall provide to the department a surety bond, a letter of credit, or marketable securities acceptable to the department in an amount of not less than \$50,000 to cover the deficiency. If, after licensure, an applicant defaults in paying wages or payroll-related taxes or in meeting any liability arising pursuant to Title 39, chapters 71 and 72, or this chapter, the surety bond, letter of credit, or marketable securities provided to the department may be used to meet those obligations. A surety will not be acceptable to satisfy this requirement unless the applicant submits sufficient evidence to satisfy the department that the surety has adequate resources to satisfy the obligations of the surety. A surety is subject to audit or verification by the department or its agent.*

~~(7) The applicant shall maintain a positive working capital, as determined in accordance with generally accepted accounting principles evidenced by financial statements.~~

(8) The department may provide by rule for the acceptance, in lieu of the requirements of subsections (6) and (7), of an affidavit provided by a bonded, independent, and qualified assurance organization that has been approved by the department certifying the qualifications of a professional employer organization or group seeking licensure under this chapter.

~~(8)(9)~~ The department may issue a restricted license for limited operation within this state to a professional employer organization or group that is a resident of or domiciled in another state if:

(a) the applicant's state of residence or domicile provides for licensing of professional employer organizations or groups, the applicant is licensed and in good standing in ~~the that~~ state of residence or domicile, and that state grants a similar privilege for restricted licensing to professional employer organizations or groups that are residents of or domiciled in this state and that are licensed under this chapter;

(b) the applicant does not maintain an office, a sales force, or a sales representative in this state and does not solicit clients who are residents of or domiciled in this state; and

(c) the applicant does not have more than 100 leased employees working in this state.

~~(9)(10)~~ An applicant for a ~~nonresident or~~ restricted license shall ~~file, on a form provided by the department, an appointment of~~ *appoint* a recognized and approved entity as its ~~attorney~~ *registered agent* to receive service of legal process issued against it in this state.

(11) The department may issue a provisional license to an applicant that allows the applicant to operate in this state while the applicant's application is being processed by the department. The department may not charge a fee for a provisional license. The department may adopt rules to implement the provisions of this subsection.

~~(10)(12)~~ A license issued under 39-8-204 or this section ~~remains the property of the department and~~ may not be transferred."

Section 3. Section 39-8-204, MCA, is amended to read:

“39-8-204. License renewal. (1) ~~Except as provided in subsection (5), a~~ A license issued under this chapter is valid for 1 year from the date of issuance unless suspended or revoked.

(2) *An applicant for license renewal is subject to the requirements of 39-8-202(3) through (11).*

~~(2)~~(3) At least 30 days prior to the expiration of the license, the licensee shall submit an application for renewal of a license on a form prescribed by the department and accompanied by the license fee, as provided in 39-8-205.

~~(3)~~(4) A late renewal application may not be processed prior to the expiration of the licensee's current license. A person engaged in an unlicensed activity is subject to the penalty established in 39-8-302.

~~(4)~~(5) Denial of a renewal license is subject to review under the provisions of 39-8-203.

~~(5) If the application fee required in 39-8-202 is paid and accepted, then no additional license fee is required for the first year.”~~

Section 4. Section 39-8-206, MCA, is amended to read:

“39-8-206. License suspension, revocation, or nonrenewal. (1) In addition to the penalty provided in 39-8-302, the department may suspend for up to 1 year, may permanently revoke, or may refuse to renew a license issued under this chapter if, after notice to the licensee ~~of the charges and after a hearing,~~ the department finds that any of the following exists:

(a) a cause for which issuance of the license could have been refused had it been known to the department at the time of issuance;

(b) a violation of an order of the department or noncompliance with any provision of this chapter;

(c) procurement of or attempting to procure a license through misrepresentation or fraud;

(d) failure to provide a written response to a written inquiry from the department or its agent within 30 days after receiving an inquiry; or

(e) failure to meet or maintain any other requirement of this chapter.

(2) If a license is suspended, revoked, or not renewed, the department shall:

(a) immediately notify by certified mail the licensee and the licensee's workers' compensation carrier; and

(b) require the licensee to:

(i) notify each client by certified mail, return receipt requested, of the suspension, revocation, or nonrenewal using language furnished by the department;

(ii) notify each client in writing that the client shares joint and several liability, retroactive to the date of the client's entering into a contract with the licensee, for any wages, workers' compensation premiums, payroll-related taxes, and any benefits left unpaid by the professional employer organization or group; and

(iii) provide the department with evidence of client notification.

(3) Upon notification, the licensee may appeal the decision of the department pursuant to the procedure provided in 39-8-203.”

Section 5. Section 39-8-207, MCA, is amended to read:

“39-8-207. Requirements of licensee. (1) A professional employer organization or group shall, by written contract with the client, establish the responsibilities and duties of each party. The contract must disclose to the client:

(a) the services provided, the administrative fee, and the respective rights and obligations of the parties;

(b) a statement providing that the professional employer organization or group:

(i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.

(ii) assumes responsibility for the payment of wages of employees, workers' compensation premiums, payroll-related taxes, and employee benefits from its own accounts without regard to payments by the client; and

(iii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.

(c) a statement that, with respect to a worker supplied to a client by a professional employer organization or group, the client shares joint and several liability for any wages, workers' compensation premiums, and payroll-related taxes and for any benefits left unpaid by the professional employer organization or group and that, in the event that the licensee's license is suspended or revoked, this liability is retroactive to the client's entering into a contract with the licensee; and

(d) a statement that the client is responsible for compliance with the Montana Safety Culture Act, Title 39, chapter 71, part 15.

(2) The professional employer organization or group shall:

(a) give written notice of the general nature of the relationship between the professional employer organization or group and the client to each employee assigned to perform services at the client's place of work. The disclosure must provide that the professional employer organization:

(i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.

(ii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.

(b) submit to the department, within 90 days of the end of each calendar quarter, information certified by an independent certified public accountant demonstrating that all payroll-related taxes for the quarter have been paid. Upon a showing of reasonable cause, one 30-day extension may be granted for each quarter.

(c) maintain and make available for the department or its agent all records relating to the licensee's business conduct. Records must be maintained for 5 years after terminating an employee leasing arrangement or professional employer arrangement.

(d) notify the department in writing within 20 days of a change of business address or a change in partners, directors, officers, members, or controlling persons designated in the license;

(e) notify the department in writing within 20 days after a client either commences or terminates a professional employer arrangement or an employee leasing arrangement with that professional employer organization or group; and

(f) post the license issued in a conspicuous place in the principal place of business and display, in clear public view in each licensee's office, a notice stating that the professional employer organization or group is licensed and regulated by the department.

(3) When a professional employer organization or group uses a professional employer arrangement with the client, both the professional employer organization or group and the client are the immediate employers of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state. When a professional employer organization or group uses an employee leasing arrangement with the client, the professional employer organization or group is the immediate employer of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state.

(4) A professional employer organization or group shall:

(a) pay wages and collect, report, and pay payroll-related taxes from its own accounts;

(b) pay unemployment taxes, pursuant to 39-51-1103, and provide, maintain, and secure all records and documents required of employers under the unemployment insurance laws of this state. For unemployment reporting purposes, each professional employer organization is the employing unit, as defined in 39-51-201, and shall keep separate records and submit quarterly wage lists for each of its clients.

(c) provide workers' compensation coverage for all employees and provide, maintain, and secure all records and documents required of employers under the workers' compensation laws of this state. A license may not be issued to a professional employer organization or group until the department receives proof of workers' compensation coverage for all employees assigned to any client location in this state.

(5) A professional employer organization or group is ~~the~~ *an* employer for sponsoring and maintaining employee benefit and welfare plans. The plans, if limited to employees of the professional employer organization or group, are not multiple employer welfare arrangements. *This section does not preclude the client from providing benefits to employees coemployed by a professional organization or group.*

(6) A professional employer organization or group shall disclose to the department, to each client, and to its employees information on any health or life fringe benefit program provided for its employees. The information must include:

(a) the type of benefits;

(b) the identity of each insurer providing each type of coverage;

(c) the amount of benefits for each type of coverage and to whom or on whose behalf the benefits will be paid;

- (d) the policy limits on each insurance policy; and
- (e) whether coverage is fully insured, partially insured, or fully self-funded.

(7) Disclosure required by this section may be made by any written means reasonably calculated to adequately inform the employees, including a summary plan description that meets the requirements of the Employee Retirement Income Security Act of 1974, (29 U.S.C. 1001, et seq.), as amended.

(8) (a) Subject to any contrary provisions of the contract between the client and the professional employer organization or group, the professional employer arrangement that exists between the parties must be interpreted for purposes of insurance, bonding, and employer liability pursuant to subsection (8)(b).

(b) The professional employer organization or group:

(i) is entitled, along with the client, to the exclusivity of the remedy under both the workers' compensation and employers' liability provisions of a workers' compensation policy or plan of either party; and

(ii) is not liable for the acts, errors, or omissions of a client or of an employee acting under the direction and control of a client, subject to the provisions of this chapter. Subject to the provisions of this chapter, a client is not liable for the acts, errors, or omissions of a professional employer organization or group or of any employee of a professional employer organization or group acting under the direction and control of the professional employer organization or group.

(9) A professional employer organization that applies for workers' compensation coverage shall also maintain and furnish to the insurer sufficient information to permit the calculation of an experience modification factor for each client employer, including but not limited to:

- (a) the client employer's corporate or business name;
- (b) the client employer's taxpayer or employer identification number;
- (c) the client employer's risk identification number;

(d) a listing of all employees assigned to each client employer and the applicable classification code and payroll; and

(e) the client employer's first report of injury identifying the client employer and any other information necessary to permit the calculation of an experience modification factor for each client employer.

(10) An employee assigned to a client by a professional employer organization or group is considered the employee of the client for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, and liquor liability insurance carried by the client. An employee assigned to a client by a professional employer organization or group is not an employee of the professional employer organization or group for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, or liquor liability insurance carried by the professional employer organization or group unless the employee is included by reference in an employment arrangement contract, insurance contract, or bond.

(11) The sale of professional employer services pursuant to this chapter does not constitute the sale of insurance under Title 33 unless the professional employer organization or group:

(a) undertakes to indemnify another or pay or provide a specified or determinable amount of benefit based on determinable contingencies unless

done through a licensed insurer or an employee welfare benefit plan as defined in 29 U.S.C. 1002(1);

(b) solicits, negotiates, effects, procures, delivers, renews, continues, or binds an insurance policy unless done through a licensed insurance producer; or

(c) is not exempt under 33-17-103(4).

(12) A sole proprietor or a working member of a partnership working under a professional employer arrangement may not receive unemployment insurance benefits unless the individual would otherwise be entitled to benefits if the professional employer arrangement did not exist.

(13) If the professional employer organization or group or the client complies with the provisions of 39-71-401 with respect to a worker under the professional employer arrangement, the professional employer organization or group and the client, with respect to those workers, are not uninsured employers, as defined in 39-71-501, and are not subject to the provisions of 39-71-508 or 39-71-515.”

Section 6. Section 39-8-302, MCA, is amended to read:

“39-8-302. Disciplinary action against licensee — penalties. (1) The department may deny a license application or may suspend, revoke, or refuse to renew an existing license for a person who:

(a) obtains or renews a license through bribery, fraud, or willful misrepresentation;

(b) engages in fraud, deceit, misrepresentation, or misconduct in:

(i) obtaining or providing workers’ compensation or health coverage;

(ii) the classification of employees;

(iii) the reporting of employee wages for purposes of ~~unemployment insurance~~ *any payroll-related taxes* or workers’ compensation benefits; or

(iv) the operation of a professional employer organization or group;

(c) conducts business without a valid license;

(d) fails to maintain evidence of workers’ compensation insurance coverage;

(e) transfers or attempts to transfer a license issued pursuant to this chapter; or

(f) violates the provisions of this chapter or a rule issued pursuant to this chapter.

(2) A person who fails to comply with the provisions of this chapter is guilty of a misdemeanor and, upon conviction, is subject to a fine of up to \$1,000, imprisonment for not more than 1 year, or both.”

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

Approved April 15, 2005

CHAPTER NO. 261

[SB 410]

AN ACT EXPANDING THE POWER OF CITIES AND TOWNS TO CONTROL, REMOVE, AND RESTRICT GAME ANIMALS UNDER PLANS APPROVED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AMENDING

SECTIONS 7-3-1105, 7-3-1222, 7-31-4110, AND 87-3-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 7-3-1105, MCA, is amended to read:

“7-3-1105. Rules, ordinances, and resolutions of consolidated unit.

(1) Within 2 years after ratification of the consolidation, the governing body of the consolidated unit of local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating county, cities, and towns at the time of consolidation. Each rule, ordinance, or resolution in force at the time of consolidation ~~shall~~ *must* remain in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments may not be repealed.

(2) (a) A consolidated government may adopt, for the portion of the consolidated government that was formerly a city or town, a plan to control, remove, and restrict game animals, as defined in 87-2-101, within the defined boundaries of the city or town limits for public health and safety purposes. Upon adoption of a plan, the consolidated government shall notify the department of fish, wildlife, and parks of the plan. If the department of fish, wildlife, and parks approves the plan or approves the plan with conditions, the consolidated government may implement the plan as approved or as approved with conditions.

(b) *The plan may allow the hunting of game animals and provide restrictions on the feeding of game animals.”*

Section 2. Section 7-3-1222, MCA, is amended to read:

“7-3-1222. Procedure to enact ordinances and resolutions. (1) Ordinances and resolutions must be introduced in the commission only in written or printed form. All ordinances or resolutions, except ordinances making appropriations, must be confined to one subject, which must be clearly expressed in the title, except as provided in 7-3-1226. Ordinances making appropriations must be confined to the subject of appropriations. An ordinance may not be passed until it has been read on 3 separate days, unless the requirement of reading on 3 separate days has been dispensed with by a vote of not less than two-thirds of the members of the commission. The final reading must be in full unless a written or printed copy of the measure has been furnished to each member of the commission prior to final reading.

(2) The enacting clause of all ordinances passed by the commission must be: “Be it ordained by the city and county of _____”, and the enacting clause of all ordinances submitted by the initiative must be: “Be it ordained by the people of the city and county of _____”.

(3) An ordinance, resolution, or section of an ordinance or resolution may not be revised or amended unless the new ordinance or resolution contains the entire ordinance, resolution, or section of the ordinance or resolution as revised or amended.

(4) Every ordinance or resolution, upon its final passage, must be recorded in a book kept for that purpose and must be authenticated by the signatures of the president and clerk. Within 10 days after its final passage, each ordinance or resolution must be published at least once in the manner that the commission may provide by ordinance.

(5) Initiated ordinances adopted by the electors must be published and may be amended or repealed by the commission, as in the case of other ordinances.

(6) (a) A consolidated government may adopt, for the portion of the consolidated government that was formerly a city or town, a plan to control, remove, and restrict game animals, as defined in 87-2-101, within the boundaries that are within the city or town limits for public health and safety purposes. Upon adoption of a plan, the consolidated government shall notify the department of fish, wildlife, and parks of the plan. If the department of fish, wildlife, and parks approves the plan or approves the plan with conditions, the consolidated government may implement the plan as approved or as approved with conditions.

(b) *The plan may allow the hunting of game animals and provide restrictions on the feeding of game animals.*

Section 3. Section 7-31-4110, MCA, is amended to read:

“7-31-4110. Restriction of wildlife. (1) A city or town may adopt a plan to control, remove, and restrict game animals, as defined in 87-2-101, within the boundaries of the city or town limits for public health and safety purposes. Upon adoption of a plan, the city or town shall notify the department of fish, wildlife, and parks of the plan. If the department of fish, wildlife, and parks approves the plan or approves the plan with conditions, the city or town may implement the plan as approved or as approved with conditions.

(2) *The plan may allow the hunting of game animals and provide restrictions on the feeding of game animals.*

Section 4. Section 87-3-305, MCA, is amended to read:

“87-3-305. Unlawful to hunt deer within city or town boundaries. It is unlawful to hunt or attempt to hunt any deer within the boundaries of any incorporated or unincorporated city or town of this state *except as allowed under a plan developed by a city or town and approved by the department pursuant to 7-3-1105, 7-3-1222, or 7-31-4110.*

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

Approved April 15, 2005

CHAPTER NO. 262

[SB 451]

AN ACT REVISING SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS LICENSING LAWS; REVISING THE DEFINITION OF “PRACTICE OF AUDIOLOGY” AND “PRACTICE OF SPEECH-LANGUAGE PATHOLOGY”; REVISING LICENSE EXEMPTION AND EXAMINATION REQUIREMENTS; AND AMENDING SECTIONS 37-15-101, 37-15-102, 37-15-103, 37-15-303, 37-15-304, 37-15-307, AND 37-15-313, MCA.

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

Section 1. Section 37-15-101, MCA, is amended to read:

“37-15-101. Purpose. The legislature declares it to be a policy of this state that in order to safeguard the public health, safety, and welfare and to protect the public from being misled by incompetent, unscrupulous, and unauthorized persons and to protect the public from unprofessional conduct by qualified

speech-language pathologists and audiologists and to help ensure the availability of the highest possible quality speech-language pathology and audiology services to the people of this state with communicative ~~disabilities disorders~~, it is necessary to provide regulatory authority over persons offering speech-language pathology or audiology services to the public.”

Section 2. Section 37-15-102, MCA, is amended to read:

“37-15-102. Definitions. As used in this chapter, the following definitions apply:

~~(1) “ASHA” means the American speech-language-hearing association.~~

~~(2) (1) “Association” means the Montana speech-language and hearing association.~~

~~(3) (2) “Audiologist” means a person who practices audiology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is an audiologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words “audiologist”, “audiology”, “audiometrist”, “audiometry”, “audiological”, “audiometrics”, “hearing clinician”, “hearing clinic”, “hearing therapist”, “hearing therapy”, “hearing center”, “hearing aid audiologist”, or any similar title or description of services.~~

~~(4) (3) “Audiology aide or assistant” means any person meeting the minimum requirements established by the board of speech-language pathologists and audiologists who works directly under the supervision of a licensed audiologist.~~

~~(5) (4) “Board” means the board of speech-language pathologists and audiologists provided for in 2-15-1739.~~

~~(6) (5) “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.~~

~~(7) (6) “Practice of audiology” means rendering or offering to render a service in audiology to individuals or groups of individuals who have or are suspected of having hearing disorders nonmedical diagnosis, assessment, and treatment services relating to auditory and vestibular disorders as provided by board rule. These services include:~~

~~(a) prevention, identification, measurement, testing, evaluation, prediction, consultation, habilitation, rehabilitation, instruction, and research;~~

~~(b) participating in hearing conservation and hearing aid and assistive listening device evaluation, prescription, preparation, dispensing, and orientation;~~

~~(c) fabricating ear molds;~~

~~(d) providing auditory training and speech reading;~~

~~(e) conducting tests of vestibular function;~~

~~(f) evaluating tinnitus;~~

~~(g) planning, directing, conducting, or supervising programs that render or offer to render a service in audiology; and~~

~~(h) speech or language screening, limited to a pass/fail determination.~~

~~(8) (7) “Practice of speech-language pathology” means rendering or offering to render a service in speech-language pathology to individuals or groups of individuals who have or are suspected of having communication disorders~~

nonmedical diagnosis, assessment, and treatment services relating to speech-language pathology as provided by board rule. These services include:

~~(a) prevention, identification, measurement, testing, evaluation, prediction, consultation, habilitation, and rehabilitation;~~

~~(b) determining the need for augmentative communication systems and providing training in the use of these systems;~~

~~(c) planning, directing, conducting, or supervising programs that render or offer to render a service in speech-language pathology;~~

~~(d) nondiagnostic pure-tone air conduction, tympanometry, and acoustic reflex screening, limited to a pass/fail determination;~~

~~(e) aural rehabilitation, which includes services and procedures for facilitating adequate receptive and expressive communication in individuals with hearing impairment;~~

~~(f) oral motor rehabilitation, which includes services and procedures for evaluating and facilitating face, lip, and tongue mobility and control;~~

~~(g) cognitive retraining, which includes services and procedures for evaluating and facilitating memory, attention, reasoning, processing, judgment, and other related areas in individuals with language impairment resulting from head injury, stroke, or other insult; and~~

~~(h) dysphagia therapy, which includes services and procedures for evaluating and facilitating swallowing and feeding in those individuals with swallowing disorders.~~

~~(9)(8)~~ "Speech-language pathologist" means a person who practices speech-language pathology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is a speech-language pathologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "speech pathologist", "speech pathology", "speech correctionist", "speech corrections", "speech therapist", "speech therapy", "speech clinician", "speech clinic", "language pathologist", "language pathology", "voice therapist", "voice therapy", "voice pathologist", "voice pathology", "logopedist", "logopedics", "communicologist", "communicology", "aphasiologist", "aphasiology", "phoniatrist", "language therapist", "language clinician", or any similar title or description of services or functions.

~~(10)(9)~~ "Speech-language pathology aide or assistant" means a person meeting the minimum requirements established by the board who works directly under the supervision of a licensed speech-language pathologist."

Section 3. Section 37-15-103, MCA, is amended to read:

"37-15-103. Exemptions. (1) ~~Nothing in this~~ *This chapter prevents does not prevent* a person licensed in this state under any other law from engaging in the profession or business for which ~~he~~ *that person* is licensed.

(2) ~~Nothing in this chapter restricts or prevents~~ *This chapter does not restrict or prevent* activities of a speech-language pathology or audiology nature or the use of the official title of the position for which ~~they~~ *the activities* were ~~employed performed~~ *employed* on the part of a speech-language pathologist or audiologist employed by federal agencies.

(3) Those persons performing activities described in subsection (2) ~~of this section~~ *who are not licensed under this chapter must do so solely may perform*

those activities only within the confines of or under the jurisdiction of the organization in which they are employed and may not offer speech-language pathology or audiology services to the public for compensation over and above the salary they receive for performance of their official duties with organizations by which they are employed. However, without obtaining a license under this chapter, these persons may consult or disseminate their research findings and scientific information to other accredited academic institutions or governmental agencies. They also may offer lectures to the public for a fee without being licensed under this chapter.

(4) ~~Nothing in this chapter restricts~~ *This chapter does not restrict* the activities and services of a student in speech-language pathology or audiology from pursuing a course of study in speech-language pathology or audiology at an accredited or approved college or university or an approved clinical training facility. However, these activities and services must constitute a part of ~~his a~~ supervised course of study, and a fee may not accrue directly or indirectly to the student. These ~~persons~~ *students* must be designated by the title "speech-language pathology (or audiology) intern", "speech-language pathology (or audiology) trainee", or a title clearly indicating the training status appropriate to ~~his the~~ level of training.

(5) ~~Nothing in this~~ *This chapter restricts does not restrict* a person from another state from offering speech-language pathology or audiology services in this state if ~~these the~~ services are performed for ~~no not~~ more than 5 days in any calendar year and if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter. However, by securing a temporary license from the board subject to limitations ~~as that~~ the board may impose, a person not a resident of this state who is not licensed under this chapter but who is licensed under the law of another state that has established licensure requirements at least equivalent to those established by this chapter ~~or who is the holder of the ASHA certificate of clinical competency in speech-language pathology or audiology or its equivalent~~ may offer speech-language pathology or audiology services in this state for ~~no not~~ more than 30 days in any calendar year if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter.

(6) ~~Nothing in this~~ *This chapter restricts does not restrict any* a person holding a class A certificate issued by the conference of executives of American schools of the deaf from performing the functions for which ~~he the~~ person qualifies.

(7) ~~Nothing in this~~ *This chapter restricts does not restrict a any* person who holds a certificate of registration in this state as a hearing aid dealer from performing ~~those the~~ functions for which ~~he the~~ person qualifies and that are described in Title 37, chapter 16.

(8) ~~Nothing in this~~ *This chapter exempts does not exempt* an audiologist who sells, dispenses, or fits hearing aids from the licensing requirements or other provisions of Title 37, chapter 16."

Section 4. Section 37-15-303, MCA, is amended to read:

"37-15-303. Qualifications. (1) To be eligible for licensing by the board as a speech-language pathologist or audiologist, the applicant ~~must~~:

(a) *must* meet the current academic, supervised clinical practicum, and postclassroom sponsored employment requirements ~~of the ASHA as defined by board rule;~~

(b) *shall* pass an examination approved by the board.

(2) The board shall determine the subject and scope of the examination.

(3) *The standards defined by the board must be equal to or greater than the standards generally accepted as the national norm.*"

Section 5. Section 37-15-304, MCA, is amended to read:

"37-15-304. Examination. (1) Except as otherwise provided in this chapter, an applicant ~~shall~~ *must* be examined for speech-language pathology or audiology by the board and shall pay to the board, at least 30 days prior to the date of the examination, the examination fee for each examination as prescribed by this chapter.

(2) The board shall examine by written examination given at least twice a year at a time and place and under ~~such~~ *the* supervision as the board may determine. In addition, an oral examination may be required by the board. Standards for acceptable performance ~~shall~~ *must* be determined by the board.

(3) The board may waive the written examination for ~~certification~~ *licensure* if the applicant has successfully passed ~~the~~ *a* national examination in speech-language pathology or audiology *as provided by board rule*.

(4) The board may examine or direct the applicant to be examined for knowledge in whatever theoretical or applied fields of speech-language pathology or audiology ~~as it~~ *that the board* considers appropriate. ~~† The board~~ may also examine the candidate with regard to ~~his~~ professional skills and ~~his~~ judgment in the ~~utilization~~ *use* of speech-language pathology or audiology techniques and methods.

(5) The department shall maintain a permanent record of all examination scores.

(6) The board shall keep an accurate transcript of the oral examination, if any. Transcripts of oral examinations ~~shall~~ *must* be retained by the board for at least 1 year following the date of examination.

(7) An applicant who fails ~~his~~ *the* examination may be reexamined at a subsequent examination upon payment of another examination fee. An applicant who fails two successive examinations may apply for reexamination after 2 years of additional professional experience or training."

Section 6. Section 37-15-307, MCA, is amended to read:

"37-15-307. Application and examination fee — license fee — registration fee. The amount of fees prescribed in connection with a license as a speech-language pathologist or audiologist and with registration as a speech-language pathology aide or *assistant* or audiology aide or *assistant* ~~shall~~ *must* be determined by the board each year based on costs and predicted expenditures."

Section 7. Section 37-15-313, MCA, is amended to read:

"37-15-313. Registration of aides or assistants. Each licensed speech-language pathologist and audiologist shall annually, on or before October 31, register with ~~a~~ *the* board on forms provided by the board all speech-language pathology aides or *assistants* and audiology aides or *assistants* working directly under the supervision of the licensee."

Approved April 15, 2005

CHAPTER NO. 263

[SB 457]

AN ACT REVISING THE TIME PERIOD FOR AN INSURER TO GIVE NOTICE OF PREMIUM DUE; CLARIFYING NOTICE REQUIREMENTS FOR CANCELLATION OF INSURANCE POLICIES ON HOMES FOR NONPAYMENT; AND AMENDING SECTIONS 33-15-1103, 33-15-1105, AND 33-23-401, MCA.

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

Section 1. Section 33-15-1103, MCA, is amended to read:

“33-15-1103. Midterm cancellation. (1) An insurer may not cancel an insurance policy before either the expiration of the agreed term or 1 year from the effective date of the policy or renewal date, whichever is less, except:

- (a) for reasons specifically allowed by statute;
- (b) for failure to pay a premium when due; or
- (c) on grounds stated in the policy which pertain to the following:

- (i) material misrepresentation;
- (ii) substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk when the contract was written;

- (iii) substantial breaches of contractual duties, conditions, or warranties;

- (iv) determination by the commissioner that continuation of the policy would place the insurer in violation of this code;

- (v) financial impairment of the insurer; or

- (vi) any other reason approved by the commissioner.

(2) ~~Cancellation~~ *Except as provided in 33-23-401, cancellation* under subsection (1) is not effective until 10 days after a notice of cancellation is either delivered or mailed to the insured.

(3) Subsections (1) and (2) do not apply to a newly issued insurance policy if the policy has been in effect less than 60 days at the time the notice of cancellation is mailed or delivered. ~~No~~ A cancellation under this subsection is *not* effective until 10 days after the notice is delivered or mailed to the insured.

(4) If a policy has been issued for a term longer than 1 year and if either the premium is prepaid or an agreed term is guaranteed for additional premium consideration, the insurer may not cancel the policy except:

- (a) for reasons specifically allowed by statute;
- (b) for failure to pay a premium when due; or

- (c) on grounds stated in the policy which pertain to those grounds listed in subsection (1)(c).”

Section 2. Section 33-15-1105, MCA, is amended to read:

“33-15-1105. Nonrenewal — renewal premium. (1) (a) An insured has a right to reasonable notice of nonrenewal. Unless otherwise provided by statute or unless a longer term is provided in the policy, at least 45 days prior to the expiration date provided in the policy, an insurer who does not intend to renew a policy beyond the agreed expiration date shall mail or deliver to the insured a

notice of the intention not to renew. The insurer shall also mail or deliver a copy to the insured's insurance producer.

(b) Notification ~~or~~ of nonrenewal to the insured's insurance producer via electronic transfer of data or by electronic data retrieval device meets the requirement of a mailed or delivered copy.

(2) An insurer shall give notice of premium due not more than 60 days or less than ~~40~~ 30 days before the due date of a renewal premium. The notice must clearly state the effect of nonpayment of the premium on or before the due date.

(3) Subsections (1) and (2) do not apply if:

(a) the insured has obtained insurance elsewhere, has accepted replacement coverage, or has requested or agreed to nonrenewal; or

(b) the policy is expressly designated as nonrenewable.

(4) An insurer may not refuse to renew a property and casualty insurance policy on the basis of a single loss occurring during the policy period unless the insurer has previously disclosed in writing to the insured, at the time that the insured applied for the insurance or prior to the insured's renewal, that a single loss is among the insurer's criteria for nonrenewal."

Section 3. Section 33-23-401, MCA, is amended to read:

"33-23-401. Written notice required for cancellation or nonrenewal of insurance policies on homes — penalty. (1) An insurer may not cancel or refuse to renew any policy insuring private residences, including but not limited to fire, homeowner, theft, or liability insurance on any home occupied by the insured as a domicile, without first giving to the insured 45 days' notice in writing, including in the notice a statement of the specific reason or reasons for canceling or not renewing the policy, *except that a policy may be canceled for nonpayment of premiums, in which case, the notice to the insured may not be less than 20 days.*

(2) Violation of this section is punishable under 33-1-104."

Approved April 15, 2005

CHAPTER NO. 264

[SB 460]

AN ACT ALLOWING THE TRUSTEES OF A UNIFIED SCHOOL DISTRICT OR A JOINT BOARD OF TRUSTEES TO CONDUCT MORE THAN ONE MAIL BALLOT SCHOOL BOND ELECTION ON THE SAME DAY; AMENDING SECTION 13-19-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 13-19-104, MCA, is amended to read:

"13-19-104. Mail ballot elections not mandatory — when authorized — when prohibited — when county election administrator conducts. (1) Conducting elections by mail ballot is only one option available to local officials, and this chapter does not mandate that the procedure be used.

(2) Except as provided in subsection (3), any election may be conducted by mail ballot.

(3) The following elections may not be conducted by mail ballot:

(a) a regularly scheduled federal, state, or county election;

(b) a special federal or state election, unless authorized by the legislature; or

(c) a regularly scheduled or special election when another election in the political subdivision is taking place at the polls on the same day.

(4) ~~(a)~~ *Except as provided in subsection (4)(b), if more than one mail ballot election is being conducted in the political subdivision on the same day, the county election administrator shall conduct the elections.*

(b) The requirement that a county election administrator shall conduct more than one mail ballot election on the same day does not apply to a mail ballot school bond election conducted by the trustees of any two or more school districts that have unified pursuant to 20-6-312 or that have created a joint board of trustees pursuant to 20-3-361."

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

Approved April 15, 2005

CHAPTER NO. 265

[SB 478]

AN ACT PROVIDING THAT AN EMERGENCY ADMINISTRATIVE RULE MAY NOT BE USED TO IMPLEMENT AN ADMINISTRATIVE BUDGET REDUCTION; SPECIFICALLY INCLUDING PROVIDERS OF SERVICES UNDER CONTRACTS WITH THE STATE AS AN AFFECTED CLASS OF PERSONS FOR PURPOSES OF A STATEMENT OF THE PROBABLE ECONOMIC IMPACT OF A RULE ON AFFECTED CLASSES OF PERSONS; AMENDING SECTIONS 2-4-303 AND 2-4-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 2-4-303, MCA, is amended to read:

"2-4-303. Emergency or temporary rules. (1) *(a)* If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed upon special notice filed with the committee, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than 120 days, after which a new emergency rule with the same or substantially the same text may not be adopted, but the adoption of an identical rule under 2-4-302 is not precluded. Because the exercise of emergency rulemaking power precludes the people's constitutional right to prior notice and participation in the operations of their government, it constitutes the exercise of extraordinary power requiring extraordinary safeguards against abuse. An emergency rule may be adopted only in circumstances that truly and clearly constitute an existing imminent peril to the public health, safety, or welfare that cannot be averted or remedied by any other administrative act. The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare is subject to judicial review upon petition by any person. The matter must be set for hearing at the earliest possible time and takes precedence over all other matters except older matters of the same character. The sufficiency of

the reasons justifying a finding of imminent peril and the necessity for emergency rulemaking must be compelling and, as written in the rule adoption notice, must stand on their own merits for purposes of judicial review. The dissemination of emergency rules required by 2-4-306 must be strictly observed and liberally accomplished.

(b) *An emergency rule may not be used to implement an administrative budget reduction.*

(2) A statute enacted or amended to be effective prior to October 1 of the year of enactment or amendment may be implemented by a temporary administrative rule, adopted before October 1 of that year, upon any abbreviated notice or hearing that the agency finds practicable, but the rule may not be filed with the secretary of state until at least 30 days have passed since publication of the notice of proposal to adopt the rule. The temporary rule is effective until October 1 of the year of adoption. The adoption of an identical rule under 2-4-302 is not precluded during the period that the temporary rule is effective.”

Section 2. Section 2-4-405, MCA, is amended to read:

“2-4-405. Economic impact statement. (1) Upon written request of the appropriate administrative rule review committee based upon the affirmative request of a majority of the members of the committee at an open meeting, an agency shall prepare a statement of the economic impact of the adoption, amendment, or repeal of a rule as proposed. The agency shall also prepare a statement upon receipt by the agency or the committee of a written request for a statement made by at least 15 legislators. If the request is received by the committee, the committee shall give the agency a copy of the request, and if the request is received by the agency, the agency shall give the committee a copy of the request. As an alternative, the committee may, by contract, prepare the estimate. Except to the extent that the request expressly waives any one or more of the following, the requested statement must include and the statement prepared by the committee may include:

(a) a description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

(b) a description of the probable economic impact of the proposed rule upon affected classes of persons, *including but not limited to providers of services under contracts with the state*, and quantifying, to the extent practicable, that impact;

(c) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue;

(d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of inaction;

(e) an analysis that determines whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule;

(f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

(g) a determination as to whether the proposed rule represents an efficient allocation of public and private resources; and

(h) a quantification or description of the data upon which subsections (1)(a) through (1)(g) are based and an explanation of how the data was gathered.

(2) A request to an agency for a statement or a decision to contract for the preparation of a statement must be made prior to the final agency action on the rule. The statement must be filed with the appropriate administrative rule review committee within 3 months of the request or decision. A request or decision for an economic impact statement may be withdrawn at any time.

(3) Upon receipt of an impact statement, the committee shall determine the sufficiency of the statement. If the committee determines that the statement is insufficient, the committee may return it to the agency or other person who prepared the statement and request that corrections or amendments be made. If the committee determines that the statement is sufficient, a notice, including a summary of the statement and indicating where a copy of the statement may be obtained, must be filed with the secretary of state for publication in the register by the agency preparing the statement or by the committee, if the statement is prepared under contract by the committee, and must be mailed to persons who have registered advance notice of the agency's rulemaking proceedings.

(4) This section does not apply to rulemaking pursuant to 2-4-303.

(5) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of the inaccuracy or inadequacy of a statement required under this section.

(6) An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the factors listed in this section satisfies the provisions of this section."

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

Approved April 15, 2005

CHAPTER NO. 266

[SB 479]

AN ACT SPECIFYING THE ENTITIES TO WHICH A BILL OR DEMAND FOR PAYMENT FOR ANATOMIC PATHOLOGY SERVICES MAY BE PRESENTED; PROHIBITING A PHYSICIAN OR OTHER PRACTITIONER OF THE HEALING ARTS FROM BILLING FOR ANATOMIC PATHOLOGY SERVICES UNLESS THOSE SERVICES WERE PROVIDED BY THE PHYSICIAN OR OTHER PRACTITIONER; SPECIFYING ENTITIES NOT REQUIRED TO REIMBURSE FOR CERTAIN ANATOMIC PATHOLOGY SERVICES; PROVIDING EXEMPTIONS; PROVIDING A REMEDY FOR VIOLATIONS; PROVIDING DEFINITIONS; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Direct billing for anatomic pathology services. (1) A clinical laboratory or physician providing anatomic pathology services for a patient may present a bill or demand for payment for services furnished by the laboratory or physician only to the following entities:

- (a) the patient;
- (b) the patient's insurer or other third-party payor;
- (c) the health care facility ordering the services;

(d) a referring laboratory, other than a laboratory in which the patient's physician or other practitioner of the healing arts has a financial interest; or

(e) a state or federal agency or the agent of that agency, on behalf of the patient.

(2) Except as provided in subsection (5), a physician or other practitioner of the healing arts licensed pursuant to Title 37 may not directly or indirectly bill or charge for or solicit payment for anatomic pathology services unless those services were provided personally by the physician or other practitioner or under the direct supervision of a physician providing that supervision for the purposes of 42 U.S.C. 263a.

(3) The following entities are not required to reimburse a physician for a bill or charge made in violation of this section:

- (a) a patient;
- (b) an insurer;
- (c) a health care facility; or
- (d) another third-party payor.

(4) This section does not require an assignment of benefits for anatomic pathology services.

(5) This section does not prohibit billing between laboratories, other than laboratories in which the patient's physician or other practitioner of the healing arts has a financial interest, for anatomic pathology services in instances requiring that a sample be sent to a specialist at another laboratory.

(6) This section does not prohibit a clinical laboratory or physician providing anatomic pathology services for a patient from presenting a bill or demand for payment for those services or presenting separate bills or demands for payment to a payor when allowed by this section.

(7) The licensing entity for a physician or other practitioner of the healing arts licensed pursuant to Title 37 may revoke, suspend, or refuse to renew the license of a physician or other practitioner of the healing arts who violates a provision of this section.

(8) As used in this section, the following definitions apply:

(a) "Anatomic pathology services" means:

(i) histopathology or surgical pathology, meaning the gross examination of, histologic processing of, or microscopic examination of human organ tissue performed by a physician or under the supervision of a physician;

(ii) cytopathology, meaning the examination of human cells, from fluids, aspirates, washings, brushings, or smears, including the pap test examination performed by a physician or under the supervision of a physician;

(iii) hematology, meaning the microscopic evaluation of human bone marrow aspirates and biopsies performed by a physician or under the supervision of a physician and peripheral human blood smears when the attending or treating physician or other practitioner of the healing arts or a technologist requests that a blood smear be reviewed by a pathologist;

(iv) subcellular pathology and molecular pathology; or

(v) blood bank services performed by a pathologist.

(b) "Clinical laboratory" or "laboratory" means a facility for the biological, microbiological, serological, chemical, immunohematological, hematological,

biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of human beings or the assessment of the health of human beings.

(c) "Health care facility" has the meaning provided in 50-5-101.

(d) "Insurer" includes a disability insurer, a health services corporation, a health maintenance organization, and a fraternal benefit society.

(e) "Patient" has the meaning provided in 50-16-504.

(f) "Physician" has the meaning provided in 37-3-102.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 2, and the provisions of Title 37, chapter 2, apply to [section 1].

Section 3. Applicability. [This act] applies to anatomic pathology services furnished after October 1, 2005.

Approved April 15, 2005

CHAPTER NO. 267

[SB 497]

AN ACT LIMITING THE TRANSFERABILITY OF THE LOCATION OF RETAIL BEER LICENSES AND ALL-BEVERAGES LIQUOR LICENSES THAT ARE BROUGHT TO WITHIN 5 MILES OF A CITY OR TOWN BECAUSE OF ANNEXATION; AMENDING SECTIONS 16-4-105 AND 16-4-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 16-4-105, MCA, is amended to read:

"16-4-105. Limit on retail beer licenses — wine license amendments — limitation on use of license — exceptions. (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation that is approved by the department as a person, firm, or corporation qualified to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of the cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of the towns, not more than one retail beer license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities or towns, one retail beer license for every 500 inhabitants;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for every additional 2,000 inhabitants;

(b) the number of the inhabitants in incorporated cities and incorporated towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns, governs the number of retail beer licenses that may be issued for use within the cities and towns and within a distance of 5 miles from the corporate limits of the cities and towns. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use in both the incorporated municipalities and within a distance of 5 miles from their respective corporate limits must be determined on the basis of the combined populations of both municipalities and may not exceed the limitations in this section. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

(c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in violation of the limitations;

(d) the limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949;

(e) the number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits or for use at premises situated within any unincorporated area must be determined by the department in its discretion, except that a retail beer license may not be issued for any premises so situated unless the department determines that the issuance of the license is required by public convenience and necessity pursuant to 16-4-203. Subsection (3) does not apply to licenses issued under this subsection (1)(e). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The department may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. Except for beer and wine licenses issued pursuant to 16-4-420, a person holding a beer and wine license may sell wine for consumption on or off the premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine amendment license.

(3) (a) Except as provided in subsections (1)(e) and (3)(b), a license issued pursuant to this section after October 1, 1997, must have a conspicuous notice that the license may not be used for premises where gambling is conducted.

(b) Subsection (3)(a) does not apply to licenses issued under this section if the department received the application before October 1, 1997. For the purposes of this subsection (3)(b), the application is received by the department

before October 1, 1997, if the application's mail cover is postmarked by the United States postal service before October 1, 1997, or if the application was consigned to a private courier service for delivery to the department before October 1, 1997. An applicant who consigns an application to a private courier shall provide to the department, upon demand, documentary evidence satisfactory to the department that the application was consigned to a private courier before October 1, 1997.

(4) *A license issued under subsection (1)(e) that becomes located within 5 miles of an incorporated city or town because of annexation after [the effective date of this act] may not be transferred to another location within the city quota area for 5 years from the date of the annexation.*"

Section 2. Section 16-4-201, MCA, is amended to read:

"16-4-201. All-beverages license quota. (1) Except as otherwise provided by law, a license to sell liquor, beer, and table wine at retail, (an all-beverages license), in accordance with the provisions of this code and the rules of the department may be issued to any person who is approved by the department as a fit and proper person to sell ~~such~~ alcoholic beverages, except that the number of all-beverages licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of ~~such those~~ cities and towns ~~shall must~~ be determined on the basis of population prescribed in 16-4-502 as follows:

(a) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of ~~such the~~ towns, not more than two retail licenses;

(b) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 3,000 inhabitants and within a distance of 5 miles from the corporate limits of ~~such the~~ cities and towns, three retail licenses for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

(c) in incorporated cities of over 3,000 inhabitants and within a distance of 5 miles from the corporate limits ~~thereof of the cities~~, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500 inhabitants.

(2) The number of the inhabitants in ~~such~~ cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits ~~thereof of the cities or towns, shall govern~~ governs the number of retail licenses that may be issued for use within ~~such the~~ cities and towns and within a distance of 5 miles from the corporate limits ~~thereof of the cities or towns~~. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail licenses that may be issued for use in both of ~~such the~~ municipalities and within a distance of 5 miles from their respective corporate limits ~~shall must~~ be determined on the basis of the combined populations of both of ~~such the~~ municipalities and may not exceed the ~~foregoing~~ limitations in subsection (1) or this subsection. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town ~~shall must~~ be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

(3) Retail all-beverages licenses of issue on March 7, 1947, and all-beverages licenses issued under 16-4-209, which are in excess of the ~~foregoing~~ limitations ~~shall in subsections (1) and (2) must~~ be renewable, but no new licenses may not be issued in violation of ~~such the~~ limitations.

(4) ~~Such~~ The limitations in subsections (1) and (2) do not prevent the issuance of a nontransferable and nonassignable (as to ownership only) retail license to an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization if ~~such the~~ veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

(5) The number of retail all-beverages licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits ~~thereof of a city or town~~ may not be more than one license for each 750 population of the county after excluding the population of incorporated cities and incorporated towns in ~~such the~~ county.

(6) *An all-beverages license issued under subsection (5) that becomes located within 5 miles of an incorporated city or town because of annexation after [the effective date of this act] may not be transferred to another location within the city quota area for 5 years from the date of annexation.*

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

Approved April 15, 2005

CHAPTER NO. 268

[HB 643]

AN ACT PROHIBITING SMOKING IN ALL PUBLIC SCHOOLS AND IN ALL PLACES WHERE THE PUBLIC IS FREE TO ENTER, INCLUDING BUILDINGS OWNED OR OCCUPIED BY POLITICAL SUBDIVISIONS; PROVIDING LEGISLATIVE INTENT AND PURPOSE; PROVIDING EXCEPTIONS; REQUIRING THE POSTING OF SIGNS INFORMING PERSONS OF THE SMOKING PROHIBITION; PROVIDING FOR ENFORCEMENT; REQUIRING RULEMAKING BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; ALLOWING ADOPTION OF A STRICTER ORDINANCE OR REGULATION BY A POLITICAL SUBDIVISION AFTER SEPTEMBER 30, 2009; ESTABLISHING PENALTIES; AMENDING SECTIONS 20-1-220, 50-40-102, 50-40-103, 50-40-104, 50-40-108, AND 50-40-201, MCA; REPEALING SECTIONS 7-1-120, 50-40-105, 50-40-106, 50-40-107, 50-40-109, 50-40-202, 50-40-203, AND 50-40-207, MCA; AND PROVIDING A TERMINATION DATE.

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke, also known as environmental tobacco smoke, is a cause of disease in healthy nonsmokers, including diseases such as heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, the National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually; and

WHEREAS, The National Toxicology Program of the U.S. Department of Health and Human Services has listed secondhand smoke as a known carcinogen; and

WHEREAS, a study of hospital admissions for acute myocardial infarction in Helena, Montana, before, during, and after a local ordinance eliminating

smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease; and

WHEREAS, the U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke; and

WHEREAS, the Environmental Protection Agency has determined, as of the introduction date of this bill, that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation and that air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and

WHEREAS, it has been determined by the Centers for Disease Control and Prevention that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is nonlinear at low doses, increasing rapidly with relatively small doses, such as those received from secondhand smoke or actively smoking one or two cigarettes a day; and

WHEREAS, the Centers for Disease Control and Prevention warns that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking; and

WHEREAS, numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free; and

WHEREAS, smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses; and

WHEREAS, creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety.

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

Section 1. Section 20-1-220, MCA, is amended to read:

“20-1-220. Use of tobacco product in public school building or on public school property prohibited. (1) An individual may not use a tobacco product in a public school building or on public school property ~~during school hours.~~

(2) Subsection (1) does not apply to the use of a tobacco product:

(a) in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product;

~~(b) as a part of a play, performance, or other theatrical event sanctioned by a school administrator or faculty member;~~

~~(c) after school hours by persons in a tobacco, alcohol, or drug rehabilitation, counseling, or control group using school facilities for a meeting or event that is in furtherance of the group's goals and that is sanctioned by a school administrator or other public official; or~~

~~(d) by nonstudent adults in any area designated as a smoking area by the school administrator or by the board of trustees of the school district.~~

(3) The principal of an elementary or secondary school, or the principal's designee, may enforce this section.

(4) *A violation of this section is subject to the penalties provided in [section 8].*

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

(a) “Public school building or *public school* property”:

(i) means public land, fixtures, buildings, or other property owned or occupied by an institution for the teaching of minor children that is established and maintained under the laws of the state of Montana at public expense; and

(ii) includes school playgrounds, school steps, parking lots, administration buildings, athletic facilities, gymnasiums, locker rooms, and school buses.

(b) “Tobacco product” means a substance intended for human consumption that contains tobacco, including cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco.”

Section 2. Section 50-40-102, MCA, is amended to read:

“50-40-102. Intent — purpose. ~~The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Clean Indoor Air Act of 1979. It is the legislature’s intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system. The purpose of this part is to protect the health of nonsmokers in public places and to provide for reserved areas in some public places for those who choose to smoke. The legislature finds and declares that the purposes of this part are as follows:~~

(1) *to protect the public health and welfare by prohibiting smoking in public places and places of employment;*

(2) *to recognize the right of nonsmokers to breathe smoke-free air; and*

(3) *to recognize that the need to breathe smoke-free air has priority over the desire to smoke.”*

Section 3. Section 50-40-103, MCA, is amended to read:

“50-40-103. Definitions. As used in this part, the following definitions apply:

(1) *“Bar” means an establishment with a license issued pursuant to Title 16, chapter 4, that is devoted to serving alcoholic beverages for consumption by guests or patrons on the premises and in which the serving of food is only incidental to the service of alcoholic beverages or gambling operations, including but not limited to taverns, night clubs, cocktail lounges, and casinos.*

(1)(2) “Department” means the department of public health and human services provided for in 2-15-2201.

(2)(3) “Enclosed public place” means an indoor area, room, or vehicle ~~used by~~ that the general public is allowed to enter or ~~servicing~~ that serves as a place of work, including but not limited to the following:

(a) restaurants,;

(b) stores,;

(c) *public and private office buildings and offices, including all office buildings and offices of political subdivisions, as provided for in 50-40-201, and state government;*

(d) *trains, buses, and other forms of public transportation; educational or*

(e) *health care facilities,;*

(f) *auditoriums, arenas, and assembly facilities; and*

- (g) meeting rooms open to the public;
- (h) bars;
- (i) community college facilities;
- (j) facilities of the Montana university system; and
- (k) public schools, as provided for in 20-1-220 and 50-40-104.

~~(4)~~(4) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(5) "Incidental to the service of alcoholic beverages or gambling operations" means that at least 60% of the business's annual gross income comes from the sale of alcoholic beverages or gambling receipts, or both.

~~(4)~~(6) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.

~~(5)~~(7) "Place of work" means an enclosed room where more than one employee or more individuals works work.

~~(6)~~(8) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product.

(7) "Smoking area" means a designated area in which smoking is permitted."

Section 4. Section 50-40-104, MCA, is amended to read:

~~"50-40-104. Designation or reservation of smoking or nonsmoking areas—notice Smoking in enclosed public places prohibited—notice to public—places where prohibition inapplicable.~~ (1) *Except as otherwise provided in this section, smoking in an enclosed public place is prohibited.*

~~(1) The proprietor or manager of an enclosed public place shall:~~

- ~~(a) designate nonsmoking areas with easily readable signs;~~
- ~~(b) reserve a part of the public place for nonsmokers and post easily readable signs designating a smoking area;~~
- ~~(c) designate the entire area as a smoking area by posting a sign that is clearly visible to the public stating this designation; or~~
- ~~(d) designate and reserve the entire area as a nonsmoking area.~~

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, ~~whether or not areas within the establishment have been reserved for nonsmokers that smoking in the enclosed public place is prohibited.~~

~~(3) The proprietor or manager of an establishment containing both a restaurant and a tavern, in which some patrons choose to eat their meals in the tavern, is not required by this part to post a sign described in subsection (2) in the tavern area of the establishment.~~

~~(4)~~(3) The proprietor or manager of an intrastate bus that is not chartered shall prohibit smoking in all parts of the bus.

(4) *The proprietor or manager of a business licensed under 23-5-611(1)(a) or (1)(c) may not allow any member of the public who is under 18 years of age to be present in any area of the establishment in which smoking is permitted.*

(5) *The prohibition in subsection (1) does not apply to the following places, whether or not the public is allowed access to those places:*

(a) until September 30, 2009, bars, provided that smoke from the bar does not infiltrate into areas where smoking is prohibited under this section;

(b) a private residence, unless it is used for any of the following purposes, in which case the prohibition in subsection (1) applies:

(i) a family day-care home or group day-care home, as defined in 52-2-703 and licensed pursuant to Title 52, chapter 2, part 7;

(ii) an adult foster care home, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5; or

(iii) a health care facility, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5;

(c) a private motor vehicle;

(d) school property in which smoking is allowed pursuant to the exception in 20-1-220;

(e) a hotel or motel room designated as a smoking room and rented to a guest; however, not more than 35% of the rooms available to rent to guests may be designated as smoking rooms; and

(f) a site that is being used in connection with the practice of cultural activities by American Indians that is in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a.”

Section 5. Section 50-40-108, MCA, is amended to read:

“50-40-108. Enforcement. The provisions of this part shall *must* be supervised and enforced by the *department and the department’s designees*, local boards of health, *and the boards’ designees* under the direction of the department.”

Section 6. Section 50-40-201, MCA, is amended to read:

“50-40-201. Reservation of smoking and nonsmoking areas in work areas in local government buildings — smoking prohibited. (1) In ~~offices and work areas in all parts of buildings maintained by a political subdivision, except a school or community college facility designated as tobacco free by the board of trustees of the school district or community college district, the governing body of the political subdivision shall, except as provided in subsection (2), arrange nonsmoking and smoking areas in a convenient area.~~

~~(2) The governing body of a political subdivision may designate any building maintained by it as smoke-free smoking is prohibited as provided in this section.~~

(2) Buildings owned and occupied by a political subdivision only must be smoke-free on January 1, 2006. Buildings leased and occupied by a political subdivision only must be smoke-free as soon as practicable on or after January 1, 2006, but no later than July 1, 2006. In a building leased and occupied by a political subdivision and another entity, the on-the-scene manager of the political subdivision activity located in the building shall make the portions of the building occupied by the political subdivision activity smoke-free as soon as practicable after January 1, 2006, but no later than July 1, 2006, and is encouraged to work with the building owner or other tenants to make the building smoke-free.

(3) Restrictions ~~authorized by~~ contained in this section and imposed by the governing body apply uniformly to the employees of the political subdivision and the public.”

Section 7. Part preemptive of stricter ordinance. The provisions of this part preempt adoption of an ordinance or regulation by a political subdivision that is stricter than the provisions of this part as to a place in which the ordinance or regulation applies or as to the penalty or remedy imposed for violation of the ordinance or regulation.

Section 8. Penalties. (1) It is unlawful for a person to smoke in any area where smoking is prohibited under 20-1-220 or 50-40-104. A person who violates 20-1-220 or 50-40-104 is guilty of a misdemeanor and shall be subject to a fine of not less than \$25 or more than \$100.

(2) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of Title 50, chapter 40, is guilty of a misdemeanor after a third violation within a 3-year period and shall be warned, reprimanded, or punished as follows:

- (a) a warning for the first violation;
- (b) a written reprimand for a second violation; and
- (c) within any 3-year period, a fine of:
 - (i) \$100 for a third violation;
 - (ii) \$200 for a fourth violation; and
 - (iii) \$500 for a fifth or subsequent violation.

(3) Penalties imposed under this section may not be considered by the department of revenue for the purposes of 16-4-401 or by the department of justice for the purposes of 23-5-119, 23-5-177, or 23-5-611(1)(a) or (1)(c).

Section 9. Rulemaking required. The department shall adopt rules to implement this part.

Section 10. Repealer. Sections 7-1-120, 50-40-105, 50-40-106, 50-40-107, 50-40-109, 50-40-202, 50-40-203, and 50-40-207, MCA, are repealed.

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 band of Chippewa.

Section 12. Codification instruction. [Sections 7 through 9] are intended to be codified as an integral part of Title 50, chapter 40, part 1, and the provisions of Title 50, chapter 40, part 1, apply to [sections 7 through 9].

Section 13. Nonseverability. It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

Section 14. Termination. [Section 7] terminates September 30, 2009.

Approved April 18, 2005

CHAPTER NO. 269

[SB 191]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE IV, SECTION 8, ARTICLE VI, SECTIONS 1, 2, 3, 4, 6, AND 7, AND ARTICLE X, SECTION 4, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE NAME OF THE STATE AUDITOR BE CHANGED TO THE INSURANCE COMMISSIONER.

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

Section 1. Article IV, section 8, of The Constitution of the State of Montana is amended to read:

“Section 8. Limitation on terms of office. (1) The secretary of state or other authorized official shall not certify a candidate’s nomination or election to, or print or cause to be printed on any ballot the name of a candidate for, one of the following offices if, at the end of the current term of that office, the candidate will have served in that office or had he not resigned or been recalled would have served in that office:

(a) 8 or more years in any 16-year period as governor, lieutenant governor, secretary of state, ~~state auditor~~ *insurance commissioner*, attorney general, or superintendent of public instruction;

(b) 8 or more years in any 16-year period as a state representative;

(c) 8 or more years in any 16-year period as a state senator;

(d) 6 or more years in any 12-year period as a member of the U.S. house of representatives; and

(e) 12 or more years in any 24-year period as a member of the U.S. senate.

(2) When computing time served for purposes of subsection (1), the provisions of subsection (1) do not apply to time served in terms that end during or prior to January 1993.

(3) Nothing contained herein shall preclude an otherwise qualified candidate from being certified as nominated or elected by virtue of write-in votes cast for said candidate.”

Section 2. Article VI, section 1, of The Constitution of the State of Montana is amended to read:

“Section 1. Officers. (1) The executive branch includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and ~~auditor~~ *insurance commissioner*.

(2) Each holds office for a term of four years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, there keep the public records of his office, and perform such other duties as are provided in this constitution and by law.”

Section 3. Article VI, section 2, of The Constitution of the State of Montana is amended to read:

“Section 2. Election. (1) The governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and ~~auditor~~ *insurance commissioner* shall be elected by the qualified electors at a general election provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures provided by law that the offices of governor and lieutenant governor are voted upon together in primary and general elections.”

Section 4. Article VI, section 3, of The Constitution of the State of Montana is amended to read:

“Section 3. Qualifications. (1) No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or ~~auditor insurance commissioner~~ unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election.

(2) Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election.

(3) The superintendent of public instruction shall have such educational qualifications as are provided by law.”

Section 5. Article VI, section 4, of The Constitution of the State of Montana is amended to read:

“Section 4. Duties. (1) The executive power is vested in the governor who shall see that the laws are faithfully executed. He shall have such other duties as are provided in this constitution and by law.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor. No power specifically vested in the governor by this constitution may be delegated to the lieutenant governor.

(3) The secretary of state shall maintain official records of the executive branch and of the acts of the legislature, as provided by law. He shall keep the great seal of the state of Montana and perform any other duties provided by law.

(4) The attorney general is the legal officer of the state and shall have the duties and powers provided by law.

(5) The superintendent of public instruction and the ~~auditor insurance commissioner~~ shall have such duties as are provided by law.”

Section 6. Article VI, section 6, of The Constitution of the State of Montana is amended to read:

“Section 6. Vacancy in office. (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected governor and the elected lieutenant governor become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the office of secretary of state, attorney general, ~~auditor insurance commissioner~~, or superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office until the next general election and until a successor is elected and qualified. The person elected to fill a vacancy shall hold the office until the expiration of the term for which his predecessor was elected.”

Section 7. Article VI, section 7, of The Constitution of the State of Montana is amended to read:

“Section 7. 20 departments. All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch (except for the office of governor, lieutenant governor, secretary of state,

attorney general, superintendent of public instruction, and ~~auditor~~ *insurance commissioner*) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a department.”

Section 8. Article X, section 4, of The Constitution of the State of Montana is amended to read:

“**Section 4. Board of land commissioners.** The governor, superintendent of public instruction, ~~auditor~~ *insurance commissioner*, secretary of state, and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.”

Section 9. Submission to electorate. This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 2006 by printing on the ballot the full title of this act and the following:

- FOR changing the name of the state auditor to the insurance commissioner.
- AGAINST changing the name of the state auditor to the insurance commissioner.

CHAPTER NO. 270

[HB 68]

AN ACT PROHIBITING THE ADMINISTRATION OF ANY MEDICINE TO A CHILD IN A LICENSED OR UNLICENSED DAY-CARE FACILITY WITHOUT PROPER AUTHORIZATION FROM THE CHILD'S PARENT OR GUARDIAN; PROVIDING AN EXCEPTION; PROVIDING DEFINITIONS; AND PROVIDING A CRIMINAL PENALTY.

WHEREAS, too often the victim is forgotten by the judicial system and society; and

WHEREAS, the motivation for this bill is the tragic death of Dane Jordan Heggem; and

WHEREAS, this bill will be known as “Dane’s Law” to remind the judicial system and society of the victims of the crime.

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

Section 1. Prohibition against administering medicine without authorization — provision for emergency — definitions — penalty. (1) An employee, owner, household member, volunteer, or operator of a day-care facility, as defined in 52-2-703, regardless of whether the facility is licensed or registered, may not purposely or knowingly administer any medicine, as defined in 37-7-101, to a child attending the day-care facility without written authorization. Written authorization must include the child’s name, date or dates for which the authorization is applicable, dosage instructions, and signature of the child’s parent or guardian.

(2) If an emergency medical condition arises and the parent or guardian of the child is unavailable, an employee, owner, or operator of a day-care facility may administer medicine to a child attending the day-care facility without the written authorization of a parent or guardian as provided in subsection (1) if:

(a) a medical practitioner provides a written authorization containing the child's name, date or dates for which the authorization is applicable, dosage instructions, and the medical practitioner's signature; or

(b) a medical practitioner, emergency services provider, or 9-1-1 responder verbally directs the employee, owner, or operator of the day-care facility attending the child to immediately administer a medicine to the child and the child is subsequently transported within a reasonable time by the child's parents, an owner, operator, or employee of the child-care facility, a health care provider, or an emergency services provider to a health care facility or a medical practitioner for follow-up care.

(3) A medicine administered to a child pursuant to subsection (1) or (2) may not be inappropriately administered.

(4) An employee, owner, or operator of a day-care facility who has administered medicine to a child in accordance with this section may not be prosecuted for causing bodily injury or severe bodily injury to a child.

(5) For the purposes of this section:

(a) "bodily injury" has the meaning provided in 45-2-101;

(b) "emergency medical condition" means circumstances in which a prudent lay person acting reasonably would believe that an emergency medical condition exists;

(c) "emergency services provider" has the meaning provided in 50-16-701;

(d) "health care facility" means a profit or nonprofit, public or private physician's office, hospital, critical access hospital, infirmary, clinic, outpatient center for primary care, outpatient center for surgical services, or medical assistance facility, as any of those terms are defined in 50-5-101;

(e) "inappropriately administered" means to give medicine to a child that is not indicated, as to the medicine's type, dosage, or frequency of use or the container instructions, if any, by the medical symptoms exhibited by the child;

(f) "knowingly" has the meaning provided in 45-2-101;

(g) "medical practitioner" has the meaning provided in 37-2-101;

(h) "9-1-1 responder" means a law enforcement dispatcher or other person answering a 9-1-1 telephone call, a person answering a telephone call made to a poison control center, or an emergency services provider;

(i) "purposely" has the meaning provided in 45-2-101; and

(j) "serious bodily injury" has the meaning provided in 45-2-101.

(4) (a) A person convicted of purposely or knowingly administering medicine without authorization resulting in bodily injury to a child shall be imprisoned in the county jail for a term not to exceed 6 months or be fined an amount not to exceed \$500, or both.

(b) A person convicted of purposely or knowingly administering medicine without authorization resulting in serious bodily injury to a child or in the death of a child shall be imprisoned for a term not to exceed 20 years or be fined an amount not to exceed \$50,000, or both.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 52, chapter 2, part 7, and the provisions of Title 52, chapter 2, part 7, apply to [section 1].

Approved April 19, 2005

CHAPTER NO. 271

[HB 105]

AN ACT PROVIDING FOR PARTIAL PAYMENT OF THE SALARY OF A DEPUTY SHERIFF INJURED IN THE PERFORMANCE OF THE DEPUTY SHERIFF'S DUTY; PROVIDING FOR ASSIGNMENT TO LIGHT DUTY OR ANOTHER DEPARTMENT OR AGENCY; PROVIDING THAT THE DEPUTY SHERIFF AND EMPLOYER RETIREMENT CONTRIBUTIONS MUST BE BASED ON TOTAL COMPENSATION; AND REPEALING SECTION 19-7-810, MCA.

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

Section 1. Payment of partial salary of deputy sheriff injured in performance of duty. (1) A deputy sheriff who is injured in the performance of the deputy sheriff's duties and who requires medical or other remedial treatment for injuries that render the deputy sheriff unable to perform the deputy sheriff's duties must be paid by the county the difference between the deputy sheriff's net salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the partial salary payment provided for in subsection (1), the deputy sheriff must be unable to perform the deputy sheriff's duties as a result of the injury.

Section 2. Assignment to light duty or other agency. (1) Whenever, in the opinion of the county and supported by a health care provider's opinion, the deputy sheriff is able to perform specified types of light duty, payment of the officer's partial salary amount under [section 1] must be discontinued if the deputy sheriff refuses to perform light duty when it is available and offered to the deputy sheriff.

(2) The deputy sheriff may be transferred to another department or agency within the county.

Section 3. Contributions based on total compensation when member receives disability compensation. When a member receives compensation from both the member's employer and the workers' compensation program under the provisions of [section 1], the member's compensation reported by the employer is the same as if the member was in active service, and the member and employer contributions required by this chapter must be calculated and paid on that total compensation.

Section 4. Repealer. Section 19-7-810, MCA, is repealed.

Section 5. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 7, chapter 32, part 21, and the provisions of Title 7, chapter 32, part 21, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 19, chapter 7, part 4, and the provisions of Title 19, chapter 7, part 4, apply to [section 3].

Approved April 19, 2005

CHAPTER NO. 272

[HB 140]

AN ACT CREATING A MONTANA CONSUMER DEBT MANAGEMENT SERVICES ACT; REQUIRING LICENSURE OF CREDIT COUNSELING SERVICES; ESTABLISHING REQUIREMENTS FOR DEBT MANAGEMENT PLANS ENTERED INTO BETWEEN CONSUMERS AND CREDIT COUNSELING SERVICES; DESIGNATING PROHIBITED PRACTICES FOR CREDIT COUNSELING SERVICES; PROVIDING THE DEPARTMENT OF ADMINISTRATION WITH RULEMAKING AUTHORITY; PROVIDING REMEDIES AND PENALTIES; REPEALING CERTAIN DEBT ADJUSTMENT LAWS; AMENDING SECTION 5, CHAPTER 125, LAWS OF 2005; REPEALING SECTIONS 31-3-201, 31-3-202, AND 31-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Short title. [Sections 1 through 7] may be cited as the “Montana Consumer Debt Management Services Act”.

Section 2. Scope. (1) The provisions of [sections 1 through 7] apply to any person that provides or offers to provide debt management plans to residents of this state.

(2) The provisions of [sections 1 through 7] do not apply to:

(a) banking institutions, as defined in 32-1-601, building and loan associations, credit unions, escrow businesses, as defined in 32-7-102, or title companies;

(b) the services of an attorney licensed to practice law in this state if providing credit counseling services is incidental to and not the principal business of the attorney;

(c) the services of a certified public accountant licensed to practice accounting in this state if providing credit counseling services is incidental to and not the principal business of the certified public accountant; and

(d) debt collectors that do not advertise or hold themselves out as a credit counseling service.

Section 3. Definitions. As used in [sections 1 through 7], the following definitions apply:

(1) “Consumer” means an individual who, singly or jointly with another individual, owes money to one or more creditors for personal, family, or household purposes.

(2) “Credit counseling service” means a person that provides or offers to provide debt management plan services to consumers for consideration.

(3) “Credit counselor” means a person who is an employee or agent of a credit counseling service and who designs debt management plans and provides consumers with budget, basic financial planning, and consumer education services.

(4) "Debt management plan" means a written agreement under which a credit counseling service is to receive money from a consumer for the purpose of distributing that money to one or more creditors of the consumer as full or partial payment of the consumer's obligation to the creditor or creditors.

(5) "Department" means the department of administration provided for in 2-15-1001.

(6) "Person" means an individual, sole proprietorship, firm, partnership, corporation, limited liability partnership or company, or other entity and includes a nonprofit organization exempt from taxation under 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3).

(7) "Trust account" means an account:

(a) established by a credit counseling service in a federally insured financial institution;

(b) designated as a trust account or other appropriate designation indicating that the funds in the account are not funds of the credit counseling service or its directors, officers, employees, or agents;

(c) used exclusively for funds paid by consumers to the credit counseling service for disbursement to creditors of the consumers; and

(d) that is unavailable to creditors of the credit counseling service.

Section 4. Requirements for licensure — fees — rulemaking authority — refusal to grant license — suspension or revocation of license — rules. (1) A credit counseling service may not provide or offer to provide debt management plans or other consumer credit counseling services to the consumers of this state without first being licensed by the department.

(2) In order to obtain a license or annually renew a license, an applicant shall pay the required license fee as established by the department by rule. The fee must be in an amount commensurate with the cost of administering [sections 1 through 7], and the applicant shall provide evidence:

(a) that it maintains a trust account for handling consumer funds;

(b) (i) that it has been accredited by a bona fide third-party accreditation provider that ensures compliance with industry standards and best practices; and

(ii) that its credit counselors have been certified by a bona fide third-party certification provider as possessing the competence to provide consumer credit counseling services;

(c) that a majority of its owners, principals, officers, board of directors, or employees are not persons who have a conflict of interest with the applicant's mission. Persons with a conflict of interest include creditors, creditors' representatives, bankruptcy attorneys, and other persons having a direct stake in the outcome of the consumer credit counseling process.

(d) that it has obtained a surety bond for the benefit of consumers harmed by a violation of the provisions of [sections 1 through 7] in an amount, form, and duration as required by the department by rule, except that an applicant that does not maintain an office in this state with a credit counselor on the premises shall post a surety bond in the amount of \$50,000; and

(e) that it has contracted at its own expense for annual audits by an independent certified public accountant to be conducted within 6 months of the close of each of its fiscal years.

(3) An applicant for a license or license renewal shall provide any additional information that the department requires. The department shall adopt rules to implement the provisions of this section. The department shall designate by rule acceptable third-party accreditation and certification providers for purposes of subsection (2)(b).

(4) The department may refuse to grant a license to or suspend or revoke the license of any credit counseling service that fails to comply with the provisions of subsections (1) through (3) or any rules adopted pursuant to this section.

Section 5. Requirements for debt management plans — rulemaking authority. (1) A credit counseling service may not require or accept any consideration from a consumer for the provision of services or the offer to provide services unless a written and dated debt management plan meeting the requirements of this section has been signed by the consumer. A copy of the debt management plan must be provided to the consumer.

(2) The debt management plan must include the following:

(a) the name and principal business address of the credit counseling service and the name and address of the consumer;

(b) a full and detailed description of the services to be performed by the credit counseling service for the consumer;

(c) a clear statement of the costs to the consumer, including contributions or fees, highlighted in bold type;

(d) a statement, in a prominent location in the plan in at least 10-point bold type, that either party may cancel the agreement without penalty at any time upon 10 days' notice and that a consumer who cancels an agreement is entitled to a refund of all unexpended funds that the consumer has paid to the credit counseling service as of the date of the notice;

(e) a complete list of the obligations of each party that are subject to the terms of the agreement;

(f) an indication of how disputes are to be resolved; and

(g) a statement that the credit counseling service has a duty to advocate the interests of the consumer who is a party to the debt management plan and not promote the interests of any third party that is in conflict with the primary obligation of advocating the interests of the consumer.

(3) A credit counseling service shall provide each consumer who is a party to a debt management plan with a report that shows the funds received from the consumer since the last report and the disbursement of those funds made to each creditor of the consumer. The credit counseling service shall provide the reports to consumers on at least a quarterly basis.

(4) (a) A credit counseling service may not impose any fees or other charges on a consumer or receive any payment from a consumer or other person on behalf of a consumer except as allowed by this section.

(b) The fees or charges referred to in this subsection (4) include voluntary contributions and any other fees charged to or collected from a consumer or on behalf of a consumer.

(c) A credit counseling service may not charge an initial consultation fee that exceeds an amount set by the department by rule. The fee or portion of the fee may not be charged until the credit counseling service has complied with the provisions of this section.

(d) A credit counseling service may charge a monthly maintenance fee. In the absence of exceptional circumstances as defined in the department's rules, a credit counseling service may not have a total monthly fee in an amount that exceeds the amount set by the rules.

(e) A credit counseling service may not, as a condition of entering into a debt management plan, require a consumer to purchase for a fee a counseling session, an educational program, or materials and supplies.

(f) Fees charged for services other than credit counseling services must be fair and reasonable.

(g) If the credit counseling service imposes any fee or other charge or receives any funds or other payments not authorized by this section, except as a result of a bona fide error, the debt management plan is void and the credit counseling service shall return to the consumer all fees received from or on behalf of the consumer.

(5) Credit counseling services are prohibited from using hold harmless clauses, confessions of judgment, and waivers of the right to jury trials in debt management plans.

(6) The department may promulgate rules as necessary to implement the provisions of [sections 1 through 7], including setting fees.

Section 6. Prohibited practices. (1) A credit counseling service may not:

- (a) purchase any debt or obligation of a consumer;
- (b) lend money or provide credit to a consumer;
- (c) obtain a mortgage or other security interest in any property of a consumer;
- (d) operate as a collection agency;
- (e) structure a debt management plan in a way that at the debt management plan's conclusion any debts of the consumer that are subject to the debt management plan are not fully amortized;
- (f) charge for or provide credit insurance;
- (g) cause or attempt to cause a consumer to waive or forego any right or benefit that the consumer has under the provisions of [sections 1 through 7]; or
- (h) operate in this state without a license.

(2) (a) A credit counseling service may not advertise its services in any manner in this state without first being licensed by the department.

(b) A credit counseling service or any person on a credit counseling service's behalf may not misrepresent any material fact or make a false promise intended to induce a consumer into entering a debt management plan.

Section 7. Remedies — penalty. (1) The remedies provided in this section are cumulative and apply to licensees and unlicensed persons to whom [sections 1 through 7] apply.

(2) Any violation of [sections 1 through 7] constitutes an unfair or deceptive trade practice and is a violation of 30-14-103.

(3) A person found to have violated [sections 1 through 7] is liable to the person harmed for actual and consequential damages or \$500, whichever is greater, for each violation, plus costs and attorney fees.

(4) A person harmed by a violation of [sections 1 through 7] may sue for injunctive and other appropriate equitable relief.

(5) A person harmed by a violation of [sections 1 through 7] may bring a class action suit.

(6) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer for a violation of [sections 1 through 7].

(7) The department, the attorney general, or a county attorney, on behalf of state residents who have suffered a loss or harm as a result of a violation of [sections 1 through 7], may seek any remedy provided by Title 30, chapter 14, part 1.

(8) A person engaged in credit counseling in this state without a license, a person who fails to maintain a separate trust account for consumer funds, or a person who fails to maintain any records required by the provisions of [sections 1 through 7] or by department rule shall be fined an amount not to exceed \$5,000 for each violation.

Section 8. Section 5, Chapter 125, Laws of 2005, is amended to read:

“Section 5. Retroactive applicability — applicability. (1) *Except as provided in subsection (2), [This this act] applies retroactively, within the meaning of 1-2-109, to loans subject to [this act] made on or after October 1, 1985, the effective date of Chapter 406, Laws of 1985.*

(2) *[This act] does not apply to loans that are the subject of a lawsuit filed prior to [the effective date of this act].”*

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. Repealer. Sections 31-3-201, 31-3-202, and 31-3-203, MCA, are repealed.

Section 11. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through 7].

Section 12. Effective date. [This act] is effective on passage and approval.

Approved April 19, 2005

CHAPTER NO. 273

[HB 167]

AN ACT INCREASING THE FREQUENCY AT WHICH THE SECRETARY OF STATE IS REQUIRED TO PROVIDE A LIST OF CERTAIN CORPORATIONS, LIMITED PARTNERSHIPS, LIMITED LIABILITY COMPANIES, AND LIMITED LIABILITY PARTNERSHIPS TO THE DEPARTMENT OF REVENUE; AND AMENDING SECTION 15-31-603, MCA.

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

Section 1. Section 15-31-603, MCA, is amended to read:

“15-31-603. List of entities furnished by secretary of state. On or before ~~December 31~~ *the 15th day* of each ~~year~~ *month*, the secretary of state shall ~~direct~~ *provide* a list of all *new* corporations, limited partnerships, limited liability companies, and limited liability partnerships, foreign and domestic,

subject to the terms of Title 35, chapters 1, 4, 5, 8, ~~9~~, *through* 10, and 12, to the department of revenue. The list must include the following information:

- (1) the name of the entity;
- (2) the principal office of the entity;
- (3) the name and address of the registered agent of the entity in Montana, if applicable; and
- (4) other information that the director of the department of revenue may require.”

Approved April 19, 2005

CHAPTER NO. 274

[HB 244]

AN ACT DESIGNATING TERRY, MONTANA, AS THE OFFICIAL HOME OF THE EVELYN CAMERON GALLERY AND DIRECTING THE DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF TRANSPORTATION TO IDENTIFY IT AS SUCH ON OFFICIAL STATE MAPS AND HIGHWAY SIGNS AND TO AMEND HIGHWAY SIGNS IN THE VICINITY OF TERRY TO REFLECT THE DESIGNATION.

WHEREAS, the photography and writing of Evelyn Cameron captured the spirit and history of early Montana in her more than 1,800 photographs and 35 volumes of diaries; and

WHEREAS, Cameron rejected an aristocratic lifestyle offered by her upbringing in favor of the work of ranching in early Prairie County; and

WHEREAS, from 1892 until her death in 1928, Cameron spent her life living, working, and photographing Eastern Montana while living in the Terry area; and

WHEREAS, Cameron’s exceptional images of the rugged and austere Montana landscape and early lifestyle preserve a cherished history of frontier life on the prairie, garnering national attention; and

WHEREAS, the town of Terry, Montana, maintains the only permanent exhibit of Cameron’s photographs and personal effects in the Evelyn Cameron Gallery.

THEREFORE, be it enacted by the Legislature of the State of Montana that the town of Terry, Montana, be designated the “Official Home of the Evelyn Cameron Gallery”.

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

Section 1. Official home of Evelyn Cameron gallery — Terry. (1) The town of Terry is designated the “official home of the Evelyn Cameron gallery”.

(2) The department of commerce and the department of transportation shall identify the town of Terry as the official home of the Evelyn Cameron gallery on official state maps.

(3) The department of transportation shall erect and maintain signs designating the town of Terry as the official home of the Evelyn Cameron gallery along highways in the vicinity of Terry and shall accomplish the signing changes in accordance with the department’s normal sign maintenance and replacement schedule.

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 19, 2005

CHAPTER NO. 275

[HB 297]

AN ACT PROVIDING THAT PAPER BALLOTS MUST BE USED IN ANY ELECTION SO THAT VOTES MAY BE MANUALLY COUNTED; PROVIDING AN EXCEPTION ONLY TO FACILITATE VOTING BY DISABLED VOTERS; AND AMENDING SECTION 13-17-103, MCA.

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

Section 1. 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 ~~(2)~~ (3);
- (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; ~~and~~
- (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; *and*
- (k) *uses a paper ballot that allows votes to be manually counted, except as provided in subsection (2).*

(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.*

~~(2)~~(3) 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 2. Coordination instruction. If Senate Bill No. 302 and [this act] are both passed and approved and if Senate Bill No. 302 amends 13-17-103 to add a subsection (1)(k) allowing the use of a direct recording electronic voting system, then subsection (1)(k) of Senate Bill No. 302 is void.

Approved April 18, 2005

CHAPTER NO. 276

[HB 307]

AN ACT CREATING THE OFFENSE OF MONEY LAUNDERING; PROVIDING FOR THE FORFEITURE AND SALE OF PROPERTY USED IN THE COMMISSION OF THE OFFENSE; AND PROVIDING FOR SALE PROCEEDS TO BE DEPOSITED IN THE STATE GENERAL FUND.

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

Section 1. Money laundering. (1) A person commits the offense of money laundering if the person knowingly:

(a) receives or acquires the proceeds of, or engages in transactions involving proceeds of, any activity that is unlawful under the laws of the United States or the state in which the activity occurred;

(b) gives, sells, transfers, trades, invests, conceals, transports, or otherwise makes available anything of value that the person knows is intended to be used for the purpose of committing or furthering the commission of any activity that is unlawful under the laws of the United States or the state in which the committing or furthering of the commission of the activity occurs;

(c) directs, plans, organizes, initiates, finances, manages, supervises, or facilitates the transportation or transfer of proceeds that the person knows are derived from any activity that is unlawful under the laws of the United States or the state in which the activity occurred; or

(d) conducts a financial transaction involving proceeds that the person knows are derived from any activity that is unlawful under the laws of the United States or the state in which the activity occurred when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds or to avoid a transaction reporting requirement under federal law.

(2) A person convicted of money laundering shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. If the money laundering is part of a common scheme or if the value of the proceeds or item of value exceeds \$1,000, the person shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 20 years, or both.

(3) (a) Upon conviction, the court shall order the following property possessed by a person convicted of money laundering to be forfeited:

(i) money, including digital currency, and raw materials, products, equipment of any kind, and any other personal property involved in the money laundering;

(ii) personal property constituting or derived from proceeds obtained directly or indirectly from the money laundering; and

(iii) real property, including any right, title, and interest in any lot or tract of land and any appurtenances or improvements, that is directly used or intended to be used in any manner to commit or facilitate the commission of, or that is derived from or maintained by the proceeds resulting from, the money laundering.

(b) The sheriff of the county where forfeited property is located shall sell the property at auction. The proceeds of the sale must be deposited in the state general fund.

(4) For purposes of this section, “digital currency” means money represented by digital information that is stored, spent, and transferred electronically by a person as part of a financial transaction.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 6, part 3, and the provisions of Title 45 apply to [section 1].

Approved April 19, 2005

CHAPTER NO. 277

[HB 326]

AN ACT CHANGING THE PENALTY FOR A SECOND OR SUBSEQUENT OFFENSE OF POSSESSION OF METHAMPHETAMINE; REQUIRING THE DEPARTMENT OF CORRECTIONS TO CONTRACT FOR THE ESTABLISHMENT AND MAINTENANCE OF RESIDENTIAL METHAMPHETAMINE TREATMENT PROGRAMS AND TO ADOPT RULES FOR THE PROGRAMS; AND AMENDING SECTIONS 41-5-206, 45-9-102, AND 53-1-203, MCA.

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

Section 1. Section 41-5-206, MCA, is amended to read:

“41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney’s discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103;

(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

- (i) negligent homicide as defined in 45-5-104;
- (ii) arson as defined in 45-6-103;
- (iii) aggravated assault as defined in 45-5-202;
- (iv) assault with a weapon as defined in 45-5-213;
- (v) robbery as defined in 45-5-401;
- (vi) burglary or aggravated burglary as defined in 45-6-204;
- (vii) aggravated kidnapping as defined in 45-5-303;
- (viii) possession of explosives as defined in 45-8-335;
- (ix) criminal distribution of dangerous drugs as defined in 45-9-101;
- (x) criminal possession of dangerous drugs as defined in 45-9-102(4) ~~and (5)~~ *through (6)*;
- (xi) criminal possession with intent to distribute as defined in 45-9-103(1);
- (xii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;
- (xiii) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership, as defined in 45-8-403;
- (xiv) escape as defined in 45-7-306;
- (xv) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)(xiv).

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court unless the district court finds, by a preponderance of the evidence, that:

- (a) a youth court proceeding and disposition will serve the interests of community protection;
- (b) ~~that~~ the nature of the offense does not warrant prosecution in district court; and
- (c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be

transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) If a youth's case is filed in the district court and remains in the district court after the transfer hearing, the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal offenses."

Section 2. Section 45-9-102, MCA, is amended to read:

"45-9-102. Criminal possession of dangerous drugs. (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal possession of dangerous drugs if the person possesses any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed \$1,000 or by imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or by both.

(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment in the county jail for not more than 6 months, or both.

(4) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(5) (a) *A person convicted of a second or subsequent offense of criminal possession of methamphetamine shall be punished by:*

(i) imprisonment for a term not to exceed 5 years or by a fine not to exceed \$50,000, or both; or

(ii) commitment to the department of corrections for placement in an appropriate correctional facility or program for a term of not less than 3 years or more than 5 years. If the person successfully completes a residential methamphetamine treatment program operated or approved by the department of corrections during the first 3 years of a term, the remainder of the term must be suspended. The court may also impose a fine not to exceed \$50,000.

(b) During the first 3 years of a term under subsection (5)(a)(ii), the department of corrections may place the person in a residential methamphetamine treatment program operated or approved by the department of corrections or in a correctional facility or program. The residential methamphetamine treatment program must consist of time spent in a residential methamphetamine treatment facility and time spent in a community-based prerelease center.

(c) The court shall, as conditions of probation pursuant to subsection (5)(a), order:

(i) the person to abide by the standard conditions of probation established by the department of corrections;

(ii) payment of the costs of imprisonment, probation, and any methamphetamine treatment by the person if the person is financially able to pay those costs;

(iii) that the person may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;

(iv) that the person may not consume alcoholic beverages;

(v) the person to enter and remain in an aftercare program as directed by the person's probation officer; and

(vi) the person to submit to random or routine drug and alcohol testing.

~~(5)~~(6) A person convicted of criminal possession of dangerous drugs not otherwise provided for in ~~subsection (2), (3), or (4)~~ subsections (2) through (5) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$50,000, or both.

~~(6)~~(7) A person convicted of a first violation under this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.

~~(7)~~(8) Ultimate users and practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 3. 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, 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) utilize 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;

(h) collect and disseminate information relating to youth in need of intervention and delinquent youth;

(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;

(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 10 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 youth correctional facilities.”

Approved April 19, 2005

CHAPTER NO. 278

[HB 379]

AN ACT ESTABLISHING A PERMANENT TRUST FUND FOR LONG-TERM OR PERPETUAL WATER TREATMENT AT THE ZORTMAN AND LANDUSKY MINE SITES; REQUIRING A TWO-THIRDS VOTE BY THE LEGISLATURE TO APPROPRIATE THE PRINCIPAL OF THE TRUST; DIRECTING THE TRANSFER OF FUNDS FROM THE ORPHAN SHARE ACCOUNT TO THE PERMANENT TRUST FUND; AMENDING SECTION 75-10-743, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Long-term or perpetual water treatment permanent trust fund. (1) There is established a fund of the permanent fund type to pay exclusively for the cost to the state of long-term or perpetual water treatment at the Zortman and Landusky mine sites.

(2) The fund is financed with:

(a) funds transferred from the orphan share account pursuant to 75-10-743; and

(b) other sources of funding that the legislature or congress may from time to time provide.

(3) The fund must be invested by the board of investments pursuant to Title 17, chapter 6, part 2, and the earnings from the investment must be credited to the principal of the fund until the year 2018.

(4) The annual earnings on the fund for the year 2018 and for each succeeding year may be appropriated for the purposes of subsection (1).

(5) The principal of the fund must remain inviolate unless appropriated by a vote of two-thirds of the members of each house of the legislature. An appropriation of the principal may only be made for payment of the costs of long-term or perpetual water treatment at the Zortman and Landusky mine sites.

Section 2. 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 (10) and (11)*, must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-751 and, ~~except as provided in subsection (10)~~, to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

(a) all penalties assessed pursuant to 75-10-750(12);

(b) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

~~(c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;~~

~~(d) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;~~

(c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;

(d) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;

~~(e)~~*(e)* unencumbered funds remaining in the abandoned mines state special revenue account;

~~(f)~~*(f)* interest income on the account;

~~(g)~~*(g)* funds received from settlements pursuant to 75-10-719(7); and

~~(h)~~*(h)* funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsection (8), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until

all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of 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).

(7) If sufficient money remains in the orphan share fund on June 29, 2003, \$999,000 must be transferred to the general fund.

(8) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(9) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process.

(10) For the biennium beginning July 1, 2003, and subject to the provisions of section 4, Chapter 199, Laws of 2003, 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.

(11) (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 [section 1] \$1.2 million in each fiscal year until the board of investments makes the certification pursuant to subsection (11)(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 [section 1] 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), 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), 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.”*

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 82, chapter 4, part 3, and the provisions of Title 82, chapter 4, part 3, apply to [section 1].

Section 4. Notification to tribal government. The secretary of state shall send a copy of [this act] to the Fort Belknap tribal government.

Section 5. Effective date. [This act] is effective July 1, 2005.

Approved April 19, 2005

CHAPTER NO. 279

[HB 406]

AN ACT ADOPTING THE COUNTRY OF ORIGIN PLACARDING ACT; REQUIRING A COUNTRY OF ORIGIN PLACARD ON SPECIFIC COMMODITIES OFFERED FOR SALE IN MONTANA; PROVIDING PENALTIES FOR OFFERING FOR SALE SPECIFIC COMMODITIES WITHOUT INDICATING THE COUNTRY OF ORIGIN AND FOR REMOVING LABELS; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO DEVELOP RULES TO IMPLEMENT THE COUNTRY OF ORIGIN PLACARDING ACT; AND PROVIDING EFFECTIVE DATES.

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

Section 1. Short title. [Sections 1 through 5] may be cited as the “Country of Origin Placarding Act”.

Section 2. Definitions. As used in [sections 1 through 5], the following definitions apply:

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

(2) “Label” has the meaning provided in 50-31-103.

(3) “Labeling” has the meaning provided in 50-31-103.

(4) “Package” has the meaning provided in 50-31-103.

(5) “Person” means an individual, partnership, corporation, company, society, or association.

(6) "Placard" has the meaning provided in 50-31-103.

Section 3. Labeling permitted — when placarding required — removal of label prohibited — exemption. (1) All producers, growers, and shippers of beef, pork, poultry, or lamb in this state are permitted to label each individual portion, piece, or package of beef, pork, poultry, or lamb in a conspicuous place as legibly, indelibly, and permanently as the nature of the commodity will permit, in a manner that indicates to an ultimate purchaser that the product was produced in Montana.

(2) Muscle cuts and ground beef, pork, poultry, or lamb, including any package that contains any blending of foreign and domestic product, that is produced in any country other than the United States and offered for retail sale in Montana must be labeled with a placard in a manner that indicates to an ultimate purchaser the country of origin.

(3) If one of the products enumerated in subsection (2) is unlabeled and the retail vendor is unable to determine its country of origin, the product must be labeled with a placard as "country of origin unknown".

(4) All retail vendors engaged in the business of selling products that are labeled or identified as to country of origin are prohibited from willfully or knowingly removing the labels or identifying marks.

(5) A placard is not required for prepared foods for immediate sale or ready to eat.

Section 4. Penalties. (1) A person engaged in the business of retail vending of muscle cuts and ground beef, pork, poultry, or lamb who knowingly or purposely offers those products for sale without ensuring that the products are clearly labeled as to the country of origin, as provided in [section 3(2)], is subject to the following penalties:

(a) for a first offense, a vendor shall be fined an amount not to exceed \$100;

(b) for a second offense, a vendor shall be fined an amount not to exceed \$250; and

(c) for a third or subsequent offense, a vendor shall be fined an amount not to exceed \$500.

(2) A person engaged in the business of retail vending of beef, pork, poultry, or lamb who knowingly removes any labels or identifying marks from beef, pork, poultry, or lamb that is labeled as to the country of origin is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) As used in this section, "knowingly" and "purposely" have the meanings provided in 45-2-101.

Section 5. Department authorized to adopt rules. (1) The department may develop, adopt, and administer rules for the efficient enforcement of [sections 1 through 5]. The rules adopted by the department may include but are not limited to:

(a) statements that delineate the difference between imported and unimported raw agricultural commodities for the purpose of [sections 1 through 5];

(b) the preferred labeling or placarding method for each commodity type identified in [sections 1 through 5]; and

(c) other rules that the department considers necessary to enforce [sections 1 through 5].

(2) The rules adopted to implement [sections 1 through 5] may not unduly restrict a person from conducting business.

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 30, chapter 12, and the provisions of Title 30, chapter 12, apply to [sections 1 through 5].

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. Contingent voidness. Upon the funding and full implementation of federal mandatory country of origin labeling, adopted as part of the 2002 federal farm bill, [sections 1, 2(1), (3), (5), and (6), 3(2) through (5), 4, and 5 of this act] are void.

Section 9. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2006.

(2) [Section 3(1) and this section] are effective on passage and approval.

Approved April 19, 2005

CHAPTER NO. 280

[HB 425]

AN ACT GENERALLY REVISING UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAWS, TELEMARKETING LAWS, AND NEW MOTOR VEHICLE WARRANTY LAWS; PROVIDING THAT ALL ADMINISTRATIVE AND ENFORCEMENT FUNCTIONS RELATING TO UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAWS AND TELEMARKETING LAWS BE PLACED UNDER THE DEPARTMENT OF JUSTICE RATHER THAN SPLIT BETWEEN THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF ADMINISTRATION; REQUIRING COURTS TO AWARD ATTORNEY FEES TO THE PREVAILING PARTY IN AN ACTION FOR UNFAIR TRADE PRACTICES; TRANSFERRING ALL OF THE DEPARTMENT OF ADMINISTRATION'S ADMINISTRATIVE AND ENFORCEMENT FUNCTIONS, INCLUDING RULEMAKING AUTHORITY, PERTAINING TO NEW MOTOR VEHICLE WARRANTIES TO THE DEPARTMENT OF JUSTICE; AMENDING SECTIONS 30-14-102, 30-14-121, 30-14-131, 30-14-143, 30-14-201, 30-14-202, 30-14-220, 30-14-222, 30-14-226, 30-14-1403, 30-14-1407, 30-14-1412, 30-14-1413, 61-4-507, 61-4-511, 61-4-512, 61-4-515, 61-4-516, 61-4-517, 61-4-518, 61-4-519, 61-4-520, 61-4-525, 61-4-526, AND 61-4-532, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

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

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

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

(2) "Department" means the department of ~~administration~~ *justice* created in ~~2-15-1001~~ *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) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(6) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services, 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 30-14-121, MCA, is amended to read:

"30-14-121. Duties of county attorney and attorney general. It is the duty of the county attorney to lend to the department ~~such~~ *the* assistance ~~as~~ *that* the department may request in the commencement and prosecution of actions pursuant to this part. The county attorney ~~or the attorney general~~, on request of the department or ~~a~~ *another* county attorney, may initiate all procedures and prosecute actions in the same manner as provided for the department. If an action is prosecuted by the county attorney alone ~~or the attorney general on request of the county attorney~~, the ~~person prosecuting county attorney~~ shall notify the department as to the nature of the action and the parties to the action within 30 days of the filing of the action. The county attorney ~~or attorney general~~ shall ~~make a report thereon on the action~~ to the department within 30 days of the final disposition of the matter."

Section 3. Section 30-14-131, MCA, is amended to read:

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

(2) *The court shall award reasonable attorney fees to the prevailing party for bringing a successful action under this part.*

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

Section 4. Section 30-14-143, MCA, is amended to read:

"30-14-143. Disposition of civil fines, costs, and fees. (1) All civil fines, costs, and fees received or recovered by the department pursuant to this part must be deposited into a state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this part. Any excess civil fines, costs, or fees must be transferred to the general fund.

~~(2) All civil fines, costs, and fees received or recovered by the attorney general pursuant to this part must be deposited into a state special revenue account to the credit of the attorney general and must be used to defray the expenses of the office of the attorney general in discharging its regulatory powers and duties in relation to this part. Any excess civil fines, costs, or fees must be transferred to the general fund.~~

~~(2)~~ (2) All civil fines, costs, and fees received or recovered by a county attorney pursuant to this part must be paid to the general fund of the county ~~where in which~~ the action was commenced.”

Section 5. Section 30-14-201, MCA, is amended to read:

“30-14-201. Purpose. The legislature declares that the purpose of this part is to safeguard the public against the creation or perpetuation of monopolies and foster and encourage competition by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This part shall ~~must~~ be ~~literally~~ *liberally* construed so that its beneficial purposes may be ~~suberved~~ *accomplished*.”

Section 6. Section 30-14-202, MCA, is amended to read:

“30-14-202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) (a) “Article of commerce” includes but is not limited to any commodity, product, service or output of a service trade, or any product of the soil.

(b) The term does not include a product or service of a public utility.

(2) “Business” includes any person, domestic or foreign, engaged in the production, manufacture, distribution, purchasing, or sale of any article of commerce within the state of Montana.

(3) (a) “Cost”, as applied to production, includes the cost of raw materials, labor, and all overhead expenses of the producer.

(b) Cost, as applied to distribution, means either the invoice price of the article or product sold or the cost to the dealer or vendor for replacing the article or product in the quantity last purchased within 90 days prior to the sale of the article or product, whichever is less, minus all trade discounts except customary cash discounts plus the cost of doing business by the vendor.

(4) “Cost of doing business” or “overhead expense” includes all costs of doing business incurred in the conduct of a business and includes but is not limited to the following items of expense:

- (a) labor (including salaries of executives and officers);
- (b) rent;
- (c) interest on borrowed capital;
- (d) depreciation;
- (e) selling cost;
- (f) maintenance of equipment;
- (g) delivery costs;
- (h) credit losses;
- (i) all types of licenses;
- (j) taxes;
- (k) insurance and advertising.

(5) "Customary cash discount" means any allowance not exceeding 2%, whether a part of a larger discount or not, made to a wholesale or retail vendor when the vendor pays for merchandise within a limited or specified time.

(6) "Department" means the department of ~~administration~~ *justice* provided for in ~~2-15-1001~~ *2-15-2001*.

(7) "Person" includes any person, partnership, firm, corporation, joint-stock company, or other association engaged in business within this state.

(8) "Vendor" includes not only any person acting as one known generally and legally as a vendor but also any person who performs work upon, renovates, alters, or improves any personal property belonging to another person."

Section 7. Section 30-14-220, MCA, is amended to read:

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

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

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

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

(c) A person who is the subject of a complaint may appear at the hearing and show cause why an order should not be entered by the department requiring the person to stop the violation of the law charged in the complaint.

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

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

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

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

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

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

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

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

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

Section 8. Section 30-14-222, MCA, is amended to read:

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

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

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

(3) A defendant in an action brought under this section may be required to testify under the Montana Rules of Civil Procedure. In addition, the books and records of the defendant may be brought into court and introduced into evidence by reference. Information obtained pursuant to this subsection may not be used against the defendant as a basis for prosecution under 30-14-205 through 30-14-214, 30-14-216 through 30-14-218, or 30-14-224.

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

Section 9. Section 30-14-226, MCA, is amended to read:

“30-14-226. Disposition of civil fines, costs, and fees. (1) All civil fines, costs, and fees received or recovered by the department pursuant to this part must be deposited into a state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this part. Any excess civil fines, costs, or fees must be transferred to the general fund.

~~(2) All civil fines, costs, and fees received or recovered by the attorney general pursuant to this part must be deposited into a state special revenue account to the credit of the attorney general and must be used to defray the expenses of the office of the attorney general in discharging its regulatory powers and duties in relation to this part. Any excess civil fines, costs, or fees must be transferred to the general fund.”~~

Section 10. Section 30-14-1403, MCA, is amended to read:

“30-14-1403. Definitions. As used in this part, the following definitions apply:

(1) "Consumer" means a person who is or may be required to pay for goods or services offered by a seller or telemarketer through telemarketing.

(2) "Department" means the department of ~~administration~~ *justice* created in ~~2-15-1001~~ *2-15-2001*.

(3) "Goods or services" means any real property, any tangible or intangible personal property, or services of any kind provided or offered to a person.

(4) "Material aspect" means any factor likely to affect a person's choice of or conduct regarding goods or services. The term includes currency values and comparative expressions of value, including but not limited to percentages or multiples.

(5) "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association, or other legal entity.

(6) "Prize" means anything offered, purportedly offered, given, or purportedly given to a person by chance.

(7) "Prize promotion" means a sweepstakes or other game of chance or an oral or written representation, express or implied, that a person has won, has been selected to receive, or is eligible to receive a prize or purported prize.

(8) "Seller" means a person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the consumer in exchange for consideration.

(9) "Solicitation" means a written or oral notification or advertisement that:

(a) is transmitted by or on behalf of a seller or telemarketer by any printed, audio, video, cinematic, telephonic, or electronic means to a consumer; and

(b) in the case of a notification or advertisement other than by telephone, either of the following conditions is met:

(i) the notification or advertisement is followed by a telephone call from a seller or telemarketer; or

(ii) the notification or advertisement induces a response by telephone and, through that response, a seller or telemarketer attempts to make a sale of goods or services.

(10) "Supervised financial organization" means any bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, consumer finance lender, commercial finance lender, or insurer, provided that the organization is subject to supervision by an agency of this or any other state of the United States or an agency, bureau, or department of government of the United States.

(11) "Telemarketer" means a person, located within or outside of this state, who in connection with telemarketing initiates or receives telephone calls to or from a consumer in this state. The term includes a seller directly engaged in telemarketing on the seller's own behalf or a person engaged in telemarketing at the direction of a seller.

(12) "Telemarketing" means a plan, program, or campaign that is conducted by telephone to induce the purchase of goods or services and that involves more than one telephone call to a consumer."

Section 11. Section 30-14-1407, MCA, is amended to read:

"30-14-1407. Authority of department, attorney general, and county attorney. (1) The department, ~~the attorney general,~~ and a county attorney

have the same authority ~~in enforcing~~ *to enforce* and ~~carrying~~ *carry* out the provisions of this part as they have under Title 30, chapter 14, part 1.

(2) All civil fines, costs, and fees received or recovered by the department pursuant to this section must be deposited into ~~the~~ *a* state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this section and to fund the telemarketing fraud consumer awareness program established in ~~30-14-1405~~ *30-14-1406*. Any excess civil fines, costs, or fees must be deposited in the general fund.

~~(3) All civil fines, costs, and fees received or recovered by the attorney general pursuant to this section must be deposited into the state special revenue account to the credit of the attorney general and must be used to defray the expenses of the office of the attorney general in discharging its duties in relation to this section and to establish a telemarketing fraud consumer awareness program similar to the program authorized in 30-14-1405. Any excess civil fines, costs, or fees must be deposited in the general fund.~~

~~(4)~~(3) All civil fines, costs, and fees received or recovered by a county attorney must be paid to the general fund of the county ~~where~~ *in which* the action was commenced.”

Section 12. Section 30-14-1412, MCA, is amended to read:

“30-14-1412. Abusive acts and practices. (1) It is an abusive telemarketing act or practice and a violation of this part for any seller or telemarketer to engage in the following conduct:

- (a) use threatening, intimidating, or profane or obscene language;
- (b) engage any person repeatedly or continuously with behavior a reasonable person would consider annoying, abusive, or harassing;
- (c) initiate a telemarketing call to a person who has stated previously, in compliance with 16 CFR 310 and 47 CFR 64.1200, that the person does not wish to receive solicitation calls from that seller or telemarketer;
- (d) engage in telemarketing to a person’s residence at any time other than between 8 a.m. and 9 p.m. local time at the called person’s location;
- (e) engage in any other conduct that would be considered abusive to any reasonable consumer; or
- (f) intentionally block a person using caller identification or “*69” from accessing the seller’s or telemarketer’s phone number. It is not a violation of this subsection (1)(f) to provide a reasonable substitute name and number that accurately identify the entity causing the call to be made and a working telephone number at which the entity’s personnel can be contacted.

(2) The department ~~or the attorney general~~ may seek injunctive or declaratory relief or any other remedy provided in Title 30, chapter 14, part 1, for any violations of this section.”

Section 13. Section 30-14-1413, MCA, is amended to read:

“30-14-1413. Civil remedies — venue — burden of proof. (1) The sale of any goods or services by an unregistered seller or telemarketer that is required to register is void. A person obtaining a judgment for damages, attorney fees, or costs against a seller or telemarketer pursuant to this section has the right to be reimbursed for those damages, attorney fees, or costs from any bond or security posted by the seller or telemarketer pursuant to the provisions of 30-14-1404.

(2) A person that suffers a loss or harm as a result of an unfair and deceptive act or practice or a prohibited act or practice is entitled to recover actual damages or \$500, whichever is greater, attorney fees, court costs, and any other remedies provided by law.

(3) In addition to the remedies provided in subsection (2), a person that suffers harm as a result of an abusive act or practice is entitled to receive injunctive or declaratory relief.

(4) (a) The department, ~~the attorney general~~, or a county attorney, on behalf of state residents who have suffered a loss or harm as a result of a violation of this part, may seek any remedy provided by Title 30, chapter 14, part 1.

(b) The proper place for trial for an action based on a claim of a violation of this part is the district court of Lewis and Clark County or the county in which the alleged violation occurred.

(5) In a civil proceeding alleging a violation of this part, the burden of proving an exemption under 30-14-1405 or an exception to a definition contained in 30-14-1403 is on the person claiming the exemption or exception.”

Section 14. Section 30-14-1601, MCA, is amended to read:

“30-14-1601. Definitions. As used in this part, the following definitions apply:

(1) “Caller identification service” means a type of telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls.

(2) “Department” means the department of ~~administration~~ *justice* provided for in ~~2-15-1001~~ *2-15-2001*.

(3) “Residential subscriber” means a person who has subscribed to residential telephone service from a local exchange company and the other persons living or residing with the person.

(4) “Telephone solicitation” means any voice communication over a telephone line from a live operator, through the use of an automatic dialing-announcing device, or by other means for the purpose of encouraging the purchase of, rental of, or investment in property, goods, or services. Telephone solicitation does not include communications:

(a) to any residential subscriber with that subscriber’s prior express invitation or permission;

(b) by or on behalf of any person or entity with whom a residential subscriber has had a business contact within the past 180 days or has a current business or personal relationship;

(c) by or on behalf of an entity organized pursuant to section 501(c)(1) through 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(1) through 501(c)(6), while the entity is engaged in fundraising to support the charitable purpose for which the entity was established and provided that a bona fide member of the exempt organization makes the voice communication;

(d) by or on behalf of any entity over which a federal agency has regulatory authority to the extent that:

(i) subject to that authority, the entity is required to maintain a license, permit, or certificate to sell or provide the merchandise being offered through telemarketing; and

- (ii) the entity is required by law or rule to develop and maintain a no-call list;
- (e) by a natural person responding to a referral or working from the person's primary residence; or
- (f) by a person licensed by the state of Montana to carry out a trade, occupation, or profession who is setting or attempting to set an appointment for actions relating to that licensed trade, occupation, or profession within the state."

Section 15. Section 30-14-1603, MCA, is amended to read:

"30-14-1603. Department to create *provide for no-call list database* — rules — inclusion of national database — database not public record — no cost to subscribers. (1) The department shall ~~establish and~~ provide for the operation of a database containing a list of names and telephone numbers of residential subscribers who object to receiving telephone solicitations. ~~The department shall have the database in operation no later than January 1, 2004.~~ A residential subscriber may be listed in the database without cost to the subscriber.

(2) ~~Not later than January 1, 2004, the~~ *The* department shall promulgate rules and regulations governing the ~~establishment of a~~ state no-call database that are necessary and appropriate to fully implement the provisions of this part. The rules must include but are not limited to rules specifying:

(a) the methods by which each residential subscriber may give notice to the department or a contractor designated by the department of the residential subscriber's objection to receiving telephone solicitations or the methods by which the residential subscriber may revoke the notice;

(b) the length of time for which a notice of objection is effective and the effect of a change of telephone number on the notice;

(c) the methods by which pertinent information may be collected and added to the no-call database;

(d) the methods for obtaining access to the no-call database by any person or entity desiring to make telephone solicitations if that person or entity is required to avoid calling the residential subscribers included in the no-call database;

(e) the cost to be assessed to a person or entity that is required to obtain access to the no-call database; and

(f) other matters relating to the no-call database that the department considers desirable.

(3) If the federal communications commission establishes a single national database of telephone numbers of residential subscribers who object to receiving telephone solicitations pursuant to 47 U.S.C. 227(c)(3), the department shall include that part of the single national database that relates to Montana in the no-call database established pursuant to this section.

(4) Information contained in the no-call database established pursuant to this section may be used only for the purpose of compliance with 30-14-1602 and this section or in a proceeding or action pursuant to 30-14-1605. The information may not be considered a public record pursuant to Title 2, chapter 6.

(5) In April, July, October, and January of each year, the department shall make a reasonable attempt to obtain subscription listings of residential subscribers in this state who have arranged to be included on any national no-call list and add those names to the state no-call list."

Section 16. Section 61-4-507, MCA, is amended to read:

“61-4-507. Exhaustion of remedies under federal law. The provisions of 61-4-503 are not applicable against a manufacturer who has established an informal dispute settlement procedure certified by the department of administration to be in substantial compliance with the provisions of Title 16, Code of Federal Regulations, part 703, ~~as those provisions read on October 1, 1983,~~ unless the consumer has first resorted to that procedure without satisfaction.”

Section 17. Section 61-4-511, MCA, is amended to read:

“61-4-511. Manufacturer’s dispute settlement procedure — certification — prohibited contents. (1) A manufacturer who has established an informal dispute settlement procedure under the provisions of Title 16, Code of Federal Regulations, part 703 (~~16 CFR, part 703~~), ~~as those provisions read on October 1, 1983,~~ shall submit a copy of the procedure to the department of administration. The department of administration shall issue a certificate of approval to a manufacturer whose procedure complies in all respects with the federal regulations and subsection (2). ~~The department of administration shall report to the department of justice all~~ *and shall maintain a record of the manufacturer’s procedures certified.* The department of administration may issue subpoenas requiring the attendance of witnesses and the production of records, documents, or other evidence necessary to ~~it~~ *the department* in an investigation related to the certification of a manufacturer’s informal dispute settlement procedure.

(2) A manufacturer’s informal dispute settlement procedure must afford the consumer or the consumer’s representative an opportunity to appear and present evidence in Montana at a location reasonably convenient to the consumer and, further, may not include any practices that:

(a) delay a decision in any dispute beyond 60 days after the date on which the consumer initially resorts to the dispute settlement procedure;

(b) delay performance of remedies awarded in a settlement beyond 10 days after a decision, except that a manufacturer may have 30 days following the date of decision to replace a motor vehicle or make refund to the consumer as provided in 61-4-503;

(c) require the consumer to make the vehicle available for inspection by a manufacturer’s representative more than once;

(d) fail to consider in decisions any remedies provided by this part; or

(e) require the consumer to take any action or assume any obligation not specifically authorized under the federal regulations referred to in subsection (1).”

Section 18. Section 61-4-512, MCA, is amended to read:

“61-4-512. Annual audit — revocation or suspension of certification. (1) A manufacturer establishing an informal dispute resolution procedure shall file with the department of administration a copy of the annual audit required under Title 16, Code of Federal Regulations, part 703 (~~16 CFR, part 703~~), ~~as those provisions read on October 1, 1983,~~ along with any additional information that the department of administration may require, including the number of refunds and replacements made by the manufacturer during the period audited.

(2) The department of administration may, after notice and hearing as provided in Title 2, chapter 4, suspend or revoke the certification of a

manufacturer's informal dispute resolution procedure upon a finding that the procedure is being used to create hardship to consumers. ~~The department of administration shall notify the department of justice of any revocation or suspension of a certification.~~ The department of administration may consider the revocation or suspension in licensing manufacturers under Title 61, chapter 4, part 2."

Section 19. Section 61-4-515, MCA, is amended to read:

"61-4-515. Arbitration procedure. (1) ~~The department of administration~~ shall provide an independent forum and arbitration procedure for the settlement of disputes between consumers and manufacturers of motor vehicles that do not conform to all applicable warranties under the provisions of this part. The procedure must conform to Title 27, chapter 5. All arbitration must take place in Montana at a place reasonably convenient to the consumer.

(2) Except as provided in 61-4-520, a consumer owning a motor vehicle that fails to conform to all applicable warranties may bring a grievance before an ~~arbitration panel~~ *arbitrator* only if the manufacturer of the motor vehicle has not established an informal dispute settlement procedure that has been certified by the department of administration under 61-4-511."

Section 20. Section 61-4-516, MCA, is amended to read:

"61-4-516. Selection of arbitrator. An arbitrator for a grievance under this part must be chosen by the department of administration. ~~The department of administration~~ shall maintain a list of persons willing to serve as an arbitrator."

Section 21. Section 61-4-517, MCA, is amended to read:

"61-4-517. Implementation of arbitration. (1) A consumer may initiate a request for arbitration by filing a notice with the department of administration. The consumer shall file, on a form prescribed by the department of administration, any information considered relevant to the resolution of the dispute and shall return the form, along with a \$50 filing fee, within 5 days after receiving ~~it~~ *the form*. The ~~complaint~~ form must offer the consumer the choice of presenting any subsequent testimony orally or in writing, but not both.

(2) ~~The department of administration~~ shall determine whether the complaint alleges the violation of any applicable warranty under this part. If the department of administration determines that a complaint does not allege a warranty violation, it shall refund the filing fee.

(3) Upon acceptance of a complaint, the department of administration shall notify the manufacturer of the filing of a request for arbitration and shall obtain from the manufacturer, on a form prescribed by the department of administration, any information considered relevant to the resolution of the dispute. The manufacturer shall return the form within 15 days of receipt, with a filing fee of \$250.

(4) Fees collected under this section must be deposited in a special revenue ~~fund~~ *account* for the use of the department of administration in administering this part.

(5) The manufacturer's fee provided in subsection (3) is due only if the ~~department of administration~~ *department's* arbitration procedures are used."

Section 22. Section 61-4-518, MCA, is amended to read:

"61-4-518. Arbitration — role of department of administration justice — expert. (1) ~~The department of administration~~ shall investigate,

gather, and organize all information necessary for a fair and timely decision in each dispute. The department of ~~administration~~ may, on behalf of the arbitrator, issue subpoenas to compel the attendance of witnesses and the production of documents, papers, and records relevant to the dispute.

(2) If requested by the arbitrator, the department of ~~administration~~ may forward a copy of all written testimony and documentary evidence to an independent technical expert certified by the national institute of automotive excellence. The expert may review the material and be available to advise and consult with the arbitrator. The expert, at the arbitrator's request, may be present whenever oral testimony is presented."

Section 23. Section 61-4-519, MCA, is amended to read:

"61-4-519. Action by arbitrator — decision. (1) The arbitrator shall, as expeditiously as possible, but not later than 60 days after the department of ~~administration~~ has accepted a complaint, render a fair decision based on the information gathered and disclose the arbitrator's findings and reasoning to the parties.

(2) The decision must provide appropriate remedies, including but not limited to:

- (a) repair of the vehicle;
- (b) replacement of the vehicle with an identical vehicle or a comparable vehicle acceptable to the consumer;
- (c) refund as provided in 61-4-503(2);
- (d) any other remedies available under the applicable warranties or 15 U.S.C. 2301 through 2312, as in effect on October 1, 1983; or
- (e) reimbursement of expenses and costs to the prevailing party.

(3) The decision must specify a date for performance and completion of all awarded remedies. The department of ~~administration~~ shall contact the prevailing party within 10 working days after the date for performance to determine whether performance has occurred. The parties shall act in good faith in abiding by any decision. In addition, if the decision is not accepted, the parties shall follow the provisions of Title 27, chapter 5. If it is determined by the court ~~determines~~ that the appellant has acted without good cause in bringing an appeal of an award, the court, in its discretion, may grant to the respondent costs and reasonable attorney fees."

Section 24. Section 61-4-520, MCA, is amended to read:

"61-4-520. Nonconforming procedure — arbitration de novo. A consumer injured by the operation of any procedure that does not conform with procedures established by a manufacturer pursuant to 61-4-511 and the provisions of Title 16, Code of Federal Regulations, part 703, ~~as in effect on October 1, 1983,~~ may appeal any decision rendered as the result of the procedure by requesting arbitration de novo of the dispute by a department of ~~administration panel~~ *arbitrator*. Filing procedures and fees for appeals must be the same as those required in 61-4-515 through 61-4-517. The findings of the manufacturer's informal dispute settlement procedure are admissible in evidence at the ~~department of administration~~ *department's* arbitration ~~panel~~ hearing and in any civil action arising out of any warranty obligation or matter related to the dispute."

Section 25. Section 61-4-525, MCA, is amended to read:

“61-4-525. Notice on resale of replaced vehicle. A motor vehicle ~~which~~ *that* is returned to the manufacturer and ~~which that~~ requires replacement or refund may not be sold in the state without a clear and conspicuous written disclosure of the fact that the vehicle was returned. The department of ~~justice~~ may prescribe by rule the form and content of the disclosure statement and a procedure by which the disclosure may be removed upon a determination that the vehicle is no longer defective.”

Section 26. Section 61-4-526, MCA, is amended to read:

“61-4-526. Records of disputes. The department of ~~administration~~ shall maintain records of each dispute as it determines *appropriate*, including an index of disputes by brand name and model. The department of ~~administration~~ shall, at intervals of no more than 6 months, compile and maintain statistics indicating the record of compliance with arbitration decisions and the number of refunds or replacements awarded. The statistical summary must be considered by the department of ~~administration~~ in determining the issuance of any manufacturer license required under Title 61, chapter 4, part 2.”

Section 27. Section 61-4-532, MCA, is amended to read:

“61-4-532. Rulemaking. The department of ~~administration~~ may adopt rules to implement the provisions of this part.”

Section 28. Transition. (1) The provisions of 2-15-131 through 2-15-137 apply to [this act].

(2) Agencies involved in the reorganization and transfer of certain governmental functions may:

- (a) reallocate existing personnel across and within the involved agencies;
- (b) adjust indirect cost rates commensurate with costs for central management functions; and
- (c) reallocate and adjust spending authority for indirect charges to the programs of agencies involved in the reorganization.

Section 29. 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 30. Code commissioner instruction. Whenever legislation enacted by the 59th legislature refers to the “department of administration” that under [this act] would refer to the department of justice, the code commissioner shall change the reference in the enacted legislation to conform to [this act].

Section 31. Effective date. [This act] is effective July 1, 2005.

Approved April 19, 2005

CHAPTER NO. 281

[HB 668]

AN ACT PROVIDING EXCEPTIONS AND EXEMPTIONS TO PROHIBITIONS ON POSSESSION OF EXOTIC WILDLIFE FOR ROADSIDE MENAGERIES AND SCIENTIFIC TESTING FACILITIES; PROVIDING ENFORCEMENT ABILITY AND PRESCRIBED REMEDIES TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR VIOLATIONS;

PROVIDING THE FISH, WILDLIFE, AND PARKS COMMISSION WITH AUTHORITY TO GRANT EXCEPTIONS; AMENDING SECTIONS 87-5-703, 87-5-704, 87-5-709, 87-5-712, AND 87-5-721, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 87-5-703, MCA, is amended to read:

“87-5-703. Applicability to other provisions for importation or introduction of wildlife. Sections 87-5-701 through 87-5-704, 87-5-711, 87-5-713 through 87-5-716, and 87-5-721 do not apply to ~~the importation of wildlife for the commercial pet trade or to~~ the provisions on importation or introduction of wildlife contained in the following laws:

- (1) Title 80;
- (2) 87-3-207 and 87-3-208;
- (3) 87-3-221 through 87-3-224 or 87-3-209, 87-3-210, and 87-3-225 through 87-3-227;
- (4) 87-4-422;
- (5) 87-5-112;
- (6) 87-5-205;
- (7) 87-5-302; or
- (8) Title 81, chapter 2.”

Section 2. Section 87-5-704, MCA, is amended to read:

“87-5-704. Rulemaking. (1) The commission may adopt rules to implement 87-5-701, 87-5-702, and 87-5-711 through 87-5-715. In implementing 87-5-713, the commission may adopt rules approving species of wildlife that may be introduced by the department. In implementing 87-5-715, the commission may adopt rules to authorize the control or extermination by the department of introduced wildlife species.

(2) The department may adopt rules to implement 87-5-713 and 87-5-715. In implementing 87-5-713 and 87-5-715, the department may not adopt rules in the subject areas reserved to the commission in subsection (1).

(3) (a) The commission may adopt rules to implement 87-5-705 through 87-5-709 *and 87-5-712* regarding the importation, possession, and sale of exotic wildlife, including adoption of a list of controlled exotic wildlife and a list of prohibited exotic wildlife. The commission may by rule add to the list of noncontrolled exotic wildlife provided in 87-5-706. The department of livestock may not issue import permits for exotic wildlife on a list of controlled exotic wildlife or prohibited exotic wildlife without authorization from the department.

(b) The commission may adopt rules regarding the operation of the classification review committee established in 87-5-708.

(4) (a) The department may adopt rules regarding issuance of the authorization permit provided for in 87-5-705(2), including the establishment of a reasonable fee for the permit.

(b) The department may adopt rules regarding the amnesty program provided for in 87-5-709(2).”

Section 3. Section 87-5-709, MCA, is amended to read:

“87-5-709. Exceptions and exemptions to possession and sale of exotic wildlife. (1) Sections 87-5-705 through 87-5-708 and this section do not apply to:

(a) *institutions that have established that their proposed facilities are adequate to provide secure confinement of wildlife, including:*

~~(a)(i) an accredited zoological garden chartered by the state as a nonprofit corporation if the zoological garden establishes that the proposed facilities are adequate to provide secure confinement of the exotic wildlife in question;~~

(ii) *a roadside menagerie permitted under 87-4-803 that was established for the purpose of exhibition or attracting trade;*

(iii) *a research facility for testing and science that employs individuals licensed under 37-34-301 or that submits evidence to the department that it meets animal testing standards as provided by the national institutes of health, the national science foundation, the centers for disease control and prevention, the United States department of agriculture, or another similar nationally recognized and approved testing standard; or*

(b) domestic animals.

~~(2) The department shall institute and administer an amnesty program for exotic wildlife possessed by a person as of January 1, 2004, who is not in compliance with 87-5-705 through 87-5-708. Until January 1, 2005, a person who reports that person's noncompliance to the department may not be prosecuted for a violation based on the reported noncompliance. Possession authorization Authorization for possession must be provided by the department for species exotic wildlife possessed as of January 1, 2004, and the authorization may include any conditions and restrictions necessary to minimize risks.”~~

Section 4. Section 87-5-712, MCA, is amended to read:

“87-5-712. Authority for commission to control importation, possession, or sale of certain wildlife species and exotic wildlife. The commission may, after public hearing and recommendation by the classification review committee in 87-5-708, list by administrative rule wildlife species or exotic wildlife that may not be imported, possessed, or sold as pets for captive breeding for research or commercial purposes, for the commercial pet trade, or for any other reason. A wildlife species or exotic wildlife may be placed on the list only after the commission finds that:

(1) the exotic wildlife would not be readily subject to control by humans while in captivity;

(2) if released from captivity, the exotic wildlife would pose a substantial threat to native wildlife and plants or agricultural production; or

(3) the exotic wildlife would pose a risk to human health or safety, livestock, or native wildlife through disease transmission, hybridization, or ecological or environmental damage.

(4) *The commission may make exceptions for wildlife species or exotic wildlife otherwise prohibited under this section if the wildlife species or exotic wildlife is controlled in an institution listed in 87-5-709(1)(a) and under any conditions specified by the commission.”*

Section 5. Section 87-5-721, MCA, is amended to read:

“87-5-721. Penalty — license and permit revocation and denial. (1) Except as provided in subsection (2), a person who violates a provision of this

part is guilty of a misdemeanor punishable as provided in 87-1-102, and the department, upon conviction of the person, shall revoke any license or permit issued by it under this title to the person and deny any application by the person for a license or permit under this title for a period not to exceed 2 years from the date of the conviction.

(2) A person who intentionally imports, introduces, or transplants fish in violation of this part:

(a) is guilty of an offense punishable by a fine of not less than \$500 or more than \$5,000 and imprisonment for up to 1 year. A sentencing court may consider an appropriate amount of community service in lieu of imprisonment. A sentencing court may not defer or suspend \$500 of the fine amount.

(b) is civilly liable for the amount necessary to eliminate or mitigate the effects of the violation. The damages may be recovered on behalf of the public by the department or by the county attorney of the county in which the violation occurred, in a civil action in a court of competent jurisdiction. Money recovered by the department or a county attorney must be deposited in the state special revenue fund as provided in 87-1-601(1).

(c) upon conviction or forfeiture of bond or bail, shall forfeit from the date of conviction or forfeiture any current hunting, fishing, or trapping license issued under this title and the privilege to hunt, fish, or trap in this state for not less than 24 months. If the time necessary to eliminate or mitigate the effects of the violation exceeds 24 months, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for more than 24 months. If the effects of the violation cannot be eliminated or mitigated, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for the lifetime of that person.

(3) *Any exotic wildlife held in violation of this part must be shipped out of state, returned to the point of origin, or destroyed within 6 months of a conviction or sooner if ordered by the court. The person in possession of the exotic wildlife may choose the method of disposition. If the person in possession of the exotic wildlife does not comply with this requirement, the department may confiscate and then house, transport, or destroy the unlawfully held exotic wildlife. The department may charge any person convicted of a violation of this part for the costs associated with the handling, housing, transporting, or destroying of the exotic wildlife.*

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

Approved April 19, 2005

CHAPTER NO. 282

[HB 721]

AN ACT ESTABLISHING THE MONTANA DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT; RECOGNIZING A JURISDICTIONAL BASIS FOR STATE COURTS TO IMPLEMENT A VOLUNTARY DRUG OFFENDER ACCOUNTABILITY AND TREATMENT PROGRAM FOR QUALIFYING DRUG OFFENDERS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature recognizes that a critical need exists in this state for the criminal justice system to reduce the incidence of substance abuse and the crimes resulting from it; and

WHEREAS, requiring that accountability and rehabilitating treatment, in addition to or in place of conventional and expensive incarceration, will promote public safety and the welfare of individuals involved, reduce the burden on the general fund, and benefit the common welfare of this state; and

WHEREAS, state courts already have the jurisdiction to implement drug treatment courts via the inherent power of each respective court; and

WHEREAS, the goals of this legislation include but are not limited to reducing recidivism, reducing substance abuse, increasing the personal, familial, and societal accountability of drug offenders to productive, law-abiding, and taxpaying citizens, and reducing the costs of incarceration.

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

Section 1. Short title. [Sections 1 through 9] may be cited as the “Drug Offender Accountability and Treatment Act”.

Section 2. Purpose. The purpose of [sections 1 through 9] is to recognize that state courts have a jurisdictional basis to implement drug treatment courts to reduce recidivism and restore drug offenders to being productive, law-abiding, and taxpaying citizens.

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

(1) “Assessment” means a diagnostic evaluation to determine whether and to what extent a person is a drug offender under [sections 1 through 9] and would benefit from the provisions of [sections 1 through 9].

(2) “Continuum of care” means a seamless and coordinated course of substance abuse education and treatment designed to meet the needs of drug offenders as they move through the criminal justice system and beyond, maximizing self-sufficiency.

(3) “Drug” includes:

(a) a controlled substance, which is a drug or other substance for which a medical prescription or other legal authorization is required for purchase or possession;

(b) an illegal drug, which is a drug whose manufacture, sale, use, or possession is forbidden by law; or

(c) a harmful substance, which is a misused substance otherwise legal to possess, including alcohol.

(4) “Drug offender” means a person charged with a drug-related offense or an offense in which substance abuse is determined to have been a significant factor in the commission of an offense.

(5) “Drug treatment court” means a court established by a court pursuant to [sections 1 through 9] implementing a program of incentives and sanctions intended to assist a participant to end the participant’s addiction to drugs and to cease criminal behavior associated with drug use and addiction.

(6) “Drug treatment court coordinator” means an individual who, under the direction of the drug treatment court judge, is responsible for coordinating the establishment, staffing, operation, evaluation, and integrity of the drug treatment court.

(7) “Drug treatment court team” means a group of individuals appointed by the drug treatment court that may consist of the following members:

- (a) the judge, which may include a magistrate or other hearing officer;
 - (b) the prosecutor;
 - (c) the public defender or defense attorney;
 - (d) a law enforcement officer;
 - (e) the drug treatment court coordinator;
 - (f) a probation and parole officer;
 - (g) substance abuse treatment providers;
 - (h) a representative from the department of public health and human services; and
 - (i) any other person selected by the drug treatment court.
- (8) "Memorandum of understanding" means a written document setting forth an agreed-upon procedure.
- (9) "Recidivism" means any arrest for a serious offense that results in the filing of a charge and can carry a sentence of 1 or more years;
- (10) "Staff meeting" means the meeting before a drug offender's appearance in drug treatment court in which the drug treatment court team discusses a coordinated response to the drug offender's behavior.
- (11) "Substance abuse" means the illegal or improper consumption of a drug as defined in this section.
- (12) "Substance abuse treatment" means a program designed to provide prevention, education, and therapy directed toward ending substance abuse and preventing a return to substance use.

Section 4. Drug treatment court structure. (1) Each judicial district or court of limited jurisdiction may establish a drug treatment court under which drug offenders may be processed to address an identified substance abuse problem as a condition of pretrial release, pretrial diversion under 46-16-130, probation, incarceration, parole, or other release from a detention or correctional facility.

(2) Participation in drug treatment court is voluntary and is subject to the consent of the prosecutor, defense attorney, and the court pursuant to a written agreement.

(3) A drug treatment court may grant reasonable incentives under a written agreement if the court finds that a drug offender is performing satisfactorily in drug treatment court, is benefiting from education, treatment, and rehabilitation, has not engaged in criminal conduct, and has not violated the terms and conditions of the agreement. Reasonable incentives may include but are not limited to:

- (a) graduation certificates;
- (b) early graduation;
- (c) fee reduction or waiver of fees;
- (d) record expungement of the underlying case; or
- (e) reduced contact with a probation officer.

(4) The court may impose reasonable sanctions under the agreement, including incarceration or rejection from the drug treatment court, if the court finds that the drug offender is not performing satisfactorily in drug treatment

court, is not benefiting from education, treatment, or rehabilitation, has engaged in conduct rendering the offender unsuitable for the program, has otherwise violated the terms and conditions of the agreement, or is for any reason unable to participate. Sanctions may include:

- (a) a short-term jail sentence;
- (b) fines;
- (c) extension of time in the program;
- (d) peer review;
- (e) geographical restrictions;
- (f) termination; or
- (g) contempt of court.

(5) Upon successful completion of drug treatment court, a drug offender's case must be disposed of by the judge in the manner prescribed by the agreement and by the applicable policies and procedures adopted by the drug treatment court. This may include but is not limited to pretrial diversion under 46-16-130, dismissal of criminal charges, probation, deferred sentencing, suspended sentencing, or a reduced period of incarceration. A drug offender who successfully completes the program may be given credit for the time the offender served in the drug treatment program by the judge upon disposition.

(6) Each local jurisdiction that intends to establish a drug treatment court or to continue the operation of an existing drug treatment court shall establish a local drug treatment court team.

(7) The drug treatment court team shall, when practicable, conduct a staff meeting prior to each drug treatment court session to discuss and provide updated information regarding drug offenders. After determining the offender's progress or lack of progress, the drug treatment court team shall agree on the appropriate incentive or sanction to be applied. If the drug treatment court team cannot agree on the appropriate action, the court shall make the decision based on information presented in the staff meeting.

(8) The provisions of [sections 1 through 9] apply only to offenders who qualify for participation based on qualifications established by each drug treatment court. The provisions of [sections 1 through 9] do not apply to drug offenders who have been convicted of a sexual or violent offense, as defined in 46-23-502. [Sections 1 through 9] do not confer a right or expectation of a right to participate in a drug treatment court and do not obligate a drug treatment court to accept any offender. The establishment of a drug treatment court may not be construed as limiting the discretion of a prosecutor to act on any criminal case that the prosecutor considers advisable to prosecute. Each drug treatment court judge may establish rules and may make special orders and necessary rules that do not conflict with rules adopted by the Montana supreme court.

(9) Each drug offender shall contribute to the cost of substance abuse treatment in accordance with [section 7(2)].

(10) A drug treatment court coordinator is responsible for the general administration of a drug treatment court under the direction of the drug treatment court judge.

(11) The supervising agency shall timely forward information to the drug treatment court concerning the drug offender's progress and compliance with any court-imposed terms and conditions.

(12) A department of corrections probation and parole officer may participate in a drug treatment court team if authorized by the department. The department may authorize participation if it determines, in its discretion, that the caseloads of local probation and parole officers permit participation. If necessitated by a change in caseloads, the department may withdraw authorization for participation by its probation and parole officers in a drug treatment court. The department of corrections may not authorize its probation and parole officers to supervise a participant of a drug treatment court program who has not been convicted of a felony offense and committed to the supervision of the department.

Section 5. Treatment and support services. (1) As part of a diagnostic assessment, each jurisdiction shall establish a system to ensure that drug offenders are placed into a clinically approved substance abuse treatment program. To accomplish this, the program conducting the individual assessment shall make specific recommendations to the drug treatment court team regarding the type of treatment program and durations necessary so that a drug offender's individualized needs are addressed. The assessments and recommendations must be based upon objective medical diagnostic criteria. Treatment recommendations accepted by the court, pursuant to [sections 1 through 9] must be considered to be reasonable and necessary.

(2) An adequate continuum of care for drug offenders must be established in response to [sections 1 through 9].

(3) The drug treatment court shall, when practicable, ensure that one agency may not provide both assessment and treatment services for the drug treatment court to avoid potential conflicts of interest or the appearance that a diagnostic assessment agency might benefit by determining that an offender is in need of the particular form of treatment that the agency provides.

(4) A drug treatment court making a referral for substance abuse treatment shall refer the drug offender to a program that is licensed, certified, or approved by the court.

(5) The court shall determine which treatment programs are authorized to provide the recommended treatment to drug offenders. The relationship between the treatment program and the court must be governed by a memorandum of understanding, which must include the timely reporting of the drug offender's progress or lack of progress to the drug treatment court.

(6) Offenders must be provided with adequate support services and aftercare.

(7) The length of stay in treatment must be determined by the drug treatment court team based on individual needs and accepted practices.

Section 6. Drug testing. (1) The drug treatment court team shall ensure fair, accurate, and reliable drug testing procedures.

(2) A drug offender must be ordered to submit to frequent, random, and observed drug testing to monitor abstinence.

(3) The results of all drug tests must be provided to the drug treatment court team as soon as practicable but, in the event of a positive drug test, not later than 7 days from the test.

(4) Anyone in receipt of drug test results shall maintain the information in confidentiality.

(5) A drug offender is responsible for costs, pursuant to [section 7(2)].

Section 7. Funding. (1) There is a drug treatment court federal resources account in the federal special revenue fund that is administered by the office of the supreme court administrator. Any federal money received for funding drug treatment courts must be deposited in the drug treatment court federal resources account and may be used only for purposes of [sections 1 through 9]. The money in the fund may not be transferred at the end of each year but must remain deposited to the credit of the drug treatment court federal resources account.

(2) A drug offender shall pay the total cost or a reasonable portion of the cost to participate. The cost paid by a drug offender may not exceed \$300 a month. The costs assessed must be compensatory and not punitive in nature and must take into account the drug offender's ability to pay. Upon a showing of indigency, the drug treatment court may reduce or waive costs under this subsection (2). Any fees received by the court from an offender are not court costs, charges, or fines.

(3) Funding must be provided from the drug treatment court federal resources account or other available resources for a period of 5 years from [the effective date of this act] to research the impact of Montana drug treatment courts on recidivism and money saved as a result of implementing [sections 1 through 9].

(4) All federal funds received from grants for purposes of funding drug treatment courts must be exhausted before money is spent from other appropriations for that purpose.

(5) [Sections 1 through 9] do not prohibit drug treatment court teams from obtaining supplemental funds.

(6) [Sections 1 through 9] do not supplant funds currently utilized by drug treatment courts.

Section 8. Statutory construction. The provisions of [sections 1 through 9] must be construed to effectuate its remedial purposes.

Section 9. Enforcement. A violation of [sections 1 through 9] must be referred to the appropriate court or other responsible governing body for resolution.

Section 10. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 46, chapter 1, and the provisions of Title 46, chapter 1, apply to [sections 1 through 9].

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

Approved April 19, 2005

CHAPTER NO. 283

[SB 61]

AN ACT PROVIDING FOR APPOINTMENT OF TWO LEGISLATIVE LIAISONS TO THE STATE COMPENSATION INSURANCE FUND BOARD OF DIRECTORS; PROVIDING COMPENSATION AND LENGTH OF SERVICE; AMENDING SECTION 2-15-1019, 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 2-15-1019, MCA, is amended to read:

“2-15-1019. Board of directors of state compensation insurance fund — legislative liaisons. (1) There is a board of directors of the state compensation insurance fund.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may employ its own staff.

(3) The board may provide for its own office space and the office space of the state fund.

(4) The board consists of seven members appointed by the governor. The executive director of the state fund is an ex officio nonvoting member.

(5) At least four of the seven members ~~must~~ *shall* represent state fund policyholders and may be employees of state fund policyholders. At least four members of the board shall represent private, for-profit enterprises. One of the seven members may be a licensed insurance producer. A member of the board may not:

(a) except for the licensed insurance producer member, represent or be an employee of an insurance company that is licensed to transact workers' compensation insurance under compensation plan No. 2; or

(b) be an employee of a self-insured employer under compensation plan No. 1.

(6) A member is appointed for a term of 4 years. The terms of board members must be staggered. A member of the board may serve no more than two 4-year terms. A member shall hold office until a successor is appointed and qualified.

(7) The members must be appointed and compensated in the same manner as members of a quasi-judicial board as provided in 2-15-124, except that the requirement that at least one member be an attorney does not apply.

(8) *There must be two legislative liaisons to the board consisting of members of the economic affairs interim committee, provided for in 5-5-223. The presiding officer of the economic affairs interim committee shall appoint the liaisons from two separate political parties at the first interim committee meeting.*

(9) *Legislative liaisons shall serve from appointment through each even-numbered calendar year.*

(10) *A legislative liaison may:*

(a) *attend board meetings; and*

(b) *receive board meeting agendas and information relating to agenda items from the staff of the state fund.*

(11) Legislative liaisons, appointed pursuant to subsection (8), are entitled to compensation and expenses, as provided in 5-2-302, to be paid by the economic affairs interim committee.”

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

Approved April 18, 2005

CHAPTER NO. 284

[SB 88]

AN ACT PROVIDING THAT AN ELECTOR MAY REQUEST ABSENTEE BALLOTS FOR SUBSEQUENT ELECTIONS; PROVIDING FOR A REQUEST FORM; AMENDING SECTIONS 13-13-212 AND 13-13-214, 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) An elector may apply for an absentee ballot, using only a standardized form provided by rule by the secretary of state, by making a written request, which must include the applicant’s birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant’s county of residence within the time period specified in 13-13-211.

(2) (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 13-13-214, MCA, is amended to read:

“13-13-214. Mailing absentee ballot to elector — delivery to person other than elector. (1) (a) Except as provided in 13-13-213 and in subsection (1)(b) of this section, as soon as the official paper absentee ballots are printed, the election administrator shall immediately send by mail, postage prepaid, to each 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;

(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);

~~(a)~~(b) a secrecy envelope, free of any marks that would identify the voter; and

~~(b)~~(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 3. Effective date. [This act] is effective July 1, 2005.

Approved April 18, 2005

CHAPTER NO. 285

[SB 299]

AN ACT REVISING DEFINITIONS, COMPONENTS, AND PROCESSES REGARDING THE PRIVATIZATION OF STATE SERVICES AND PRIVATIZATION PLANS; EXTENDING AND IMPOSING DEADLINES REGARDING PRIVATIZATION PLANS AND REVIEW OF PRIVATIZATION PLANS; REQUIRING THE LEGISLATIVE AUDIT COMMITTEE TO MAKE FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS REGARDING PRIVATIZATION PLANS; REQUIRING THE GOVERNOR TO APPROVE OR DISAPPROVE PRIVATIZATION PLANS; AND AMENDING SECTIONS 2-8-301, 2-8-302, 2-8-303, AND 5-13-203, MCA.

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

Section 1. Section 2-8-301, MCA, is amended to read:

“2-8-301. Definitions. As used in this part, the following definitions apply:

(1) “Agency” means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive, legislative, or judicial branch of state government.

(2) “Private sector” means any entity or individual not principally a part of or associated with a governmental unit that is associated with or involved in commercial activity.

(3) (a) “Privatize” means an agency contracting with the private sector to provide services *that are currently or normally* conducted directly by the employees of the ~~agency if the contract displaces five or more current state employees state. For the purposes of this subsection, an employee is displaced if the privatization proposal will result in his layoff, demotion, or involuntary transfer to a new location requiring a change in residence of the employee.~~

(b) *The term does not include contracting with the private sector to provide services on a temporary or emergency basis.*

(4) “Program” means a legislatively or administratively created function, project, or duty of an agency.”

Section 2. Section 2-8-302, MCA, is amended to read:

“2-8-302. Privatization plan — hearing — role of legislative audit committee — action by governor. (1) Before an agency may privatize a program, it shall prepare a privatization plan as provided in 2-8-303.

(2) The privatization plan must be released to the public and ~~any affected employee organizations~~ *to all unions that represent state employees* and must be submitted to the legislative audit committee at least ~~90~~ *180* days prior to the proposed implementation date.

(3) At least ~~60~~ *90* days prior to the proposed implementation date, the legislative audit committee shall conduct a public hearing on the proposed privatization plan at which public comments and testimony must be received.

(4) At least ~~15~~ 45 days prior to the proposed implementation date, the legislative audit committee shall release to the public a summary of the results of the hearing, ~~including any recommendations of the committee relating to the proposed privatization plan~~ and the findings and conclusions of the legislative audit committee.

(5) (a) At least 30 days prior to the proposed implementation date, the legislative audit committee shall vote to recommend approval or disapproval of the privatization plan to the governor and transmit the recommendation in writing to the governor.

(b) The recommendation of the legislative audit committee is advisory only.

(6) At least 15 days prior to the proposed implementation date, the governor shall approve or disapprove the privatization plan, stating in writing the reasons for approval or disapproval.”

Section 3. Section 2-8-303, MCA, is amended to read:

“2-8-303. Privatization plan — contents. (1) An agency proposing to privatize a program shall prepare a privatization plan that includes the following:

(a) a description of the program to be privatized, including references to the legal authority under which the program was created;

(b) detailed budget information that includes a list of expenditures for the 2 most recent fiscal years and the sources of revenue for the program;

(c) a list of all personnel currently employed in the program and the estimated effect of the proposed privatization on ~~their~~ the employment status of each employee affected;

(d) a listing of the assets of the program and their proposed disposition if the plan is implemented;

(e) an estimate of the cost savings or any additional costs resulting from privatizing the program, compared to the costs of the existing, nonprivatized program. Additional costs must include the estimated cost to the state of inspection, supervision, and monitoring of the proposed privatization and the costs incurred in the discontinuation of such a contract.

(f) the estimated current and future economic impacts of the implementation of the plan on other state programs, including public assistance programs, unemployment insurance programs, retirement programs, and agency personal services budgets used to pay out accrued vacation and sick leave benefits;

(g) the estimated increases or decreases in costs and quality of goods or services to the public if the plan is implemented;

(h) the estimated changes in individual wages and benefits resulting from the proposed privatization;

(i) the ways in which the proposed privatization will deliver the same or better services at a lower cost; and

~~(j)~~ (j) a narrative explanation and justification for the proposed privatization.

(2) To implement the privatization plan, an agency may transfer funds between budget categories.”

Section 4. Section 5-13-203, MCA, is amended to read:

“5-13-203. Meetings — compensation. (1) The committee shall meet:

(a) as often as may be necessary during and between legislative sessions to advise and consult with the legislative auditor; *and*

(b) *to review privatization plans and to make findings, conclusions, and recommendations as required under the provisions of 2-8-302.*

(2) Committee members are entitled to receive compensation and expenses as provided in 5-2-302.”

Approved April 19, 2005

CHAPTER NO. 286

[SB 302]

AN ACT GENERALLY REVISING ELECTION LAWS; REVISING VOTER REGISTRATION PROVISIONS; REVISING WHEN BALLOTS MUST BE PRINTED; REVISING VOTER IDENTIFICATION REQUIREMENTS; REVISING PROVISIONS ON ABSENTEE VOTING; CLARIFYING HOW REJECTED BALLOTS ARE HANDLED; REVISING PROVISIONS GOVERNING STANDARDS FOR VOTING SYSTEMS; AND AMENDING SECTIONS 13-2-108, 13-2-110, 13-2-115, 13-2-301, 13-2-514, 13-13-201, 13-13-205, 13-13-212, 13-13-213, 13-13-232, 13-13-233, 13-13-241, 13-13-243, 13-15-107, 13-15-201, 13-17-103, AND 13-17-212, MCA; REPEALING SECTIONS 13-2-302 AND 13-15-203, MCA; AND PROVIDING EFFECTIVE DATES.

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

Section 1. 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) 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 2. Section 13-2-108, MCA, is amended to read:

“13-2-108. Rulemaking for statewide voter registration list. (1) The secretary of state shall adopt rules to implement the provisions of 42 U.S.C. 15483 and this chapter.

(2) The rules must include but are not limited to:

(a) a list of maintenance procedures, including new data entry, updates, registration transfers, and other procedures for keeping information current and accurate;

- (b) proper maintenance and use of active and inactive lists;
- (c) proper maintenance and use of lists for legally registered electors and provisionally registered electors;
- (d) procedures and timelines to be used by election administrators when providing the information required in 13-2-123;
- (e) technical security of the statewide voter registration database;
- (f) information security with respect to keeping from general public distribution driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to 13-2-115; and
- (g) quality control measures for the system and system users.

(3) *The rules adopted by the secretary of state must reflect that an elector who was properly registered prior to January 1, 2003, is considered a legally registered elector.*"

Section 3. Section 13-2-110, MCA, is amended to read:

"13-2-110. Application for voter registration — sufficiency and verification of information — identifiers assigned for voting purposes.

(1) An individual may apply for voter registration in person or by mail by completing and signing an application for voter registration and providing the application to the election administrator in the county in which the elector resides ~~before the close of registration as provided in 13-2-301.~~

(2) An individual applying by mail shall send the application to the election administrator, postage paid, no later than 15 days after the date it is signed. ~~An application for voter registration properly executed and postmarked on or before the day registration is closed must be accepted for 3 days after the close of registration.~~

(3) Each application for voter registration must be accepted and processed as provided in rules adopted under 13-2-109.

(4) Except as provided in subsection (5):

(a) an applicant for voter registration shall provide the applicant's driver's license number; or

(b) if the applicant does not have a driver's license, the applicant shall provide the last four digits of the applicant's social security number.

(5) If an applicant does not have a driver's license or social security number:

(a) an applicant appearing in person before the election administrator shall provide:

(i) current and valid photo identification, including but not limited to ~~a valid driver's license~~, a school district or postsecondary education photo identification, or a tribal photo identification, with the individual's name; or

(ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.

(b) an applicant applying *by mail* to register ~~by mail~~ shall also enclose a copy of:

(i) a current and valid photo identification, including but not limited to ~~a valid driver's license~~, a school district or postsecondary education photo identification, or a tribal photo identification, with the individual's name; or

(ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.

(6) (a) If information provided on an application for voter registration is sufficient to be accepted and processed and is verified pursuant to rules adopted under 13-2-109, the election administrator shall register the elector as a legally registered elector.

(b) If information provided on an application for voter registration was sufficient to be accepted but the applicant failed to provide the information required in subsection (4) or (5) or if the information provided was incorrect or insufficient to verify the individual's eligibility to vote, the election administrator shall register the applicant as a provisionally registered elector.

(7) Each applicant for voter registration must be notified of the elector's registration status pursuant to rules adopted under 13-2-109.

(8) The secretary of state shall assign to each elector whose application was accepted a unique identification number for voting purposes and shall establish a statewide uniform method to allow the secretary of state and local election officials to distinguish legally registered electors from provisionally registered electors.

(9) The provisions of this section may not be interpreted to conflict with voter registration accomplished under 13-2-221, 13-21-201, 13-21-203, and 61-5-107 and as provided for in federal law."

Section 4. Section 13-2-115, MCA, is amended to read:

"13-2-115. Certification of statewide voter registration list — local lists to be prepared. (1) Immediately after *regular* registration is closed *under 13-2-301*, the secretary of state shall certify the official statewide voter registration list.

(2) Each election administrator shall have printed from the certified statewide voter registration database lists of all registered electors in each precinct in the county. Except as provided in subsections (5) and (6), names of electors must be listed alphabetically, with their residence address or with a mailing address if located where street numbers are not used.

(3) A copy of the list of registered electors in a precinct must be displayed at the precinct's polling place. Extra copies of the lists must be retained by the election administrator and furnished to an elector upon request.

(4) Lists of registered electors need not be printed if the election will not be held.

(5) If a law enforcement officer or reserve officer, as defined in 7-32-201, requests in writing that, for security reasons, the officer's and the officer's spouse's residential address, if the same as the officer's, not be disclosed, the secretary of state or an election administrator may not include the address on any generally available list of registered electors but may list only the electors' names.

(6) (a) Upon the request of an individual, the secretary of state or an election administrator may not include the individual's residential address on any generally available list of registered electors but may list only the elector's name if the individual:

(i) proves to the election administrator, as provided in subsection (6)(b), that the individual, or a minor in the custody of the individual, has been the victim of

partner or family member assault, stalking, custodial interference, or other offense involving bodily harm or threat of bodily harm to the individual or minor; or

(ii) proves to the election administrator, as provided in subsection (6)(c), that a temporary restraining order or injunction has been issued by a judge or magistrate to restrain another person's access to the individual or minor.

(b) Proof of the victimization is conclusive upon exhibition to the election administrator of a criminal judgment, information and judgment, or affidavit of a county attorney clearly indicating the conviction and the identity of the victim.

(c) Proof of the issuance of a temporary restraining order or injunction is conclusive upon exhibition to the election administrator of the temporary restraining order or injunction."

Section 5. Section 13-2-301, MCA, is amended to read:

"13-2-301. Close of regular registration — procedure notice — changes. (1) The election administrator shall:

(a) close *regular* registrations for 30 days before any election; and

(b) ~~publish~~ *broadcast* a notice specifying the day *regular* registrations will close on radio or television as provided in 2-3-105 through 2-3-107 or *publish the notice* in a newspaper of general circulation in the county at least once a week for 3 weeks before the close of registration.

(2) Information to be included in the notice must be prescribed by the secretary of state.

(3) *An application for voter registration properly executed and postmarked on or before the day regular registration is closed must be accepted as a regular registration for 3 days after regular registration is closed under subsection (1)(a).*

~~(3)~~(4) An individual who submits a completed registration form to the election administrator before the ~~deadline~~ *deadlines* provided in ~~subsection (1)(a)~~ *this section* is allowed to correct a mistake on the completed registration form until 5 p.m. on the 10th day following the close of *regular* registration, and the qualified elector is then eligible to vote in the ~~next~~ *election at the polling place for that elector's precinct.*

(5) *Subject to the provisions of [section 1], an elector who misses the deadlines provided for in this section may register to vote or change the elector's voter information and vote in the election, except as otherwise provided in [section 1]."*

Section 6. Section 13-2-514, MCA, is amended to read:

"13-2-514. Change of residence to another county. (1) ~~An~~ *Except as provided in subsection (2)(a), an elector who changes residence to a different county within this state shall register in the new county of residence in order to vote in any election unless the change occurs less than 45 days before the election.*

(2) An elector who changes residence to a different county 45 days or less before an election may:

(a) vote in person or by absentee ballot in the precinct and county where previously registered; or

(b) *update the elector's registration information and vote in the elector's new county of residence, subject to the regular registration provisions of 13-2-301 or the late registration provisions of [section 1].*

(3) The registration information of an elector ~~who votes under the provisions of subsection (2) whose information is changed pursuant to this section~~ must be updated in the statewide voter registration list ~~after the election~~ pursuant to rules adopted under 13-2-108.”

Section 7. 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, or by delivering it to the election administrator of the special absentee election board *established pursuant to 13-13-225*.

(3) (a) ~~The~~ *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 but 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 ~~shall~~ *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) ~~If the elector fails to provide the information required under subsection (3)(a) or the information provided is insufficient to verify the elector’s identity and eligibility, the~~ *An elector’s absentee ballot must be handled as a provisional ballot provided in 13-13-241.”*

Section 8. 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 ~~13-1-104(1) and~~ 13-1-107(1);

~~(2)(b) For elections held in compliance with 13-1-104(2) and (3) and 13-1-107(2), the election administrator shall ensure that paper ballots are printed and available for absentee voting at least 20 days prior to an election 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).

~~(3)(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 9. Section 13-13-212, MCA, is amended to read:

“13-13-212. Application for absentee ballot — special provisions. (1) An elector may apply for an absentee ballot, using ~~only~~ a standardized form provided by rule by the secretary of state, ~~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.”

Section 10. 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.*

~~(1)(2)~~ Except as provided in subsection ~~(3)~~ (4), the elector ~~shall~~ *may* mail the application directly to the election administrator or deliver the application in person to the election administrator. ~~With the exception of an immediate family member, as defined in 15-30-602, or a guardian, or a third party may not collect applications for absentee ballots from electors~~ *the elector’s application and forward the applications to the election administrator.*

~~(2)(3)~~ The election administrator shall compare the signature on the application with the applicant’s signature on the registration card. If convinced the individual making the application is the same as the one whose name appears on the registration card, the election administrator shall deliver the ballot to the elector in person or as otherwise provided in 13-13-214.

~~(3)(4)~~ In lieu of the requirement provided in subsection ~~(1)~~ (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.”

Section 11. Section 13-13-232, MCA, is amended to read:

“13-13-232. Delivery of ballots and secrecy envelopes to election judges — ballots to be rejected. (1) If an absentee ballot is received prior to delivery of the official ballots to the election judges, the election administrator

shall process it according to 13-13-241 and then deliver the unopened secrecy envelope to the judges at the same time that the ballots are delivered.

(2) If an absentee ballot is received after the official ballots are delivered to the election judges but prior to the close of the polls, the election administrator shall process it according to 13-13-241 and shall then immediately deliver the unopened secrecy envelope to the judges.

(3) If the election administrator receives an absentee ballot for which an application or request was not made or received as required by this part, the election administrator shall endorse upon the elector's envelope the date and exact time of receipt and the words "to be rejected". Absentee ballots endorsed in this manner must be handled in the same manner as provided in 13-13-243(1)."

Section 12. Section 13-13-233, MCA, is amended to read:

"13-13-233. Issue Issuing and record of recording absentee ballots — certificate to election judges. (1) Absentee ballots must be official numbered paper ballots beginning with ballot number 1 and following consecutively according to the number of applications for absentee ballots.

(2) The election administrator shall keep a record of all absentee ballots issued.

(3) When the election administrator delivers the voted absentee ballots pursuant to 13-13-232(1), the election administrator shall also provide a certificate stating:

(a) the ballot numbers of the absentee ballots mailed *or transmitted* pursuant to 13-13-214 *or 13-21-207*, delivered pursuant to 13-13-229, ~~and~~ *or* marked in person pursuant to 13-13-222;

(b) the number of ballots to be reserved for late absentee voting pursuant to 13-13-211(2); and

(c) the names of the electors within the precinct to whom the ballots were provided.

(4) The chief election judge shall post in a conspicuous location at the polling place a list of the names of electors appearing on the certificate required under subsection (3)."

Section 13. 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 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) ~~Except as provided in subsection (2), after comparing the signatures~~ *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.

~~(b)~~(3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes.

~~(c)~~(4) ~~A ballot cast by an elector who provided sufficient information must be handled as provided in subsection (3). A ballot cast by an elector whose voter information is insufficient or whose name does not appear on the precinct register must be handled as a provisional ballot under 13-15-107. The~~ *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.*

~~(2)~~(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 13-13-243(1).

~~(3)~~(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 14. Section 13-13-243, MCA, is amended to read:

“13-13-243. Rejected absentee ballots — handling provided by rule.

(1) ~~The~~ *All rejected absentee ballots, the absentee ballot applications, and all absentee ballot return envelopes shall must be enclosed in an envelope and sealed, and the judges shall write on the envelope “rejected ballot(s) of absentee elector” (writing in the elector's name) handled and marked as provided under rules adopted by the secretary of state.*

(2) The unopened absentee ballot envelope of an elector who has voted in person as provided in 13-13-204 must be ~~marked “voted in person” and initialed by a majority of the election judges~~ *handled and marked as provided under rules adopted by the secretary of state.*

(3) The unopened absentee ballot envelope of an elector who dies before election day shall ~~must be marked “died before election day” and initialed by a majority of the election judges if they are notified of the death on election day. The election administrator shall make and sign the notation if notice of the death is received before delivery of the absentee ballot to the polling place~~ *handled and marked as provided under rules adopted by the secretary of state.*

(4) ~~All~~ After being handled and marked as provided in this section, all rejected ballots ~~shall~~ must be placed in ~~the sealed~~ a package or container in which the voted ballots are ~~required~~ to be placed and ~~the package or container must be sealed, dated, and marked as provided under rules adopted by the secretary of state.~~ After a package or container is sealed pursuant to this subsection (4), a package or container may not be opened without a court order.”

Section 15. 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, ~~an~~ 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); or

(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.

(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 13-13-243.

~~(2)~~(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.

~~(3)~~(4) A provisional ballot must be counted if the election administrator verifies the elector’s eligibility pursuant to rules adopted under 13-13-603. However, ~~a~~ if the election administrator cannot verify the elector’s eligibility under the rules, the elector’s provisional ballot ~~may not be counted if the election administrator cannot verify the elector’s eligibility under the rules~~ must be rejected and handled as provided in 13-13-243.

~~(4)~~(5) The election administrator shall provide an elector who cast a provisional ballot but whose ballot was not counted with the reasons why the ballot was not counted.

~~(5)~~(6) 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 16. 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 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. An absentee ballot must be rejected *and handled as provided in 13-13-243* if in the envelope there is more than one voted ballot for each election.

(c) 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) 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) 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) 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 13-13-243*; 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 17. 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 (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; ~~and~~

(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) records votes in a manner that allows the votes to be printed on paper so that votes can be manually counted or audited if necessary; 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) 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 18. Section 13-17-212, MCA, is amended to read:

“13-17-212. Performance 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 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 test and certification provisions of this section must be conducted implemented according to rules adopted by the secretary of state pursuant to 13-17-211.”*

Section 19. Repealer. Sections 13-2-302 and 13-15-203, MCA, are repealed.

Section 20. Instruction to code commissioner. Section 13-13-243 is intended to be renumbered and codified in Title 13, chapter 15, part 1.

Section 21. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2005.

(2) [Sections 1 and 3 through 6] are effective July 1, 2006.

Approved April 18, 2005

CHAPTER NO. 287

[SB 324]

AN ACT PROVIDING FOR PRESCRIPTION DRUG ACCESS AND INFORMATION; PROVIDING FOR A STATE PHARMACY ACCESS PROGRAM TO COMPLEMENT THE FEDERAL MEDICARE PART D PROGRAM; PROVIDING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES ADMINISTER THE PROGRAM; PROVIDING FOR A PRESCRIPTION DRUG CONSUMER INFORMATION AND TECHNICAL ASSISTANCE PROGRAM AND EDUCATION OUTREACH FOR CONSUMERS AND PROFESSIONALS; AMENDING THE PRESCRIPTION DRUG EXPANSION PROGRAM AS A STATE PHARMACY DISCOUNT PROGRAM; AMENDING SECTIONS 53-6-1001, 53-6-1002, 53-6-1003, 53-6-1010, 53-6-1013, AND 53-6-1201, MCA; REPEALING SECTION 13, CHAPTER 551, LAWS OF 2003; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. State pharmacy access program. (1) The department shall administer a pharmacy access prescription drug benefit program that contributes to the cost of the premium and, optionally, to the cost of the deductible for the Part D medicare prescription drug benefit as established in Title I of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

(2) An individual is eligible for the pharmacy access program if the individual:

(a) has a family income, as adopted by rule, of up to 200% of the federal poverty guidelines set annually by the U.S. department of health and human services and is not eligible for federal low-income assistance under Part D;

(b) submits proof of enrollment in a prescription drug plan for the Part D medicare benefit.

(3) The department shall establish by rule eligibility based upon the applicant's family income within the range provided in subsection (2). The department may adopt rules defining income. In establishing eligibility based upon income, the department shall take into account the amount of funding available for the program.

(4) The department shall set an amount of benefit for the premium and may optionally set a portion of the deductible by rule based on the numbers enrolled and the appropriation.

(5) The department shall open the enrollment of the pharmacy access program at the same time as enrollment commences for the medicare Part D program.

(6) If the department determines that there are excess funds for the pharmacy access program, it may use the funds for the program provided for in 53-6-1002.

Section 2. Department administration — pharmacy access. (1) The department shall administer the pharmacy access program. The department shall provide for outreach and enrollment in the pharmacy access program. The department shall integrate the enrollment and outreach procedures with other services provided to individuals and families eligible for other related programs.

(2) The department shall report on Montana's prescription drug use, needs, and trends and submit a report with recommendations to the governor and to the legislature by September 15, 2006.

Section 3. Prescription drug consumer information and technical assistance program — education outreach for consumers and professionals. (1) There is a prescription drug consumer information and technical assistance program in the department to provide Montana residents with advice on the prudent use of prescription drugs and how to access government and private prescription drug programs and discounts. The program must include consultation by licensed pharmacists with individuals on how to avoid dangerous drug interactions and provide for substitution of more cost-effective drugs with approval by the prescribing health care professional.

(2) The department shall create educational resources, including a website, concerning the costs and benefits of various drugs to inform consumers and medical practitioners on clinically effective and cost-conscious prescription drugs.

Section 4. Section 53-6-1001, MCA, is amended to read:

“53-6-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) “Average wholesale price” means the wholesale price charged on a specific ~~commodity~~ *drug* that is assigned by the drug manufacturer and is listed in a nationally recognized drug pricing file.

(2) “Department” means the department of public health and human services provided for in Title 2, chapter 15, part 22.

(3) “Discounted price” means ~~a price that is less than or equal to the average wholesale a price, minus a percentage between 6% and 25% determined set by the department by rule~~ pursuant to 53-6-1002.

(4) “Gross household income” has the meaning provided in 15-30-171.

(5) “Manufacturer” means a manufacturer of prescription drugs and includes a subsidiary or affiliate of a manufacturer.

(6) “Participating retail pharmacy” means a retail pharmacy located in this state or another business licensed to dispense prescription drugs in this state that is medicaid-approved.

(7) “Program” means the ~~medicaid~~ prescription drug *plus discount* program provided for in 53-6-1002.

(8) “*Secondary discounted price*” means *the discounted price less any further discounts funded by manufacturer rebates for medication purchased by participants in the program.*”

Section 5. Section 53-6-1002, MCA, is amended to read:

“53-6-1002. Prescription drug expansion plus discount program — rules. (1) ~~By July 1, 2004, or upon securing any necessary waivers, the~~ *The* department ~~shall provide for an expansion of~~ *may provide for a* prescription drug benefits under the medicaid *plus discount* program by offering prescription drugs at a discounted price to qualified individuals whose income is at a level set by the department at or below ~~200%~~ *250%* of the federal poverty level *and who meet the requirements in 53-6-1003.* ~~Subject to subsection (7), the department shall charge an annual application fee of \$25 for the program. The application fee must be deposited in the medicaid prescription drug rebate account established in subsection (2).~~

(2) There is a ~~medicaid~~ prescription drug *plus discount program* rebate account in the state special revenue fund to the credit of the department. All money received by the state as rebates from pharmaceutical manufacturers for the ~~medicaid prescription drug expansion~~ program must be deposited in the account. The money in the account, which is administered by the department, must be used to expand ~~medicaid~~ prescription drug benefits *to qualified individuals*. Interest on account balances accrues to the account. The purpose of the account is to:

(a) reimburse participating retail pharmacies for the ~~discount on the average wholesale price of prescription drugs provided to qualified residents pursuant to this part~~ *secondary discounted price*; and

(b) reimburse the department for contracted services, administrative costs, associated computer costs, professional fees paid to participating retail pharmacies, *pharmacy benefit administrators*, and other reasonable program costs.

(3) The department shall provide for sufficient personnel to ensure efficient administration of the program. The extent and the magnitude of the program must be determined by the department on the basis of the calculated need of the recipient population and available funds. The department may not spend more on this program than is available through appropriations, federal or other grants, and other established and committed funding sources. The department may accept, for the purposes of carrying out this program, federal funds appropriated under any federal law relating to the furnishing of free or low-cost drugs to disadvantaged, elderly, and disabled individuals, may take action that is necessary for the purposes of carrying out that federal law, and may accept from any other agency of government, individual, group, or corporation funds that may be available to carry out this part.

(4) The department may adopt rules relating to the conduct of this program. ~~The rules may be based upon rules adopted in other states to administer similar programs.~~

(5) The department shall, *if the department determines that sufficient funds are available*, adopt rules to establish the *secondary* discounted price to be charged to participants in the program. The department may establish a *secondary* discounted price to encourage the use of generic drugs over higher-cost brand-name drugs.

(6) The department shall establish by rule eligibility based upon the applicant's family income as provided in 53-6-1003. The total income may not exceed ~~200%~~ *250%* of the federal poverty level. The department may adopt rules defining income. In establishing eligibility based upon income, the department shall take into account the amount of funding available for the program. The department shall issue enrollment ~~cards~~ *materials* to eligible individuals.

(7) Establishment of the ~~prescription drug expansion~~ program is contingent upon approval by the federal government that the program in this part will ~~qualify for federal financial participation under~~ *compliance with all applicable federal laws implementing the medicaid program*. The department may adopt rules necessary to implement conditions required by federal law ~~or conditions required as part of the federal government's agreement to waive certain requirements of federal law~~.

(8) If program costs are expected to exceed the legislative authorization for the program, the department shall adjust discounted prices, ~~the application fee,~~ or eligibility standards to maintain the program within the available funding.

(9) *Participation in the program by a pharmacy or a pharmaceutical manufacturer is voluntary.*

(10) (a) *The department may not contract with either an in-state or out-of-state mail service pharmacy, as defined in 37-7-702, for the purposes of the program for at least 1 year after persons eligible for the program have begun to purchase drugs through the program. At that time, the department shall evaluate the number of pharmacies within the state providing prescription drugs as part of the program.*

(b) *If the department determines that there are insufficient pharmacies participating in the program to allow reasonable access to persons qualified to purchase prescription drugs through the program, it may, after the evaluation provided for in subsection (10)(a), use one or more in-state or out-of-state mail service pharmacies, or both, for the purposes of the program.”*

Section 6. Section 53-6-1003, MCA, is amended to read:

“53-6-1003. Eligibility — income determination. ~~(1)~~ To be eligible for the program, an individual ~~must be~~ shall:

~~(a)(1) at least 62 years of age reside in a household with an income level less than or equal to 250% of the federal poverty guidelines as adopted by the U.S. department of health and human services; and~~

~~(b)(2) 18 years of age or older and determined to be disabled by the federal social security program; or~~

~~(c) eligible for mental health services pursuant to 53-21-702(2) lack prescription drug coverage or provide documentation that the individual has exceeded the coverage of the individual’s prescription drug benefits.~~

~~(2) Subject to 53-6-1002(8), individuals are eligible for the program if the gross household income is at or below the amount set by the department, which may not be more than 200% of the federal poverty level. (Subsection (1)(c) void on occurrence of contingency—sec. 11, Ch. 551, L. 2003.)”~~

Section 7. Section 53-6-1010, MCA, is amended to read:

“53-6-1010. Specifications for administration of program. (1) The department shall adopt specifications for the administration and management of the program. Specifications may include but are not limited to program objectives, accounting and handling practices, supervisory authority, and an evaluation methodology. ~~The department shall apply for any waivers of federal law that are necessary to implement the program.~~

(2) Information disclosed by manufacturers during negotiations and all terms and conditions negotiated between the director and manufacturers and all information requested or required under the program ~~must be kept confidential~~ are public information, except as for information that the department determines is necessary to carry out the program *proprietary information*. ~~The department shall comply with the budget neutrality provisions required by the United States department of health and human services for the granting of any waivers.~~

(3) *The department may use a formulary or other committee to determine preferred drug lists for department programs. The department shall include a representative of consumers on any formulary committee or committee to determine preferred drug lists for purchase by the department or reimbursement of costs. Any formulary or preferred drug list must be based on objective clinical data on safety and effectiveness. If two or more drugs are found to be equally*

effective and safe for the treatment of the same medical condition, the drug available at the lowest net price, inclusive of discounts and rebates, must be placed on the list. Other drugs for treating the same medical condition may be added to the list if they are therapeutically equivalent and the department determines them to be cost-effective.

(4) The department may negotiate rebates from the prescription drug manufacturers for drugs that will be on any preferred drug list. The department may negotiate price discounts with prescription drug manufacturers for any state-purchased health care programs, including medicaid, the state children's health insurance program, and the program provided for in 53-6-1002.

~~(3)(5) The department may not use the access restrictions, supplemental rebates, or a~~ *and a preferred drug list to comply with the budget neutrality provisions when negotiating with the federal government for this waiver. These restrictions do not apply to other components of the medicaid or mental health services plan or drugs provided in those programs. These restrictions apply only to the prescription drug expansion program provided for in 53-6-1002. to negotiate for the most favorable discount prices and rebates for the program.*

(6) The department may participate in multistate purchasing pool initiatives for the benefit of the program. (Subsection (3) terminates June 30, 2005—sec. 13, Ch. 551, L. 2003.)

Section 8. Section 53-6-1013, MCA, is amended to read:

“53-6-1013. Contracting. The department may contract for the administration of any components of the program, including but not limited to outreach, eligibility, claims, administration, *price and rebate negotiations*, and drug rebate recovery and redistribution. *Any contract to administer any program component must prohibit the contractor from receiving any compensation or other benefit from any drug manufacturer, labeler, or distributor participating in the medicaid or prescription drug plus discount programs.*”

Section 9. Section 53-6-1201, MCA, is amended to read:

“53-6-1201. Special revenue fund — health and medicaid initiatives.

(1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

(a) money from cigarette taxes deposited under 16-11-119(1)(c); ~~and~~

(b) money from taxes on tobacco products other than cigarettes deposited under 16-11-206(1)(b); *and*

(c) *any interest and income earned on the account.*

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to maximize enrollment of eligible children under the children's health insurance program, provided for under Title 53, chapter 4, part 10, and to provide outreach to the eligible children. The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits or to fund new programs to assist small businesses with the costs of providing health insurance benefits to employees, if these tax credits or programs are established by the legislature after the effective date of this section.

(4) *(a) Except for \$1 million appropriated for startup costs related to [sections 1 and 2], the money appropriated for fiscal year 2006 for the program in subsection (3)(b) may not be expended until the office of budget and program planning has certified that \$25 million has been deposited in the account provided for in this section or December 1, 2005, whichever occurs earlier.*

(b) On or before July 1, the budget director shall calculate a balance required to sustain the program in subsection (3)(b) for each fiscal year of the biennium. If the budget director certifies that the reserve balance will be sufficient, then the department may expend the revenue for the program as appropriated. If the budget director determines that the reserve balance of the revenue will not support the level of appropriation, the budget director shall notify the department. Upon receipt of the notification, the department shall adjust the operating budget for the program to reflect the available revenue as determined by the budget director.

(c) Until the programs or credits described in subsections (3)(b) and (3)(d) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

(5) The phrase “trended traditional level of appropriation”, as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section.”

Section 10. Contingency on expenditure. [Sections 1 through 3] and Title 53, chapter 6, part 10, may not be construed to require implementation or ongoing operation of the program under 53-6-1201(3)(b) without a line item appropriation in the general appropriations bill included for that purpose.

Section 11. Repealer. Section 13, Chapter 551, Laws of 2003, is repealed.

Section 12. Codification instruction. [Sections 1 through 3 and 10] are intended to be codified as an integral part of Title 53, chapter 6, part 10, and the provisions of Title 53, chapter 6, part 10, apply to [sections 1 through 3 and 10].

Section 13. Coordination instruction. If House Bill No. 667 and this bill are both passed and approved, section 53-6-1201 must read as follows:

“53-6-1201. Special revenue fund — health and medicaid initiatives.

(1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

(a) money from cigarette taxes deposited under 16-11-119(1)(c); ~~and~~

(b) money from taxes on tobacco products other than cigarettes deposited under 16-11-206(1)(b); *and*

(c) *any interest and income earned on the account.*

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to maximize enrollment of eligible children under the children's health insurance program, provided for under Title 53, chapter 4, part 10, and to provide outreach to the eligible children. The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits; ~~or~~

(e) to fund new programs to assist *eligible* small ~~businesses~~ *employers* with the costs of providing health insurance benefits to *eligible* employees; ~~if these tax credits or programs are established by the legislature after the effective date of this section;~~

(f) *the cost of administering the tax credit, the purchasing pool, and the premium incentive payments and premium assistance payments as provided in [sections 1 through 9 in House Bill No. 667]; and*

(g) *to provide a state match for the medicaid program for premium incentive payments or premium assistance payments to the extent that a waiver is granted by federal law as provided in [section 10 in House Bill No. 667].*

(4) (a) *Except for \$1 million appropriated for the startup costs of [sections 1 and 2 in Senate Bill No. 324], the money appropriated for fiscal year 2006 for the programs in subsections (3)(b) and (3)(d) through (3)(g) may not be expended until the office of budget and program planning has certified that \$25 million has been deposited in the account provided for in this section or December 1, 2005, whichever occurs earlier.*

(b) *On or before July 1, the budget director shall calculate a balance required to sustain each program in subsection (3) for each fiscal year of the biennium. If the budget director certifies that the reserve balance will be sufficient, then the agencies may expend the revenue for the programs as appropriated. If the budget director determines that the reserve balance of the revenue will not support the level of appropriation, the budget director shall notify each agency. Upon receipt of the notification, the agency shall adjust the operating budget for the program to reflect the available revenue as determined by the budget director.*

(c) Until the programs or credits described in subsections (3)(b) and (3)(d) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

(5) The phrase “trended traditional level of appropriation”, as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section.”

Section 14. Effective date. [This act] is effective July 1, 2005.

Approved April 19, 2005

CHAPTER NO. 288

[HB 22]

AN ACT PROVIDING THE FINDINGS AND PURPOSE OF IMPLEMENTING A WATER ADJUDICATION FEE; PROVIDING BENCHMARKS AND ACTION, INCLUDING ELIMINATION OF THE FEE, THAT MUST BE TAKEN IF BENCHMARKS ARE NOT MET BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; ALLOWING THE REEXAMINATION, PRIOR TO THE ISSUANCE OF A FINAL DECREE, OF CLAIMS IN BASINS THAT WERE VERIFIED; DEFINING “OWNER” FOR PURPOSES OF THE WATER ADJUDICATION FEE; ESTABLISHING WATER ADJUDICATION FEES; PROVIDING THAT THE FEE DOES NOT APPLY TO FEDERAL WATER RIGHTS AND INDIAN RESERVED AND ABORIGINAL CLAIMS TO WATER; PROVIDING THAT THE DEPARTMENT OF REVENUE COLLECT THE FEE ON BEHALF OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ASSIGN ANY UNPAID FEES TO THE DEPARTMENT OF REVENUE FOR COLLECTION; PROVIDING THAT A LIEN MAY BE PLACED ON A WATER RIGHT IF THE FEE IS NOT PAID AFTER COLLECTION EFFORTS; ESTABLISHING A WATER ADJUDICATION ACCOUNT; ESTABLISHING THE AMOUNT OF REVENUE ALLOCATED EACH YEAR FROM THE ACCOUNT; PROVIDING THAT THE FEE MAY NOT BE ASSESSED ONCE \$31 MILLION HAS BEEN DEPOSITED IN THE ADJUDICATION ACCOUNT; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE WATER COURT TO REPORT TO THE ENVIRONMENTAL QUALITY COUNCIL AND THE APPLICABLE LEGISLATIVE APPROPRIATION SUBCOMMITTEES; PROVIDING THE PROCESS FOR EXAMINATION OF CLAIMS IN VERIFIED BASINS PRIOR TO THE ISSUANCE OF A FINAL DECREE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-1-216, 85-2-231, AND 85-2-237, MCA; AN PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

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

Section 1. Findings — purpose. (1) The purpose of [sections 1 through 10] 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 [section 9] 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 [section 9] 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 [section 5] is used only for the purpose of adjudicating Montana's water rights.

Section 2. Benchmarks — action taken if not met. (1) 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).

(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 [section 9] 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 [section 5] that is attached to a water right for the purpose of funding the adjudication may not be assessed the following even-numbered year. 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 |

Section 3. Definitions. For the purposes of [sections 1 through 10], the following definitions apply:

(1) "Calculated volume" means the feasible volume given the flow rate and period of use.

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

(3) "Water right" means a legal right to the beneficial use of water as recorded in the centralized water recording system by a water court decree, provisional permit, ground water certificate, filed exempt right, Powder River declaration, statement of claim, stockwater permit, temporary provisional permit, or 1962 to 1973 ground water filings as recorded with the department or that portion of a water reservation that has been put to beneficial use. This definition applies only to the use of the term for the purposes of assessing the fee and [sections 1 through 10].

Section 4. Owner. (1) For the purposes of giving notice or imposing a fee, as provided for in [section 5], "owner", as used in [sections 5 and 6] and this section, means the first enumerated entity on a water right.

(2) The owner is responsible for collecting the proportionate share of any fee from the other entities enumerated on the water right.

Section 5. Water adjudication fees — exceptions. (1) (a) Except as provided in subsection (1)(c), a water adjudication fee is authorized and directed to be imposed by the department of revenue on all water rights.

(b) Except as provided in [section 2], [section 7], and subsections (1)(c) and (10) of this section, an owner shall pay a biennial fee for the purpose of funding Montana's water adjudication based on the fees established in subsections (4) through (7) of this section.

(c) The water adjudication fee may not be imposed on federal water rights and tribal reserved and aboriginal claims to water.

(2) The water adjudication fee is due on January 31 of even-numbered years. The penalty and interest provisions contained in 15-1-216 apply to late payments of the fee.

(3) (a) Subject to subsection (3)(b), the department of revenue may withhold revenue equal to the actual cost of collecting the water adjudication fee.

(b) The department of revenue may not withhold more than 5% of the revenue generated.

(4) (a) An owner for the purposes described in subsections (4)(b) through (4)(f) shall pay according to a graduated scale. The number of water rights for which a fee must be paid on a per purpose basis is capped at 20 water rights a person for each graduated level.

(b) For a commercial water right with a claimed or calculated volume that is:

(i) 0 acre feet to 100 acre feet, the fee is \$20;

(ii) greater than 100 acre feet and less than or equal to 5,000 acre feet, the fee is \$1,000; and

(iii) greater than 5,000 acre feet, the fee is \$2,000.

(c) For an industrial water right with a claimed or calculated volume that is:

(i) 0 acre feet to 1,000 acre feet, the fee is \$20;

(ii) greater than 1,000 acre feet and less than or equal to 4,000 acre feet, the fee is \$1,000; and

(iii) greater than 4,000 acre feet, the fee is \$2,000.

(d) For a mining water right with a claimed or calculated volume that is:

(i) 0 acre feet to 1,000 acre feet, the fee is \$20;

(ii) greater than 1,000 acre feet and less than or equal to 4,000 acre feet, the fee is \$1,000; and

(iii) greater than 4,000 acre feet, the fee is \$2,000.

(e) For a municipal water right with a claimed or calculated volume that is:

(i) 0 acre feet to 1,000 acre feet, the fee is \$20;

(ii) greater than 1,000 acre feet and less than or equal to 4,000 acre feet, the fee is \$1,000; and

(iii) greater than 4,000 acre feet, the fee is \$2,000.

(f) For a power generation water right, both consumptive and nonconsumptive, with a claimed or calculated volume that is:

(i) 0 acre feet to 100,000 acre feet, the fee is \$20;

(ii) greater than 100,000 acre feet and less than or equal to 1 million acre feet, the fee is \$1,000; and

(iii) greater than 1 million acre feet, the fee is \$2,000.

(5) Except for instream flow water rights used for irrigation purposes or for the purposes identified in subsection (4), an instream flow water right or an instream flow water reservation, with a claimed or calculated volume that is:

(a) 0 acre feet to 50,000 acre feet, the fee is \$20;

(b) greater than 50,000 acre feet and less than or equal to 1 million acre feet, the fee is \$1,000; and

(c) greater than 1 million acre feet, the fee is \$2,000.

(6) The fee for an irrigation water right or irrigation claim that is part of an irrigation district, ditch company, canal company, irrigation project, water user's association, or other organized group with the purpose of allocating irrigation water is \$20 a user, with the fee capped at 40 users. The fee must be paid by the user. If an irrigation district, ditch company, or water user's association has more than 40 users, the fee may not exceed \$800 and must be split equally among the users.

(7) The fee for all water rights that are not subject to subsections (4) through (6) is \$20. The fee is capped at 20 water rights a person for purposes that are not addressed in subsections (4) through (6).

(8) The fees established in subsections (4) through (7) apply to all water rights on record with the department that are not withdrawn or terminated.

(9) A person may file an administrative appeal with the department to contest the total amount of the fee assessed against the person or a fee imposed based on incorrect ownership records.

(10) Fees authorized in this section may not be assessed after June 30, 2014.

Section 6. Debt collection. If the owner of a water right does not pay the fee after receiving an initial bill statement and one reminder bill statement:

(1) the department shall turn over the debt to the department of revenue for collection pursuant to Title 17, chapter 4; and

(2) 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 7. 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 [section 5] may not exceed \$31 million.

(b) If federal funds are appropriated for the purposes of [sections 1 through 10], 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 [section 5] and any federal revenue appropriations have reached \$31 million, the fee may no longer be assessed.

(4) Interest and income earnings on the water adjudication account must be deposited in the account.

(5) Revenue 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.

Section 8. 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; and

(b) the total revenue generated by the fees established in [section 5] and deposited in the account provided for in [section 7];

(2) include a status report on the adjudication in their presentation to the applicable appropriation subcommittees during each legislative session; and

(3) provide a budget that outlines how each of the entities will be funded in the next biennium, including general fund money, state special revenue funds, and the allocated fee revenue.

Section 9. Examination of claims in verified basins. (1) At any time prior to the issuance of a final decree, in basins that were evaluated using the verification process rather than the examination process, the owners of water rights in the basin or a specified area in the basin may petition the water court to examine claims in the basin or an area in the basin pursuant to the supreme court rules.

(2) The owners of at least 15% of the number of water rights affected by the proposed reexamination shall sign the petition.

(3) At a minimum, the petition must provide:

(a) the specific water right purpose or water right purposes to be examined; and

(b) the elements to be examined.

(4) (a) The water judge shall evaluate each petition and determine if reexamination is necessary to provide greater accuracy to the adjudication.

(b) The water judge may request public comment on the petition.

(5) If the water judge determines reexamination should be conducted, the water judge shall issue an order that provides:

(a) what water right purpose or water right purposes must be examined by the department;

(b) the elements to be examined;

(c) final disposition of the reexamination information developed by the department; and

(d) the timeframe in which the reexamination must be completed.

(6) The water court may issue an order requiring reexamination on its own initiative. The order must provide the information contained in subsection (5).

(7) Upon receipt of the reexamination information from the department, the water court shall notify the users in the basin or the specified area in the basin identified in the petition of the final results of the reexamination and shall notify them regarding further steps or actions being taken as a result of the reexamination.

(8) Any actions taken as a result of the reexamination must be conducted in accordance with this part.

Section 10. Rulemaking authority. The department may adopt rules for the purpose of implementing [sections 1 through 10].

Section 11. Section 15-1-216, MCA, is amended to read:

“15-1-216. Uniform penalty and interest assessments for violation of tax provisions — applicability — exceptions. (1) (a) 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.

(b) A person who purposely fails to file a required return, statement, or other report must be assessed an additional late filing penalty of \$200 or the amount of the tax due, whichever is less.

(c) A person who fails to pay a tax when due 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 18% of the tax due.

(d) A person who purposely fails to pay a tax when due must be assessed an additional penalty equal to 25% of the tax due or \$200, whichever is less, plus interest as provided in subsection (2).

(2) Interest on taxes not paid when due must be assessed at the rate of 12% a year, accrued at 1% a month or fraction of a month, on the unpaid tax. Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid.

(3) (a) Except as provided in subsection (3)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16 *and [section 5]*.

(b) This section does not apply to:

(i) property taxes;

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70; or

(iii) taxes, fees, and other assessments subject to other penalty or interest charges as provided by law.”

Section 12. Section 85-2-231, MCA, is amended to read:

“85-2-231. Temporary preliminary and preliminary decree. (1) A water judge may issue a temporary preliminary decree prior to the issuance of a preliminary decree if the temporary preliminary decree is necessary for the orderly adjudication or administration of water rights.

(2) (a) The water judge shall issue a preliminary decree. The preliminary decree must be based on:

(i) the statements of claim before the water judge;

(ii) the data submitted by the department;

(iii) the contents of compacts approved by the Montana legislature and the tribe or federal agency or, lacking an approved compact, the filings for federal and Indian reserved rights; and

(iv) any additional data obtained by the water judge.

(b) The preliminary decree must be issued within 90 days after the close of the special filing period set out in 85-2-702(3) or as soon after the close of that period as is reasonably feasible.

(c) The water judge may issue an interlocutory decree if an interlocutory decree is otherwise necessary for the orderly administration of water rights.

(3) A temporary preliminary decree may be issued for any hydrologically interrelated portion of a water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, or any claim or group of claims at a time different from the issuance of other temporary preliminary decrees.

(4) The temporary preliminary decree or preliminary decree must contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-234.

(5) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not satisfied, the water judge may recommit the report to the master with instructions or modify the report and issue the preliminary decree.

(6) The department shall examine claims in basins that were verified rather than examined as ordered by the water court. The objection and hearing provisions of Title 85, chapter 2, part 2, apply to these claims.”

Section 13. Section 85-2-237, MCA, is amended to read:

“85-2-237. Reopening and review of decrees. (1) After July 1, 1996, the water judges shall by order reopen and review, within the limits set forth by the procedures described in this section, all preliminary or final decrees:

(a) that have been issued but have not been noticed throughout the water divisions; ~~or~~

(b) for basins for which claims have been filed under 85-2-221(3); *or*

(c) for basins that were verified and not examined for which the water court has received a petition and has determined that examination is necessary as provided in [section 9] or the water court has issued an order for reexamination on its own initiative.

(2) (a) Each order must state that the water judge will reopen the decree or decrees and, upon a hearing, review the water court’s determination of any claim in the decree or decrees if an objection to the claim has been filed for the purpose of protecting rights to the use of water from sources:

(i) within the basin for which the decree was entered; *or*

(ii) in other basins that are hydrologically connected to sources within the basin for which the decree was entered.

(b) A person may not raise an objection to a matter in a reopened decree if the person was a party to the matter when the matter was previously litigated and resolved as the result of the previous objection process, unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the judgment is void;

(v) any other reason justifying relief from the operation of the judgment.

(c) The objection must be made in accordance with the procedure for filing objections under 85-2-233.

(3) The water judges shall serve notice by mail of the entry of the order providing for the reopening and review of a decree or decrees to the department and to the persons entitled to receive service of notice under 85-2-232(1).

(4) Notice of the reopening and review of a preliminary or final decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation that cover the water division or divisions in which the decreed basin is located.

(5) ~~No~~ *An* objection may *not* cause a reopening and review of a claim unless the objection is filed with the appropriate water court within 180 days after the issuance of the order under subsection (1). This period of time may, for good cause shown, be extended by the water judge for up to two 90-day periods if an application for extension is made within the original 180-day period or any extension of it.

(6) The water judge shall provide notice to the claimant of any timely objection to the claim and, after further reasonable notice to the claimant, the objector or objectors, and other interested persons, set the matter for hearing. The water judge may conduct individual or consolidated hearings, and any hearing must be conducted according to the Montana Rules of Civil Procedure. On an order of the water judge, a hearing may be conducted by a water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(7) The water judge shall, on the basis of any hearing held on the matter, take action as warranted from the evidence, including dismissal of the objection or modification of the portion of the decree describing the contested claim.

(8) An order or decree modifying a previously issued final decree as a result of procedures described in this section may be appealed in the same manner as provided for an appeal taken from a final order of a district court.

(9) An order or decree modifying a previously issued preliminary decree as a result of procedures described in this section may be appealed under 85-2-235 when the preliminary decree has been made a final decree.

(10) An order requiring the department to examine a basin that was initially verified is limited to the types of claims in the basin that were identified in the petition as provided in [section 9] or the types of claims identified in an order that the water court issued on its own initiative."

Section 14. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 85, chapter 2, part 2, and the provisions of Title 85, chapter 2, part 2, apply to [sections 1 through 10].

Section 15. Contingent voidness. If at least \$2 million is not appropriated in a line item for each fiscal year from state sources other than the water adjudication account provided for in [section 7], for the purposes of funding Montana's water adjudication program, then [this act] is void.

Section 16. 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 17. Effective date. [This act] is effective July 1, 2005.

Section 18. Termination. [This act] terminates June 30, 2020.

Approved April 20, 2005

CHAPTER NO. 289

[HB 67]

AN ACT GENERALLY REVISING PROVISIONS OF THE MONTANA PROCUREMENT ACT; PROVIDING THAT THE PUBLIC HAS THE RIGHT TO INSPECT COMPETITIVE SEALED BIDS AFTER THEY ARE OPENED, SUBJECT TO SPECIFIED LIMITATIONS; PROVIDING THAT ART PURCHASED OR COMMISSIONED FOR A MUSEUM OR PUBLIC DISPLAY IS EXEMPT FROM THE ACT; REVISING THE INFORMATION IN A BID OR OFFER THAT MAY NOT BE DISCLOSED; REMOVING THE SUNSET FROM THE PROVISION AUTHORIZING AN AGENCY TO REQUEST AN ALTERNATIVE PROCUREMENT METHOD; REMOVING THE CAP ON THE AMOUNT FOR WHICH A LETTER OF CREDIT MAY BE ISSUED;

PROVIDING AN EXCEPTION TO HOW LONG PERFORMANCE SECURITY ON A CONTRACT MUST BE KEPT; CLARIFYING EXCEPTIONS TO THE CONTRACT TIME PERIOD LIMIT SPECIFIED IN THE ACT; AMENDING SECTIONS 18-4-126, 18-4-132, 18-4-301, 18-4-303, 18-4-304, 18-4-308, 18-4-312, AND 18-4-313, MCA; REPEALING SECTION 29, CHAPTER 181, LAWS OF 2001; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 18-4-126, MCA, is amended to read:

“18-4-126. Public access to procurement information — records — retention. (1) Procurement information is a public writing and must be available to the public as provided in 2-6-102, 18-4-303, and 18-4-304.

(2) All procurement records must be retained, managed, and disposed of in accordance with the state records management program, Title 2, chapter 6.

(3) Written determinations required by this chapter must be retained in the appropriate official contract file of the department or the purchasing agency administering the procurement in accordance with the state records management program.”

Section 2. Section 18-4-132, MCA, is amended to read:

“18-4-132. Application. (1) This chapter applies to the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body under any contract, except a contract exempted from this chapter by this section or by a statute that provides that this chapter does not apply to the contract. This chapter applies to a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state. This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(2) This chapter does not apply to construction contracts.

(3) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.

(4) This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than \$250,000.

(5) This chapter does not apply to contracts entered into by the state compensation insurance fund to procure insurance-related services.

(6) This chapter does not apply to employment of:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(d) consulting actuaries;

(e) a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(f) a private consultant employed by the Montana state lottery;

(g) a private investigator licensed by any jurisdiction;

(h) a claims adjuster; or

(i) a court reporter appointed as an independent contractor under 3-5-601.

(7) (a) This chapter does not apply to electrical energy purchase contracts by the university of Montana or state university, as defined in 20-25-201.

(b) Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure.

(8) *This chapter does not apply to the purchase or commission of art for a museum or public display.*"

Section 3. Section 18-4-301, MCA, is amended to read:

"18-4-301. (~~Temporary~~) 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) "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) (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) "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) "Invitation for bids" means all documents, whether attached or incorporated by reference, used for soliciting bids.

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

(7) "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) "Request for proposals" means all documents, whether attached or incorporated by reference, used for soliciting proposals.

(9) “Responsible bidder or offeror” means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will ensure good faith performance.

(10) “Responsive bidder” means a person who has submitted a bid that conforms in all material respects to the invitation for bids or request for proposals.

(11) “Term contract” means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time. (Terminates June 30, 2005—sec. 29, Ch. 181, L. 2001.)

18-4-301. (Effective July 1, 2005) Definitions. As used in this part, the following definitions apply:

(1) ~~“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.~~

(2) (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.~~

(3) ~~“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.~~

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

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

(6) ~~“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.~~

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

(8) “Responsible bidder or offeror” means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will ensure good faith performance.

(9) “Responsive bidder or offeror” means a person who has submitted a bid or proposal that conforms in all material respects to the invitation for bids or request for proposals.

(10) “Term contract” means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time.”

Section 4. 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 ~~2-6-102~~ and are subject to the requirements of subsection (4) *18-4-126.*

~~(4) Bids must be available for public inspection when the bids are opened if:~~

~~(a) the invitation for bids is issued by a state agency to contract with the private sector to provide services currently conducted by state employees; and~~

~~(b) acceptance of bids would result in the displacement of five or more state employees.~~

~~(5)(6)~~ (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.

~~(6)(7)~~ (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.

~~(7)(8)~~ (8) ~~The contract~~ *If an award is made, it must be awarded 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 ~~low~~ 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 ~~low~~ *lowest* responsible and responsive bidder in order to bring the bid within the amount of available funds.

~~(8)~~(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.”

Section 5. Section 18-4-304, MCA, is amended to read:

“18-4-304. Competitive sealed proposals. (1) The department may procure supplies and services through competitive sealed proposals.

(2) Proposals must be solicited through a request for proposals.

(3) Adequate public notice of the request for proposals must be given in the same manner as provided in 18-4-303(2).

(4) After the proposals have been opened at the time and place designated in the request for proposals *and reviewed by the procurement officer for release*, proposal documents may be inspected by the public, subject to the limitations of:

(a) the Uniform Trade Secrets Act, Title 30, chapter 14, part 4;

(b) matters involving individual safety as determined by the department;
and

~~(e) information requested by the department to establish vendor responsibility unless prior written consent has been given by the vendor, pursuant to 18-4-308; and~~

~~(d)~~(c) other constitutional protections.

(5) The request for proposals must state the evaluation ~~factors~~ *criteria* and their relative importance. ~~The award~~ *If an award is made, it* must be made to the responsible and responsive offeror whose proposal best meets the evaluation criteria. Other ~~factors or~~ *criteria* may not be used in the evaluation. The contract file must demonstrate the basis on which the award is made.

(6) The department may discuss a proposal with an offeror for the purpose of clarification or revision of the proposal.”

Section 6. Section 18-4-308, MCA, is amended to read:

“18-4-308. Nonresponsibility of bidders and offerors — nondisclosure. (1) A written determination of nonresponsibility of a bidder or offeror must be made in accordance with rules adopted by the department. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to ~~such~~ *that* bidder or offeror.

~~(2) Information furnished by a bidder or offeror pursuant to this section may not be disclosed outside of the department or the purchasing agency without prior written consent by the bidder or offeror.”~~

Section 7. Section 18-4-312, MCA, is amended to read:

“18-4-312. Bid and contract performance security. (1) For state contracts for the procurement of services or of supplies, the department may in its discretion require:

(a) bid security;

(b) contract performance security to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, mechanics, and subcontractors; or

(c) both bid and contract performance security.

(2) (a) If security is required under subsection (1), the following types of security may be required to be deposited with the state:

(i) a sufficient bond with a licensed surety company as surety;

(ii) an irrevocable letter of credit ~~not to exceed \$100,000~~ in accordance with the provisions of Title 30, chapter 5, part 1;

(iii) money of the United States;

(iv) a cashier's check, certified check, bank money order, certificate of deposit, money market certificate, or bank draft that is drawn or issued by a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation or that is drawn and issued by a credit union insured by the national credit union share insurance fund.

(b) The department may not require that a bond required pursuant to subsection (2)(a)(i) be furnished by a particular surety company or by a particular insurance producer for a surety company.

(3) The amount and type of the security must be determined by the department to be sufficient to cover the risk involved to the state. The security must be payable to the state of Montana. Contract performance security must remain in effect for the entire contract period, *except as provided pursuant to an agency liquor store franchise agreement under 16-2-101*. In determining the amount and type of contract performance security required for each contract, the department shall consider the nature of the performance and the need for future protection to the state. In determining the need for and amount of bid security, the department shall consider the risks involved to the state if a successful bidder or offeror fails to enter into a formal contract. The considerations must include but are not limited to the type of supply or service being procured, the dollar amount of the proposed contract, and delivery time requirements. The department may adopt rules to assist it in making these determinations and in protecting the state in dealing with irrevocable letters of credit. Bid and contract security requirements must be included in the invitations for bids or requests for proposals.

(4) If a bidder or offeror to whom a contract is awarded fails or refuses to enter into the contract or provide contract performance security, as required by the invitation for bid or request for proposal, after notification of award, the department may, in its discretion, require the bidder *or offeror* to forfeit the bid security to the state and become immediately liable on the bid security, but not in excess of the sum stated in the security. The liability of the bidder or offeror, the maker of the security or bid bond, or the liability on the bid bond or other security may not exceed the amount specified in the invitation for bid or request for proposal.

(5) Negotiable instruments provided as bid security must be refunded to those bidders or offerors whose bids or proposals are not accepted.

(6) The provisions of Title 18, chapter 1, part 2, and Title 18, chapter 2, parts 2 and 3, do not apply to procurements under this chapter."

Section 8. Section 18-4-313, MCA, is amended to read:

“18-4-313. Contracts — terms, extensions, and time limits. (1) ~~Unless~~ *Except as provided in subsection (2) or unless* otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a period of more than 7 years. ~~However, the department may contract for hardware, software, or other information technology resources, the department of revenue may contract with liquor agencies, and the department of public health and human services may contract for the medicaid management information system (MMIS) for a period not to exceed 10 years.~~ A contract, lease, or rental agreement may be extended or renewed if the terms of the extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period at the time of the agreement, and if the total contract period, including any extension or renewal, does not exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

(2) *The contract term limit specified in subsection (1) does not apply to:*

(a) *a contract for hardware, software, or other information technology resources, which may be made for a period not to exceed 10 years;*

(b) *a department of revenue liquor store contract governed by the term specified in 16-2-101; and*

(c) *a department of corrections contract governed by the term specified in 53-1-203, 53-30-505, or 53-30-608.*

~~(2)~~(3) Prior to the issuance, extension, or renewal of a contract, it must be determined that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

~~(3)~~(4) If funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled.”

Section 9. Repealer. Section 29, Chapter 181, Laws of 2001, is repealed.

Section 10. Effective date. [This act] is effective July 1, 2005.

Approved April 20, 2005

CHAPTER NO. 290

[HB 156]

AN ACT ESTABLISHING RECIPROCAL TIME LIMITS FOR HEALTH INSURANCE CLAIM FILING, CLAIM REIMBURSEMENTS, AND CLAIM AUDITS; SETTING A TIME LIMIT FOR HEALTH INSURANCE ISSUERS TO SEEK REIMBURSEMENT OR AN OFFSET OF A CLAIM AND PROVIDING EXCEPTIONS TO THE TIME LIMIT; REQUIRING AN AGREEMENT TO USE CURRENT CLAIM PAYMENTS TO OFFSET PAST OVERPAYMENTS OR INVALID PAYMENTS; AMENDING SECTION 33-22-101, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Reciprocal limitations on claim filing and claim audits — time limit for reimbursements or offsets — exceptions. (1) Except as provided in subsection (3), (4), or (5), if a health insurance issuer limits the time in which a health care provider or other person is required to submit a claim for payment, the health insurance issuer has the same time limit following payment of the claim to perform any review or audit for reconsidering the validity of the claim and requesting reimbursement for payment of an invalid claim or overpayment of a claim.

(2) Except as provided in subsection (3), (4), or (5), if a health insurance issuer does not limit the time in which a health care provider or other person is required to submit a claim for payment, a health insurance issuer may not request reimbursement or offset another claim payment for reimbursement of an invalid claim or overpayment of a claim more than 12 months after the payment of an invalid or overpaid claim.

(3) Regardless of the period allowed by a health insurance issuer for submission of claims for payment, a health insurance issuer may perform a review or audit to reconsider the validity of a claim and may request reimbursement for an invalid or overpaid claim within 12 months from the date upon which the health insurance issuer received notice of a determination, adjustment, or agreement regarding the amount payable with respect to a claim by:

- (a) medicare;
- (b) a workers' compensation insurer;
- (c) another health insurance issuer or group health plan;
- (d) a liable or potentially liable third party; or
- (e) a foreign health insurance issuer under an agreement among plans operating in different states when the agreement provides for payment by the Montana health insurance issuer as host plan to Montana providers for services provided to an individual under a plan issued outside of the state of Montana.

(4) (a) The time limitations on the health insurance issuer in subsections (1) and (2) do not commence running until the time specified in subsection (4)(b) if a health insurance issuer pays a claim in which the health insurance issuer:

- (i) suspects the health care provider or claimant of insurance fraud related to the claim; and
- (ii) has reported evidence of fraud related to the claim to the commissioner pursuant to 33-1-1205.

(b) The time limitation commences running on the date that the commissioner determines that insufficient evidence of fraud exists.

(5) The time limitations on the health insurance issuer in subsections (1) and (2) do not commence running until the health insurance issuer has actual knowledge of an invalid claim, claim overpayment, or other incorrect payment if the health insurance issuer has paid a claim incorrectly because of an error, misstatement, misrepresentation, omission, or concealment, other than insurance fraud, by the health care provider or other person. Regardless of the date upon which the health insurance issuer obtains actual knowledge of an invalid claim, claim overpayment, or other incorrect payment, this subsection does not permit the health insurance issuer to request reimbursement or to offset another claim payment for reimbursement of the claim more than 24 months after payment of the claim.

Section 2. Offset agreement. A health insurance issuer may not collect a claim overpayment or other reimbursement by offsetting another claim payment made to a health care provider or other person unless the health care provider or other person has previously authorized the health insurance issuer in writing to recover an overpayment or other reimbursement by offsetting a future claim payment.

Section 3. Section 33-22-101, MCA, is amended to read:

“33-22-101. Exceptions to scope. ~~Parts (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:~~

~~(1)(a)~~ any policy of liability or workers’ compensation insurance with or without supplementary expense coverage;

~~(2)(b)~~ any group or blanket policy;

~~(3)(c)~~ life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance that:

~~(a)(i)~~ provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

~~(b)(ii)~~ operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity ~~in the event that if~~ the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract;

~~(4)(d)~~ reinsurance.

~~(2) [Sections 1 and 2] apply to group or blanket policies.”~~

Section 4. Codification instruction. [Sections 1 and 2] are 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 [sections 1 and 2].

Section 5. Effective date — applicability. [This act] is effective January 1, 2006, and applies to claims made on or after January 1, 2006.

Approved April 19, 2005

CHAPTER NO. 291

[HB 295]

AN ACT PROHIBITING EXPIRATION DATES ON GIFT CARDS AND GIFT CERTIFICATES; ASSOCIATING OWNERSHIP WITH THE POSSESSOR OF THE CARD OR CERTIFICATE; LIMITING FEES; ALLOWING LIMITED CASH REDEMPTION; AND AMENDING SECTION 30-14-102, MCA.

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

Section 1. Termination of gift certificate prohibited — fee limitation — redemption — posting required. (1) A gift certificate is valid until redemption and does not terminate. 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.

(2) The value represented by the gift certificate belongs to the possessor and not to the issuer or seller. An issuer or seller may redeem a gift certificate presented by an individual whose name does not match the name on the gift certificate.

(3) A gift certificate may not be reduced in value by any fee, including a dormancy fee applied if a certificate is not used.

(4) If the original value of the gift certificate was more than \$5 and the remaining value is less than \$5 and the possessor requests cash for the remainder, the issuer or seller shall redeem the gift certificate for cash.

Section 2. 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 administration created in 2-15-1001.

(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, 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:*

(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.*

~~(5)~~(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.*

~~(6)~~(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 3. Codification instruction. [Section 1] is intended to be codified as integral parts of Title 30, chapter 14, part 1, and the provisions of Title 30, chapter 14, part 1, apply to [section 1].

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].

Approved April 19, 2005

CHAPTER NO. 292

[HB 363]

AN ACT CHANGING THE MENTAL STATE ELEMENT OF AND EXPANDING THE OFFENSE OF ASSAULT WITH A BODILY FLUID; INCLUDING AN ASSAULT ON AN EMERGENCY RESPONDER OR A HEALTH CARE PROVIDER, INCLUDING A HEALTH CARE PROVIDER PERFORMING EMERGENCY SERVICES, WHILE THE HEALTH CARE PROVIDER IS ACTING IN THE COURSE AND SCOPE OF THE HEALTH CARE PROVIDER'S PROFESSION OR OCCUPATION; AND AMENDING SECTION 45-5-214, MCA.

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

Section 1. Section 45-5-214, MCA, is amended to read:

"45-5-214. Assault with bodily fluid. (1) A person commits the offense of assault with a bodily fluid if the person purposely or ~~knowingly~~ causes one of the person's bodily fluids to make physical contact with:

(a) a law enforcement officer, ~~or a~~ staff person of a correctional or detention facility, or a health care provider, as defined in 50-4-504, including a health care provider performing emergency services, while the health care provider is acting in the course and scope of the health care provider's profession and occupation:

~~(a)~~(i) during or after an arrest for a criminal offense;

~~(b)~~(ii) while the person is incarcerated in or being transported to or from a state prison, ~~or a~~ county, city, or regional jail or detention facility, or a health care facility; or

~~(c)~~(iii) if the person is a minor, while the youth is detained in or being transported to or from a county, city, or regional jail or detention facility or a youth detention facility, secure detention facility, regional detention facility, short-term detention center, state youth correctional facility, health care facility, or shelter care facility; or

(b) an emergency responder.

(2) A person convicted of the offense of assault with a bodily fluid shall be fined an amount not to exceed \$1,000 or incarcerated in a county jail or a state prison for a term not to exceed 1 year, or both.

(3) The youth court has jurisdiction of any violation of this section by a minor, unless the charge is filed in district court, in which case the district court has jurisdiction.

(4) As used in this section, ~~“bodily”~~ *the following definitions apply:*

(a) *“Bodily fluid” means any bodily secretion, including but not limited to feces, urine, blood, and saliva.*

(b) *“Emergency responder” means a licensed medical services provider, law enforcement officer, firefighter, volunteer firefighter or officer of a nonprofit volunteer fire company, emergency medical technician, emergency nurse, ambulance operator, provider of civil defense services, or any other person who in good faith renders emergency care or assistance at a crime scene or the scene of an emergency or accident.”*

Approved April 19, 2005

CHAPTER NO. 293

[HB 528]

AN ACT REMOVING SEASONAL RESTRICTIONS ON THE BEER AND WINE LICENSE FOR THE YELLOWSTONE AIRPORT; IMPOSING AN ANNUAL FEE OF \$400 ON THE LESSEE OF A RETAIL BEER AND WINE LICENSE AT THE YELLOWSTONE AIRPORT; AMENDING SECTIONS 16-4-304 AND 16-4-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 16-4-304, MCA, is amended to read:

“16-4-304. ~~Seasonal beer~~ Beer and wine license for Yellowstone airport. (1) Upon application, the department of revenue shall issue a retail beer and wine license to the Yellowstone airport, which is an airport near West Yellowstone, Montana, owned by the state of Montana and operated by the department of transportation.

(2) The application must be made by the department of transportation. The department of transportation may lease the license of use at the airport to an individual or entity approved by the department of revenue.

(3) The license is valid for the retail sale of beer and wine ~~from June 1 to October 1~~ of each year.

(4) ~~There is no annual fee for the license~~ *The lessee shall pay to the department of revenue an annual license fee as provided in 16-4-501.*

(5) The license issued pursuant to this section:

(a) is not subject to the quota provisions of 16-4-105;

(b) is nontransferable;

(c) does not permit gambling activities otherwise allowed under Title 23, part 5.”

Section 2. Section 16-4-501, MCA, is amended to read:

“16-4-501. License and permit fees. (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions

of this code, shall pay a license fee. Unless otherwise specified in this section, the fee is an annual fee and is imposed as follows:

(a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, \$500;

(ii) for each storage depot, \$400;

(b) (i) each beer wholesaler, \$400; each domestic winery producing more than 25,000 gallons of wine, \$400; each domestic winery producing 25,000 gallons or less of wine, \$200; each table wine distributor, \$400;

(ii) for each subwarehouse, \$400;

(c) each beer retailer, \$200;

(d) (i) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license;

(ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, \$200;

(e) any unit of a nationally chartered veterans' organization, \$50.

(2) The permit fee under 16-4-301(1) is computed at the following rate:

(a) \$10 a day for each day that beer and table wine are sold at events, activities, or sporting contests, other than those applied for pursuant to 16-4-301(1)(c); and

(b) \$1,000 a season for professional sporting contests or junior hockey contests held under the provisions of 16-4-301(1)(c).

(3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license fee in the sum of \$300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is \$200.

(6) The annual renewal fee for:

(a) a brewer producing 20,000 or fewer barrels of beer, as defined in 16-1-406, is \$200; and

(b) resort retail all-beverages licenses within a given resort area is \$2,000 for each license.

(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as provided in this section, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, \$250 for a unit of a nationally chartered veterans' organization and \$400 for all other licensees;

(b) except as provided in this section, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$350 for a unit of a nationally chartered veterans' organization and \$500 for all other licensees;

(c) except as provided in this section, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to

be licensed to the nearest boundary of the city, \$500 for a unit of a nationally chartered veterans' organization and \$650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$650 for a unit of a nationally chartered veterans' organization and \$800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsections (6) and (7)(d) shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a \$20,000 license fee. A successful applicant shall pay a one-time original license fee of \$20,000 for a license issued. The one-time license fee of \$20,000 may not apply to any transfer or renewal of a license issued prior to July 1, 1974. All licenses, however, are subject to the specified annual renewal fees.

(8) The fee for one all-beverages license to a public airport is \$800. This license is nontransferable.

(9) *The annual fee for a retail beer and wine license to the Yellowstone airport is \$400.*

(10) The annual fee for a special beer and table wine license for a nonprofit arts organization under 16-4-303 is \$250.

~~(10)~~(11) The license fees provided in this section are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

~~(11)~~(12) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year or 1 year after the licensee's anniversary date, 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month after the licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal year or 1 year and 2 months after the licensee's anniversary date.

~~(12)~~(13) All license and permit fees collected under this section must be deposited as provided in 16-2-108."

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

Approved April 20, 2005

CHAPTER NO. 294

[HB 628]

AN ACT PROVIDING FOR A BOARD OF PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS; PROVIDING FOR REGISTRATION WITH THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING BOARD DUTIES; REQUIRING A REPORT TO THE LEGISLATURE ON THE NEED FOR ANY ADDITIONAL REGULATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Board of private alternative adolescent residential or outdoor programs. (1) There is a board of private alternative adolescent residential or outdoor programs.

(2) The board consists of five members appointed by the governor with the consent of the senate for 3-year terms. The members must include:

(a) three members from a list of nominees provided by programs, as defined in [section 3], of various sizes and types; and

(b) two members who must be from the general public.

(3) A vacancy on the board must be filled in the same manner as the original appointment.

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

Section 2. Purpose. The purpose of the board is to examine the benefit of licensing private alternative adolescent residential or outdoor programs as a public service to monitor and maintain a high standard of care and to ensure the safety and well-being of the adolescents and parents using the programs. Necessary licensure processes and safety standards for programs are best developed and monitored by the professionals that are actively engaged in providing private alternative adolescent residential care.

Section 3. Definitions. As used in [sections 2 through 4], the following definitions apply:

(1) "Board" means the board of private alternative adolescent residential or outdoor programs provided for in [section 1].

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) (a) "Program" means a private alternative adolescent residential or outdoor program that provides a structured, private, alternative residential setting for youth who are experiencing emotional, behavioral, or learning problems and who have a history of failing in academic, social, moral, or emotional development at home or in less-structured traditional settings.

(b) The term does not include:

(i) any program that is required to be licensed or regulated by the state under Title 50, 52, or 53;

(ii) recreational programs such as boy scouts, girl scouts, or 4-H clubs;

(iii) organizations, boarding schools, or residential schools with a sole focus on academics;

(iv) residential training or vocational programs with a sole focus on education and vocational training;

(v) youth camps with a focus on recreation and faith-related activities; or

(vi) an organization, boarding school, or residential school that is an adjunct ministry of a church incorporated in the state of Montana.

Section 4. Powers and duties of board — registration requirements.

(1) The board shall develop and implement a process for registration of programs and to set fees to carry out its duties under this section.

(2) The board shall:

(a) examine data gathered from the registration process;

(b) examine current regulations and standards applicable to these programs;

(c) determine additional regulations and standards that are needed;

(d) examine the quality of child care available in the various programs, any aspects of existing programs that need improvement, and the positive contributions to or negative interactions with local communities;

(e) determine the need for the continued existence of the board and its duties or responsibilities; and

(f) report to the economic affairs interim committee detailing the board's findings, recommendations, and proposed legislation, if any, by September 15, 2006.

(3) The board shall require information to be provided for registration of programs. The information includes but is not limited to:

(a) a description of the program and facility;

(b) a description of the population served by the program;

(c) the location and contact information for each program, including the person responsible for the conduct of the program;

(d) a list of professional and supervisory employees and relevant credentials and other qualifications;

(e) the average daily census;

(f) a copy of program policies and procedures on:

(i) admission;

(ii) behavior management;

(iii) communication with family members;

(iv) the availability of routine and emergency medical and psychological care; and

(v) medication management.

(4) The board shall adopt rules to determine any additional information necessary for registration. Registration must be updated annually. The board may set fees as provided in 37-1-134 that may be commensurate with program size. The board shall make available to the public information on the name, address, and contact information for each registered program.

(5) The board is exempt from the provisions in 37-1-105, 37-1-136, 37-1-137, 37-1-138, 37-1-141, and Title 37, chapter 1, parts 2 and 3.

Section 5. 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 4] are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 2 through 4].

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

Approved April 19, 2005

CHAPTER NO. 295

[HB 745]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2005; 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, 2005. The unspent balance of any appropriation must revert to the appropriate fund.

Section 2. Appropriations — authorization to expend money. (1) Except as provided in subsection (2), the following money is appropriated, subject to the terms and conditions of [section 1]:

| Agency and Program | Amount | Fund |
|--|-------------|-------------------|
| Department of Public Health & Human Services | | |
| Child and Family Services Division | \$1,669,184 | General Fund |
| Medicaid | \$2,000,000 | General Fund |
| Child Support Enforcement Division | \$857,058 | General Fund |
| Department of Corrections | | |
| Secure Care and Community Corrections | \$4,415,657 | General Fund |
| Department of Justice | | |
| Legal Services Major Litigation | \$200,000 | General Fund |
| Highway Patrol Retirement—Chapter 592, Laws of 2003 (HB 559) | \$363,762 | General Fund |
| Exempt Staff Payout | \$24,000 | General Fund |
| Exempt Staff Payout | \$33,000 | State Special |
| Exempt Staff Payout | \$3,000 | Proprietary Funds |
| Highway Patrol Settlement | \$8,500,000 | General Fund |
| Office of the Governor | | |
| Exempt Staff Payout—Change in Administration | \$163,683 | General Fund |
| Ombudsman ineligible for federal funding | \$135,123 | General Fund |

Office of the Commissioner of Political Practices

| | | |
|--|----------|--------------|
| Exempt Staff Payout—Change in Administration | \$10,262 | General Fund |
|--|----------|--------------|

Judicial Branch

| | | |
|------------------------------|-------------|--------------|
| District Court Reimbursement | \$6,800,000 | General Fund |
|------------------------------|-------------|--------------|

Department of Natural Resources and Conservation

| | | |
|---------------|-------------|--------------|
| FY 2004 Fires | \$2,000,000 | General Fund |
|---------------|-------------|--------------|

| | | |
|-----------------------|-------------|--------------|
| Crow Tribe Settlement | \$9,000,000 | General Fund |
|-----------------------|-------------|--------------|

Department of Agriculture

| | | |
|---|----------|--------------|
| Protecting Montana Cattle from Bovine Spongiform Encephalopathy (BSE) | \$41,318 | General Fund |
|---|----------|--------------|

Department of Revenue

| | | |
|---|--------------|--------------|
| Payoff IRIS loan and finish contractor payments | \$13,900,000 | General Fund |
|---|--------------|--------------|

Department of Administration

| | | |
|--|-------------|--------------|
| Finish contractor payments on IRIS phase one | \$2,100,000 | General Fund |
|--|-------------|--------------|

(2) If the actual common school interest and income revenue deposited in the guarantee account established in 20-9-622 by the end of fiscal year 2005 is less than the amount of common school interest and income revenue needed to make statutorily determined payments to school district BASE aid, with current House Bill No. 2 general fund BASE aid appropriation authority, then the office of public instruction school BASE aid general fund appropriation for the fiscal year ending June 30, 2005, is increased by the amount needed to make statutorily determined payments to school district BASE aid, with current House Bill No. 2 general fund BASE aid, up to a maximum of \$3 million in general fund money.

(3) If the budget director certifies that the judicial branch has district court expenditures, as provided in 3-5-901, that exceed \$21,006,994 in the 2005 biennium, the supreme court is appropriated up to a maximum of \$500,000 in additional general fund money for those expenses.

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

Approved April 20, 2005

CHAPTER NO. 296

[SB 1]

AN ACT PROVIDING FOR AN INDICATION ON A DRIVER'S LICENSE THAT A LICENSEE HAS EXECUTED A LIVING WILL DECLARATION; AND AMENDING SECTION 61-5-301, MCA.

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

Section 1. Section 61-5-301, MCA, is amended to read:

“61-5-301. Indication on driver’s license of intent to make anatomical gift or of living will declaration. (1) The department of justice shall provide on each driver’s license ~~a space~~ *spaces* for indicating when the licensee has:

(a) executed a document under 72-17-201 of intent to make a gift of all or part of the driver’s body under the Uniform Anatomical Gift Act; *or*

(b) *executed a declaration under 50-9-103 relating to the use of life-sustaining treatment.*

(2) The department shall provide each applicant, at the time of application for a new driver’s license or for a renewal, printed information calling the applicant’s attention to the provisions of this section. Each applicant must be asked orally if the applicant wishes to make an anatomical gift *and if the applicant has executed the declaration under 50-9-103 relating to the use of life-sustaining treatment.*

(3) Each applicant must be given an opportunity to indicate in the ~~space~~ *spaces* provided under subsection (1) the applicant’s intent to make an anatomical gift *or that the applicant has executed the declaration under 50-9-103 relating to the use of life-sustaining treatment.*

(4) The department shall issue to each applicant who indicates an intent to make an anatomical gift a statement that, when signed by the licensee in the manner prescribed in 72-17-201, constitutes a document of anatomical gift. This statement must be printed on a sticker that the donor may attach permanently to the back of the donor’s driver’s license.

(5) The department shall electronically transfer the information of all persons who volunteer, upon application for a driver’s license or an identification card, to donate organs or tissue to the organ and tissue donation registry created in 72-17-105 and 72-17-106 and any subsequent changes to the applicant’s donor status.”

Approved April 20, 2005

CHAPTER NO. 297

[SB 104]

AN ACT PROVIDING A GRADUATED DRIVER’S LICENSING PROGRAM, WITH MOTOR VEHICLE OPERATION RESTRICTIONS, FOR PERSONS UNDER 18 YEARS OF AGE; AMENDING SECTIONS 61-5-106 AND 61-5-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Purpose. The purpose of [sections 1 through 5] is to create a graduated driver’s licensing program that will allow persons under 18 years of age to progressively develop and improve their driving skills in the safest possible environment and that will improve highway safety by reducing the disproportionately high incidence of motor vehicle accidents involving minors.

Section 2. Prerequisites for issuance of driver’s license to minor. (1) The department may issue a driver’s license, subject to the restrictions of [section 3], to a person under 18 years of age if the person:

(a) has held an instruction permit or traffic education learner's license for a period of not less than 6 months;

(b) has passed a road test or a skills test, as provided in 61-5-110;

(c) presents written certification from the person's parent or legal guardian that states that the person has had at least 50 hours of driving experience, 10 of which were at night, during which the person was supervised by a parent, a legal guardian, or a person at least 18 years of age, with the consent of the parent or legal guardian, who had a valid driver's license; and

(d) presents written certification from the person's parent or legal guardian that states that, during the 6-month period immediately preceding application for a driver's license, the person has not been convicted of a traffic violation or convicted of or adjudicated for an offense involving the use of alcohol or drugs and the person has no pending traffic, alcohol, or drug citations.

(2) If a parent or a legal guardian for a person under 18 years of age cannot certify that the person has a 6-month conviction-free record for traffic, alcohol, and drug violations and no pending traffic, alcohol, or drug citations, the department may extend the person's instruction permit or traffic education learner's license for an additional 1-year period or until the person's 18th birthday, whichever occurs first.

(3) (a) The requirements of subsections (1)(a) through (1)(c) do not apply to a person under 18 years of age who has been licensed in another state for at least 6 months and surrenders a valid driver's license from that state.

(b) The requirements of subsection (1)(c) do not apply to a person under 18 years of age who, at the time of application for a driver's license, is an enrollee of a job corps program located in Montana. The department may require the applicant to provide current documentation of the applicant's job corps program enrollment status.

Section 3. First year restrictions on driver's license issued to minor.

(1) A driver's license issued to a person who is under 18 years of age is subject to the following restrictions for 1 year from the date of issuance of the license or until the person is 18 years of age, whichever occurs first:

(a) A restricted licensee may not operate a motor vehicle, required by 61-9-409 to be equipped with seatbelts, unless each occupant of the motor vehicle is wearing a seatbelt, as defined in 61-13-102, or is properly restrained, as required under 61-9-420. The number of motor vehicle occupants may not exceed the number of seatbelts with which the motor vehicle is equipped.

(b) A restricted licensee may not operate a motor vehicle between the hours of 11 p.m. and 5 a.m. unless the restricted licensee is:

(i) accompanied by a licensed driver who is 18 years of age or older or, if the restricted licensee is operating a motorcycle, the restricted licensee is under the immediate and proximate visual supervision of a licensed driver who is 18 years of age or older and who is riding with the licensee and is operating a separate motorcycle or other motor vehicle;

(ii) driving to the restricted licensee's place of employment from the restricted licensee's residence, is returning to the restricted licensee's residence from the restricted licensee's place of employment, or is driving in the course and scope of employment;

(iii) driving from the restricted licensee's residence to a school-sponsored event at a school attended by the restricted licensee, including any site for

school-provided transportation to and from the event, or is returning from the event or site to the restricted licensee's residence;

(iv) driving from the restricted licensee's residence to an event sponsored by a religious organization or is returning from the event to the restricted licensee's residence;

(v) driving for a purpose related to a medical emergency, fire emergency, or law enforcement-related emergency;

(vi) driving for the sole purpose of transporting farm or ranch products, machinery, or supplies within 150 miles of a farm or ranch headquarters;

(vii) an emancipated minor; or

(viii) driving under a specific authorization for a specific purpose from the restricted licensee's parent or legal guardian. A peace officer may verify the authorization by contacting the parent or legal guardian.

(c) (i) For the first 6 months of the 1-year restriction period, a restricted licensee may not operate a motor vehicle with more than one passenger who is under 18 years of age unless:

(A) the restricted licensee is supervised by a licensed driver who is at least 18 years of age; or

(B) the additional passengers under 18 years of age are members of the restricted licensee's family.

(ii) For the second 6 months of the 1-year restriction period, a restricted licensee may not operate a motor vehicle with more than three passengers who are under 18 years of age unless:

(A) the restricted licensee is supervised by a licensed driver who is at least 18 years of age; or

(B) the additional passengers under 18 years of age are members of the licensee's family.

(iii) For the first 6 months of the 1-year restriction period, a restricted licensee may not operate a motorcycle with a passenger who is under 18 years of age.

(2) For purposes of this section, the term "restricted licensee" includes a person under 18 years of age who holds a motorcycle-only endorsement issued by the department and the term "motor vehicle" includes a motorcycle, except when otherwise noted.

Section 4. Operation of motor vehicle by minor in violation of restricted first-year license — penalty. (1) A person whose driver's license is restricted under [section 3] may not operate a motor vehicle, including a motorcycle, in violation of a restriction imposed under that section.

(2) A person convicted under this section shall be ordered to perform not less than 20 hours or more than 60 hours of community service.

(3) Upon receipt of a report of a second or subsequent conviction under this section, the department shall suspend the person's driver's license for 6 months. A probationary driver's license may not be issued during the period of suspension.

Section 5. Education on distracted driving. (1) The department, in consultation with the superintendent of public instruction, shall encourage schools providing traffic education to include in the school's traffic education

curriculum information regarding the dangers of physical and cognitive distractions while driving.

(2) To reduce the risks for novice drivers, the department shall include in its publications intended for novice drivers information concerning the dangers of physical and cognitive distractions while driving, including but not limited to mental inattentiveness because of stress, fatigue, heightened emotion, conversation with passengers, stereo or climate control adjustment, food and drink, use of electronic devices, and personal grooming.

Section 6. Section 61-5-106, MCA, is amended to read:

“61-5-106. Instruction permits — traffic education learner licenses and permits — temporary licenses. (1) (a) The department may issue an instruction permit, *which is valid for 1 year from the date of issuance*, to a person satisfying the age requirements specified in 61-5-105(1) after the applicant has successfully passed the knowledge test and the vision examination, as provided in 61-5-110. ~~An~~ *Except as provided in subsections (1)(b) and (1)(c), an* instruction permit entitles the ~~permittee~~ *permitholder*, while in immediate possession of the permit and accompanied by a licensed driver seated beside the ~~permittee~~ *permitholder*, to drive a motor vehicle *other than a motorcycle* upon the public highways ~~for a period of 6 months from the date the fees required in 61-5-111 are paid.~~

(b) *If the permitholder is under 18 years of age, the driver supervising the permitholder must be a parent or a legal guardian of the permitholder or, with the permission of the permitholder's parent or legal guardian, a licensed driver 18 years of age or older. Each occupant of a motor vehicle driven by a permitholder who is under 18 years of age shall wear a properly adjusted and fastened seatbelt or, if 61-9-420 applies, must be properly restrained in a child safety restraint.*

(c) *A person holding an instruction permit for a motorcycle may drive a motorcycle upon a public highway if the person is not carrying a passenger, has immediate possession of the permit, and is under the immediate and proximate visual supervision of one of the following persons, who must be at least 18 years of age if the permitholder is under 18 years of age:*

(i) *a motorcycle-endorsed licensed driver who is riding with the permitholder and who is operating a separate motorcycle or other motor vehicle; or*

(ii) *a licensed driver who is operating a separate motor vehicle if the permitholder has successfully completed a motorcycle safety training course through a cooperative driver testing program certified under 61-5-110.*

(2) The department may issue a traffic education learner license, *which is valid for 1 year from the date of issuance*, to any person who is at least 14 1/2 years of age and who has successfully completed or is successfully participating in a traffic education course approved by the department and the superintendent of public instruction *and that is available to all who meet the age requirements specified in 20-7-503 and reside within the geographical boundaries of or attend a school in the school district that offers the course.* A traffic education learner license entitles the licensee to operate a motor vehicle only when accompanied by an approved instructor or licensed parent or guardian and may be restricted to specific times or areas.

(3) (a) An instructor of a traffic education program approved by the department and by the superintendent of public instruction may issue a traffic education permit that is effective for a school year or more restricted period to an

applicant who is enrolled in a traffic education program approved by the department and who meets the age requirements specified in 20-7-503.

(b) When in immediate possession of the traffic education permit, the permittee may operate on a designated highway or within a designated area:

(i) a motor vehicle when an approved instructor is seated beside the permittee; or

(ii) a motorcycle or quadricycle when under the immediate and proximate supervision of an approved instructor.

(4) The department may in its discretion issue a temporary driver's permit to an applicant for a driver's license permitting the applicant to operate a motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's right to receive a driver's license. The temporary driver's permit must be in the permittee's immediate possession while operating a motor vehicle, and it is invalid when the applicant's license has been issued or for good cause has been refused.

(5) The department may in its discretion issue a temporary commercial driver's license to an applicant permitting the applicant to operate a commercial motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's right to receive a commercial driver's license. The temporary license must be in the applicant's immediate possession while operating a commercial motor vehicle and is invalid when the applicant's license has been issued or for good cause has been refused.

(6) The department may in its discretion issue a temporary medical assessment and rehabilitation driving permit, as provided in 61-5-120."

Section 7. Section 61-5-111, MCA, is amended to read:

"61-5-111. Contents of a driver's license, renewal, renewal by mail, license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration. (1) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts. 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.

(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 skills test if:

(i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

(b) In the case of a commercial driver's license, the department shall, if the information was not provided in a prior licensing cycle, require the renewal applicant to provide the name of each jurisdiction in which the applicant was previously licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the renewal application and may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license. Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.

(d) (i) A person may renew a driver's license by mail if the person certifies that the person is temporarily out of state and will not be returning to the state prior to the expiration of the license.

(ii) An applicant who renews a driver's license by mail shall submit to the department an approved vision examination and a medical evaluation from a licensed physician in addition to the fees required for renewal.

(iii) If the department does not have a digitized photograph or signature record of the renewal applicant from the expiring license, then the department may require the renewal applicant to submit a personal photograph and signature that meets the requirements prescribed by the department.

(iv) The term of a license renewed by mail is 4 years, and a person may not renew by mail for consecutive license terms.

(v) The department may not renew a license by mail if the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant.

(e) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a driver's license. The department shall mail the notice to the Montana mailing address shown on the driver's license unless the licensee has submitted a change of address as required by 61-5-115.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(5) ~~Whenever~~ *When* the department issues an original *a driver's* license to a person under the age of 18 years of age, the license must be designated and clearly marked as a "provisional license" *with a notation that conveys the restrictions imposed under [section 3].* ~~Any license designated and marked as provisional may be suspended by the department for a period of not more than 12 months when its records disclose that the licensee, subsequent to the issuance of the license, has been guilty of careless or negligent driving.~~

(6) Fees for driver's licenses are:

(a) driver's license, except a commercial driver's license — \$5 a year or fraction of a year;

(b) motorcycle endorsement — 50 cents a year or fraction of a year;

(c) commercial driver's license:

(i) interstate — \$5 a year or fraction of a year;

(ii) intrastate — \$3.50 a year or fraction of a year;

(d) renewal notice — 50 cents.

(7) Upon receipt of notice from another jurisdiction that a person licensed under this chapter has surrendered a Montana driver's license to that jurisdiction, the department shall change the license status on the person's official driver record to "inactive". If the person returns to Montana prior to the expiration of the previously surrendered license, the department may reactivate the license for the remainder of the license term."

Section 8. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 61, chapter 5, part 1, and the provisions of Title 61, chapter 5, part 1, apply to [sections 1 through 5].

Section 9. Effective date. [This act] is effective July 1, 2006.

Section 10. Applicability. [This act] applies to a person who applies for a driver's license on or after July 1, 2006, and who is under 18 years of age at the time of the application unless the person was issued an instruction permit, traffic education learner's license, or traffic education permit prior to July 1, 2006.

Approved April 20, 2005

CHAPTER NO. 298

[SB 116]

AN ACT REVISING LOCAL GOVERNMENT REVIEW OF PROPOSED SUBDIVISIONS; CREATING DEFINITIONS OF "MINOR SUBDIVISION" AND "PUBLIC UTILITY"; REQUIRING LOCAL SUBDIVISION REGULATIONS TO LIST MATERIALS REQUIRED IN A SUBDIVISION APPLICATION; REQUIRING THE REGULATIONS TO ADDRESS MULTIPLE HEARINGS; REQUIRING THE REGULATIONS TO ESTABLISH EVASION CRITERIA AND PROVIDE FOR AN APPEALS PROCESS; REQUIRING THE REGULATIONS TO ESTABLISH A PREAPPLICATION PROCESS; ESTABLISHING A COMPLETENESS REVIEW FOR THE APPLICATION AND REVIEW FOR SUFFICIENCY OF INFORMATION AND

PROVIDING DEADLINES FOR THOSE REVIEWS; PROVIDING A PROCEDURE FOR MULTIPLE HEARINGS WHEN NEW INFORMATION IS PRESENTED TO A GOVERNING BODY; REVISING THE REVIEW PROCEDURE FOR FIRST AND SUBSEQUENT MINOR SUBDIVISIONS FROM A TRACT OF RECORD, ALLOWING FOR EXPEDITED REVIEW OF MINOR SUBDIVISIONS, AND ALLOWING A GOVERNING BODY TO ADOPT REGULATIONS SPECIFIC TO MINOR SUBDIVISIONS; REQUIRING THAT ANY DECISION BY A GOVERNING BODY ON A PROPOSED SUBDIVISION BE ACCOMPANIED BY INFORMATION ON THE APPEALS PROCESS, THE RELEVANT REGULATIONS AND STATUTES, DATA THE GOVERNING BODY USED TO MAKE ITS DECISION, AND CONDITIONS THAT APPLY IF APPROVAL IS CONDITIONAL; AMENDING SECTIONS 76-3-103, 76-3-501, 76-3-504, 76-3-601, 76-3-602, 76-3-603, 76-3-604, 76-3-605, 76-3-608, 76-3-609, 76-3-610, 76-3-620, 76-3-625, AND 76-4-127, MCA; REPEALING SECTION 76-3-505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

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

Section 1. Section 76-3-103, MCA, is amended to read:

“76-3-103. Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

(1) “Certificate of survey” means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) “Cluster development” means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.

(3) “Dedication” means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(4) “Division of land” means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

(5) “Examining land surveyor” means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.

(6) “Final plat” means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

(7) “Governing body” means a board of county commissioners or the governing authority of a city or town organized pursuant to law.

(8) "Immediate family" means a spouse, children by blood or adoption, and parents.

~~(9) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States government lot, the boundaries or areas of which cannot be determined without a survey or trigonometric calculation. "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.~~

(10) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(11) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(12) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.

~~(13) "Registered land surveyor" means a person licensed in conformance with Title 37, chapter 67, to practice surveying in the state of Montana. "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter, the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter 13, parts 22 and 23.~~

~~(14) "Registered professional engineer" means a person licensed in conformance with Title 37, chapter 67, to practice engineering in the state of Montana.~~

~~(15)~~(14) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

~~(16)~~(15) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.

~~(17)~~(16) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not merge parcels of land under subsection ~~(17)(b)(i)~~ (16)(b)(i) unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels."

Section 2. Section 76-3-501, MCA, is amended to read:

"76-3-501. Local subdivision regulations. ~~(1) Before July 1, 1974, the~~ *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; ~~for~~
- (2) the coordination of roads within subdivided land with other roads, both existing and planned; ~~for~~
- (3) the dedication of land for roadways and for public utility easements; ~~for~~
- (4) the improvement of roads; ~~for~~
- (5) the provision of adequate open spaces for travel, light, air, and recreation; ~~for~~
- (6) the provision of adequate transportation, water, and drainage;
- (7) subject to the provisions of 76-3-511, ~~for~~ the regulation of sanitary facilities; ~~for~~
- (8) the avoidance or minimization of congestion; and ~~for~~
- (9) the avoidance of subdivision which subdivisions that would involve unnecessary environmental degradation and the avoidance of danger of injury to health, safety, or welfare by reason of natural hazard 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 ~~such~~ the services.

~~(2) Review and approval or disapproval of a subdivision under this chapter may occur only under those regulations in effect at the time an application for approval of a preliminary plat or for an extension under 76-3-610 is submitted to the governing body."~~

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~~(3)~~, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;
- ~~(b)~~(c) establish procedures consistent with this chapter for the submission and review of subdivision ~~plats~~ *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, ~~at a minimum,~~ meet the regulations adopted by the department of environmental quality under 76-4-104;

(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 ~~preliminary plats~~ *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 ~~plat~~ *application* beyond the time limits specified in this chapter, and the failure of any agency to complete a review of ~~a plat~~ *an application* may not be a basis for rejection of the ~~plat~~ *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 ~~this~~ 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)(j)~~(1)(k) is not required if:

~~(i)~~(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

~~(ii)~~(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.

~~(k)~~(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)~~(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 [section 9].*

(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 76-3-601, MCA, is amended to read:

“76-3-601. Submission of application and preliminary plat for review. (1) ~~Except when a plat is eligible for summary review pursuant to 76-3-505, the~~ *Subject to the submittal deadlines established as provided in 76-3-504(3), the* subdivider shall present to the governing body or to the agent or agency designated by the governing body the *subdivision application, including the preliminary plat* of the proposed subdivision, for local review. The preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the *application and preliminary plat* must be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the *application and preliminary plat* must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town, within 2 miles of a second-class city, or within 3 miles of a first-class city, the county governing body shall submit the *application and preliminary plat* to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in 20-9-615, the county governing body shall provide ~~an informational copy~~ *a summary* of the *information contained in the application and preliminary plat* to school district trustees.

(c) If the proposed subdivision lies partly within an incorporated city or town, the ~~proposed application and preliminary plat~~ must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) The provisions of 76-3-604, 76-3-605, 76-3-608 through 76-3-610, and this section do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444.”

Section 5. Section 76-3-602, MCA, is amended to read:

“76-3-602. Fees. The governing body may establish reasonable fees to be paid by the subdivider to defray the expense of reviewing subdivision ~~plats~~ *applications.*”

Section 6. Section 76-3-603, MCA, is amended to read:

“76-3-603. Contents of environmental assessment. When required, the environmental assessment must accompany the ~~preliminary plat subdivision application~~ and must include:

(1) for a major subdivision:

(a) a description of every body or stream of surface water that may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision;

(b) a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608; and

(c) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection; and

(d) additional relevant and reasonable information related to the applicable regulatory criteria adopted under 76-3-501 as may be required by the governing body;

(2) except as provided in 76-3-609(3), for a minor subdivision, a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608.”

Section 7. Section 76-3-604, MCA, is amended to read:

“76-3-604. Review of ~~preliminary plat subdivision application~~ — review for required elements and sufficiency of information. (1) ~~(a) The governing body or its designated agent or Within 5 working days of receipt of a subdivision application submitted in accordance with any deadlines established pursuant to 76-3-504(3) and receipt of the review fee submitted as provided in 76-3-602, the reviewing agent or agency shall review the preliminary plat to determine whether it conforms to the provisions of this chapter and to rules prescribed or adopted pursuant to this chapter determine whether the application contains all of the listed materials as required by 76-3-504(1)(a) and shall notify the subdivider or, with the subdivider’s written permission, the subdivider’s agent of the reviewing agent’s or agency’s determination.~~

(b) *If the reviewing agent or agency determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification.*

(2) *(a) Within 15 working days after the reviewing agent or agency notifies the subdivider or the subdivider’s agent that the application contains all of the required elements as provided in subsection (1), the reviewing agent or agency shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed*

subdivision under the provisions of this chapter and the local regulations adopted pursuant to this chapter and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

(b) If the reviewing agent or agency determines that information in the application is not sufficient to allow for review of the proposed subdivision, the reviewing agent or agency shall identify the insufficient information in its notification.

(c) A determination that an application contains sufficient information for review as provided in this subsection (2) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the reviewing agent or agency or the governing body to request additional information during the review process.

(3) The time limits provided in subsections (1) and (2) apply to each submittal of the application until:

(a) a determination is made that the application contains the required elements and sufficient information; and

(b) the subdivider or the subdivider's agent is notified.

~~(2)(4) The~~ *After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an application contains sufficient information as provided in subsection (2), the governing body shall approve, conditionally approve, or disapprove deny the preliminary plat proposed subdivision within 60 working days, based on its determination of whether the application conforms to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, of its presentation unless:*

(a) the subdivider consents and the reviewing agent or agency agree to an extension or suspension of the review period, not to exceed 1 year; or

(b) a subsequent public hearing is scheduled and held as provided in [section 9].

~~(3)(5) If the governing body disapproves denies~~ *or conditionally approves the preliminary plat proposed subdivision, it shall forward one copy of the plat to send the subdivider accompanied by a letter, over with the appropriate signature, stating the reason for disapproval or enumerating the conditions that must be met to ensure approval of the final plat that complies with the provisions of 76-3-620.*

(6) (a) Review and approval, conditional approval, or denial of a proposed subdivision under this chapter may occur only under those regulations in effect at the time a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the review periods provided in subsections (1) and (2), the determination of whether the application contains the required elements and sufficient information must be based on the new regulations."

Section 8. Section 76-3-605, MCA, is amended to read:

"76-3-605. Hearing on preliminary plat subdivision application. (1) Except as provided in ~~76-3-505~~ 76-3-609 and subject to the regulations adopted pursuant to 76-3-504(1)(o) and [section 9], the governing body or its authorized agent or agency shall hold a at least one public hearing on the preliminary plat subdivision application must be held by the governing body, its authorized agent

or agency, or both and the governing body, its authorized agent or agency, or both shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment if required, to determine whether the plat subdivision application should be approved, conditionally approved, or ~~disapproved~~ denied by the governing body.

(2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the ~~preliminary~~ plat subdivision application and annexation whenever possible.

(3) Notice of the hearing must be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record *whose property is immediately adjoining the land included in the preliminary plat*, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat must also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or ~~disapproval~~ denial of the plat proposed subdivision. This recommendation must be submitted to the governing body in writing not later than 10 *working* days after the public hearing.”

Section 9. Subsequent hearings — consideration of new information — requirements for regulations. (1) The regulations adopted pursuant to 76-3-504(1)(o) must comply with the provisions of this section.

(2) The governing body shall determine whether public comments or documents presented to the governing body at a hearing held pursuant to 76-3-605 constitute:

(a) information or analysis of information that was presented at a hearing held pursuant to 76-3-605 that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment; or

(b) new information regarding a subdivision application that has never been submitted as evidence or considered by either the governing body or its agent or agency at a hearing during which the subdivision application was considered.

(3) If the governing body determines that the public comments or documents constitute the information described in subsection (2)(b), the governing body may:

(a) approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information if the governing body determines that the new information is either irrelevant or not credible; or

(b) schedule or direct its agent or agency to schedule a subsequent public hearing for consideration of only the new information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

(4) If a public hearing is held as provided in subsection (3)(b), the 60-working-day review period required in 76-3-604(4) is suspended and the new hearing must be noticed and held within 45 days of the governing body's determination to schedule a new hearing. After the new hearing, the

60-working-day time limit resumes at the governing body's next scheduled public meeting for which proper notice for the public hearing on the subdivision application can be provided. The governing body may not consider any information regarding the subdivision application that is presented after the hearing when making its decision to approve, conditionally approve, or deny the proposed subdivision.

Section 10. Section 76-3-608, MCA, is amended to read:

"76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or ~~disapprove~~ *deny* a *proposed* subdivision is whether the *subdivision application*, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the *proposed* subdivision meets the requirements of this chapter. A governing body may not deny approval of a *proposed* subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection ~~(7)~~ (6) of this section or except as provided in ~~76-3-505 and~~ 76-3-509 or in 76-3-609(2) or (4), the ~~effect impact~~ on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the *proposed* subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the *proposed* subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a *proposed* subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the ~~plat~~ *subdivision*.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

~~(6) (a) When a minor subdivision is proposed in an area where a growth policy has been adopted pursuant to chapter 1 and the proposed subdivision will comply with the growth policy, the subdivision is exempt from the review criteria contained in subsection (3)(a) but is subject to applicable zoning regulations.~~

~~(b) In order for a growth policy to serve as the basis for the exemption provided by this subsection (6), the growth policy must meet the requirements of 76-1-601.~~

~~(7)(6)~~ The governing body may exempt *proposed* subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:

(a) the governing body has adopted a growth policy pursuant to chapter 1 that:

(i) addresses the criteria in subsection (3)(a);

(ii) evaluates the ~~effect~~ *impact of subdivision development* on the criteria in subsection (3)(a);

(iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and

(iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and

(b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:

(i) apply to the entire area subject to the exemption; and

(ii) address the criteria in subsection (3)(a), as described in the growth policy.”

Section 11. Section 76-3-609, MCA, is amended to read:

“76-3-609. Review procedure for minor subdivisions — determination of sufficiency of application — governing body to adopt regulations. Subdivisions containing five or fewer parcels in which proper access to all lots is provided and in which there is not any land to be dedicated to the public for parks or playgrounds are to be reviewed as follows: (1) *Minor subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to 76-3-504.*

~~(1)(2)~~ *If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this chapter or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207 since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed as follows:*

(a) ~~The~~ *Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or disapprove deny the first minor subdivision from a tract of record within 35 working days of the submission of the application a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review. The determination and notification to the subdivider must be made in the same manner as is provided in 76-3-604(1) through (3).*

(b) *The subdivider and the reviewing agent or agency may agree to an extension or suspension of the review period, not to exceed 1 year.*

(c) *Except as provided in subsection (2)(d)(iii), an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608(3).*

~~(2) The governing body shall state in writing the conditions that must be met if the subdivision is conditionally approved or what local regulations would not be met by the subdivision if it disapproves the subdivision.~~

~~(3) The requirements for holding a public hearing and preparing an environmental assessment do not apply to the first minor subdivision created from a tract of record.~~

~~(4) Subsequent subdivisions from a tract of record must be reviewed under 76-3-505 and regulations adopted pursuant to that section~~

(d) *The following requirements do not apply to the first minor subdivision from a tract of record as provided in subsection (2):*

(i) *the requirement to prepare an environmental assessment;*

(ii) *the requirement to hold a hearing on the subdivision application pursuant to 76-3-605; and*

(iii) *the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address the criteria in 76-3-608(3)(a).*

(e) *The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:*

(i) *76-3-608(3); and*

(ii) *the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.*

(3) *Except as provided in subsection (4), any minor subdivision that is not a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and 76-3-620.*

(4) *The governing body may adopt subdivision regulations that establish requirements for review of subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as provided in subsection (2) and this chapter.*

(5) (a) *Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time that a subdivision application is determined to contain sufficient information for review as provided in subsection (2).*

(b) *If regulations change during the period that the application is reviewed for required elements and sufficient information, the determination of whether the application contains the required elements and sufficient information must be based on the new regulations."*

Section 12. Section 76-3-610, MCA, is amended to read:

"76-3-610. Effect of approval of application and preliminary plat. (1) Upon approving or conditionally approving ~~an application and~~ preliminary

plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall *must* be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507.

(2) After the *application and* preliminary plat *is are* approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval ~~providing said~~ *if the* approval is obtained within the original or extended approval period as provided in subsection (1)."

Section 13. Section 76-3-620, MCA, is amended to read:

"76-3-620. Review requirements — written statement. In addition to the requirements of 76-3-604 and 76-3-609, ~~a governing body may not deny or condition a subdivision approval under this part unless it provides a following any decision by the governing body~~ **written statement to deny or conditionally approve a proposed subdivision, the governing body shall prepare a written statement that must be provided to the applicant, that must be made available to the public, and to the applicant detailing the circumstances of the subdivision denial or condition imposition. The statement must include:**

~~(1) the reason for the denial or condition imposition;~~
~~(2) the evidence that justifies the denial or condition imposition; and~~
~~(3) information regarding the appeal process for the denial or condition imposition. that:~~

(1) includes information regarding the appeal process for the denial or imposition of conditions;

(2) identifies the regulations and statutes that are used in reaching the decision to deny or impose conditions and explains how they apply to the decision to deny or impose conditions;

(3) provides the facts and conclusions that the governing body relied upon in making its decision to deny or impose conditions and references documents, testimony, or other materials that form the basis of the decision; and

(4) provides the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved."

Section 14. Section 76-3-625, MCA, is amended to read:

"76-3-625. Violations — actions against governing body. (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter that is arbitrary or capricious.

(2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve, conditionally approve, or ~~disapprove deny a proposed an application and~~ preliminary plat *for a proposed subdivision or a final subdivision plat* may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

(3) The following parties may appeal under the provisions of subsection (2):

(a) the subdivider;

(b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

(c) the county commissioners of the county where the subdivision is proposed; and

(d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;

(ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits; and

(iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.

(4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision."

Section 15. Section 76-4-127, MCA, is amended to read:

"76-4-127. Notice of certification that adequate storm water drainage and adequate municipal facilities will be provided. (1) To qualify for the exemption from review set out in 76-4-125(2)(d), the governing body, as defined in 76-3-103, shall, within 20 days after ~~preliminary plat~~ approval of the application and preliminary plat under the Montana Subdivision and Platting Act, send notice of certification to the reviewing authority that a subdivision has been submitted for approval and that adequate storm water drainage and adequate municipal facilities will be provided for the subdivision.

(2) The notice of certification must include the following:

(a) the name and address of the applicant;

(b) a copy of the preliminary plat *included with the application for the proposed subdivision* or a final plat when a preliminary plat is not necessary;

(c) the number of proposed parcels in the subdivision;

(d) a copy of any applicable zoning ordinances in effect;

(e) how construction of the sewage disposal and water supply systems or extensions will be financed;

(f) certification that the subdivision is within an area covered by a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and a copy of the growth policy, when applicable, if one has not yet been submitted to the reviewing authority;

(g) the relative location of the subdivision to the city or town;

(h) certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within 1 year after the notice of certification is issued;

(i) if water supply, sewage disposal, or solid waste facilities are not municipally owned, certification from the facility owners that adequate facilities are available; and

(j) certification that the governing body has reviewed and approved plans to ensure adequate storm water drainage.”

Section 16. Repealer. Section 76-3-505, MCA, is repealed.

Section 17. Codification instruction. [Section 9] is intended to be codified as an integral part of Title 76, chapter 3, part 6, and the provisions of Title 76, chapter 3, part 6, apply to [section 9].

Section 18. Effective date. [This act] is effective on passage and approval.

Section 19. Applicability. (1) [This act] applies to subdivision applications submitted on or after [the effective date of this act].

(2) [Section 3], amending 76-3-504 and concerning adoption of regulations, and references to that section apply upon adoption of regulations under that section or on October 1, 2006, whichever occurs first.

Approved April 19, 2005

CHAPTER NO. 299

[SB 185]

AN ACT AUTHORIZING COUNTIES, CITIES, TOWNS, AND CONSOLIDATED LOCAL GOVERNMENTS TO IMPOSE IMPACT FEES UPON NEW DEVELOPMENT TO FUND ALL OR A PORTION OF THE PUBLIC FACILITY CAPITAL IMPROVEMENTS AFFECTED BY THE NEW DEVELOPMENT; PROVIDING DEFINITIONS; PROVIDING A METHOD FOR CALCULATING, IMPOSING, AND COLLECTING IMPACT FEES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) (a) “Capital improvements” means improvements, land, and equipment with a useful life of 10 years or more that increase or improve the service capacity of a public facility.

(b) The term does not include consumable supplies.

(2) “Connection charge” means the actual cost of connecting a property to a public utility system and is limited to the labor, materials, and overhead involved in making connections and installing meters.

(3) “Development” means construction, renovation, or installation of a building or structure, a change in use of a building or structure, or a change in the use of land when the construction, installation, or other action creates additional demand for public facilities.

(4) “Governmental entity” means a county, city, town, or consolidated government.

(5) (a) “Impact fee” means any charge imposed upon development by a governmental entity as part of the development approval process to fund the

additional service capacity required by the development from which it is collected. An impact fee may include a fee for the administration of the impact fee not to exceed 5% of the total impact fee collected.

(b) The term does not include:

(i) a charge or fee to pay for administration, plan review, or inspection costs associated with a permit required for development;

(ii) a connection charge;

(iii) any other fee authorized by law, including but not limited to user fees, special improvement district assessments, fees authorized under Title 7 for county, municipal, and consolidated government sewer and water districts and systems, and costs of ongoing maintenance; or

(iv) onsite or offsite improvements necessary for new development to meet the safety, level of service, and other minimum development standards that have been adopted by the governmental entity.

(6) "Proportionate share" means that portion of the cost of capital system improvements that reasonably relates to the service demands and needs of the project. A proportionate share must take into account the limitations provided in [section 2].

(7) "Public facilities" means:

(a) a water supply production, treatment, storage, or distribution facility;

(b) a wastewater collection, treatment, or disposal facility;

(c) a transportation facility, including roads, streets, bridges, rights-of-way, traffic signals, and landscaping;

(d) a storm water collection, retention, detention, treatment, or disposal facility or a flood control facility;

(e) a police, emergency medical rescue, or fire protection facility; and

(f) other facilities for which documentation is prepared as provided in [section 2] that have been approved as part of an impact fee ordinance or resolution by:

(i) a two-thirds majority of the governing body of an incorporated city, town, or consolidated local government; or

(ii) a unanimous vote of the board of county commissioners of a county government.

Section 2. Calculation of impact fees — documentation required — ordinance or resolution — requirements for impact fees. (1) For each public facility for which an impact fee is imposed, the governmental entity shall prepare and approve documentation that:

(a) describes existing conditions of the facility;

(b) establishes level of service standards;

(c) forecasts future additional needs for service for a defined period of time;

(d) identifies capital improvements necessary to meet future needs for service;

(e) identifies those capital improvements needed for continued operation and maintenance of the facility;

(f) makes a determination whether one service area or more than one service area is necessary to establish a correlation between impact fees and benefits;

(g) makes a determination whether one service area or more than one service area for transportation facilities is needed to establish a correlation between impact fees and benefits;

(h) establishes the methodology and time period over which the governmental entity will assign the proportionate share of capital costs for expansion of the facility to provide service to new development within each service area;

(i) establishes the methodology that the governmental entity will use to exclude operations and maintenance costs and correction of existing deficiencies from the impact fee;

(j) establishes the amount of the impact fee that will be imposed for each unit of increased service demand; and

(k) has a component of the budget of the governmental entity that:

(i) schedules construction of public facility capital improvements to serve projected growth;

(ii) projects costs of the capital improvements;

(iii) allocates collected impact fees for construction of the capital improvements; and

(iv) covers at least a 5-year period and is reviewed and updated at least every 2 years.

(2) The data sources and methodology supporting adoption and calculation of an impact fee must be available to the public upon request.

(3) The amount of each impact fee imposed must be based upon the actual cost of public facility expansion or improvements, or reasonable estimates of the cost, to be incurred by the governmental entity as a result of new development. The calculation of each impact fee must be in accordance with generally accepted accounting principles.

(4) The ordinance or resolution adopting the impact fee must include a time schedule for periodically updating the documentation required under subsection (1).

(5) An impact fee must meet the following requirements:

(a) The amount of the impact fee must be reasonably related to and reasonably attributable to the development's share of the cost of infrastructure improvements made necessary by the new development.

(b) The impact fees imposed may not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity in accommodating the development. The following factors must be considered in determining a proportionate share of public facilities capital improvements costs:

(i) the need for public facilities capital improvements required to serve new development; and

(ii) consideration of payments for system improvements reasonably anticipated to be made by or as a result of the development in the form of user fees, debt service payments, taxes, and other available sources of funding the system improvements.

(c) Costs for correction of existing deficiencies in a public facility may not be included in the impact fee.

(d) New development may not be held to a higher level of service than existing users unless there is a mechanism in place for the existing users to make improvements to the existing system to match the higher level of service.

(e) Impact fees may not include expenses for operations and maintenance of the facility.

Section 3. Collection and expenditure of impact fees — refunds or credits — mechanism for appeal required. (1) The collection and expenditure of impact fees must comply with [sections 1 through 4]. The collection and expenditure of impact fees must be reasonably related to the benefits accruing to the development paying the impact fees. The ordinance or resolution adopted by the governmental entity must include the following requirements:

(a) Upon collection, impact fees must be deposited in a special proprietary fund, which must be invested with all interest accruing to the fund.

(b) A governmental entity may impose impact fees on behalf of local districts.

(c) If the impact fees are not collected or spent in accordance with the impact fee ordinance or resolution or in accordance with [section 2], any impact fees that were collected must be refunded to the person who owned the property at the time that the refund was due.

(2) All impact fees imposed pursuant to the authority granted in [sections 1 through 4] must be paid no earlier than the date of issuance of a building permit if a building permit is required for the development or no earlier than the time of wastewater or water service connection or well or septic permitting.

(3) A governmental entity may recoup costs of excess capacity in existing capital facilities, when the excess capacity has been provided in anticipation of the needs of new development, by requiring impact fees for that portion of the facilities constructed for future users. The need to recoup costs for excess capacity must have been documented pursuant to [section 2] in a manner that demonstrates the need for the excess capacity. [Sections 1 through 4] do not prevent a governmental entity from continuing to assess an impact fee that recoups costs for excess capacity in an existing facility. The impact fees imposed to recoup the costs to provide the excess capacity must be based on the governmental entity's actual cost of acquiring, constructing, or upgrading the facility and must be no more than a proportionate share of the costs to provide the excess capacity.

(4) Governmental entities may accept the dedication of land or the construction of public facilities in lieu of payment of impact fees if:

(a) the need for the dedication or construction is clearly documented pursuant to [section 2];

(b) the land proposed for dedication for the public facilities to be constructed is determined to be appropriate for the proposed use by the governmental entity;

(c) formulas or procedures for determining the worth of proposed dedications or constructions are established as part of the impact fee ordinance or resolution; and

(d) a means to establish credits against future impact fee revenue has been created as part of the adopting ordinance or resolution if the dedication of land or construction of public facilities is of worth in excess of the impact fee due from an individual development.

(5) Impact fees may not be imposed for remodeling, rehabilitation, or other improvements to an existing structure, or rebuilding a damaged structure, unless there is an increase in units that increase service demand as described in [section 2 (1)(j)]. If impact fees are imposed for remodeling, rehabilitation, or other improvements to an existing structure or use, only the net increase between the old and new demand may be imposed.

(6) [Sections 1 through 4] do not prevent a governmental entity from granting refunds or credits:

(i) that it considers appropriate and that are consistent with the provisions of [section 2] and this chapter; or

(ii) in accordance with a voluntary agreement, consistent with the provisions of [section 2] and this chapter, between the governmental entity and the individual or entity being assessed the impact fees.

(7) An impact fee represents a fee for service payable by all users creating additional demand on the facility.

(8) An impact fee ordinance or resolution must include a mechanism whereby a person charged an impact fee may appeal the charge if the person believes an error has been made.

Section 4. Impact fee advisory committee. (1) A governmental entity that intends to propose an impact fee ordinance or resolution shall establish an impact fee advisory committee.

(2) An impact fee advisory committee must include at least one representative of the development community and one certified public accountant. The committee shall review and monitor the process of calculating, assessing, and spending impact fees.

(3) The impact fee advisory committee shall serve in an advisory capacity to the governing body of the governmental entity.

Section 5. Transition. A general powers local government that is imposing impact fees adopted on or before [the effective date of this act] shall bring those fees into compliance with [this act] by October 1, 2006.

Section 6. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 7, chapter 6, and the provisions of Title 7, chapter 6, apply to [sections 1 through 4].

Section 7. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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

Section 9. Applicability. (1) [This act] applies only to the portion of an impact fee ordinance or resolution enacted or amended by a self-governing local government on or after [the effective date of this act].

(2) Except when an impact fee ordinance or resolution is amended as provided in subsection (1), nothing in [this act] may be construed to affect any portion of an ordinance or resolution enacted prior to [the effective date of this act].

Approved April 19, 2005

CHAPTER NO. 300

[SB 255]

AN ACT CREATING THE AIRPORT COMPATIBILITY ACT; DEFINING "AIRPORT AFFECTED AREA"; REQUIRING A GOVERNING BODY TO DESIGNATE AN AIRPORT AFFECTED AREA FOR CERTAIN AIRPORTS AND REQUIRING REGULATIONS TO BE CONCURRENTLY ADOPTED; REQUIRING MAPS AND LEGAL DESCRIPTIONS OF THE AIRPORT AFFECTED AREA; REQUIRING A PUBLIC HEARING BEFORE DESIGNATION OF AN AIRPORT AFFECTED AREA; ALLOWING CREATION OF A JOINT REGULATION BOARD; ESTABLISHING CERTAIN MINIMUM REQUIREMENTS FOR AIRPORT AFFECTED AREA REGULATIONS AND ESTABLISHING A PROCEDURE FOR DEVELOPING OR AMENDING THE REGULATIONS; PROVIDING FOR PRIOR NONCONFORMING USES IN AN AIRPORT AFFECTED AREA; PROVIDING FOR ACQUISITION OF PROPERTY UNDER CERTAIN CIRCUMSTANCES; ALLOWING REGULATIONS TO BE PART OF ZONING ORDINANCES; REQUIRING A PERMIT SYSTEM; REQUIRING THE REGULATIONS TO PROVIDE FOR ENFORCEMENT; ESTABLISHING AN APPEALS PROCESS; PROVIDING FOR A VARIANCE FROM THE REGULATIONS; PROVIDING PENALTIES AND REMEDIES FOR VIOLATION OF THE ACT OR REGULATIONS; AMENDING SECTIONS 7-14-4801, 67-1-101, 67-10-102, 67-10-202, 67-10-231, 67-10-402, 67-10-902, 67-11-103, 67-11-201, 67-11-241, AND 70-30-102, MCA; REPEALING SECTIONS 67-4-101, 67-4-102, 67-4-201, 67-4-202, 67-4-203, 67-4-204, 67-4-211, 67-4-301, 67-4-302, 67-4-303, 67-4-304, 67-4-311, 67-4-312, 67-4-313, 67-4-314, 67-4-401, 67-4-402, 67-5-101, 67-5-102, 67-5-201, 67-5-202, 67-5-203, 67-5-204, 67-5-211, 67-5-212, 67-6-101, 67-6-102, 67-6-103, 67-6-201, 67-6-202, 67-6-203, 67-6-204, 67-6-205, 67-6-206, 67-6-207, 67-6-211, AND 67-6-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Section 7-14-4801, MCA, is amended to read:

"7-14-4801. Acquisition of landing fields and parking areas lots or lands for aircraft. A city or town council may acquire by lease, gift, purchase, or condemnation pursuant to Title 70, chapter 30, lots or lands for landing fields or parking areas for of aircraft, within or outside of the corporate limits of the municipality. The city or town council may exercise municipal jurisdiction over the lots or lands acquired pursuant to this section, even though the lots or lands or any portion of the lots or lands is outside of the corporate limits of the municipality."

Section 2. Section 67-1-101, MCA, is amended to read:

"67-1-101. Definitions. Unless the context requires otherwise, in this title, the following definitions apply:

(1) "Aeronautics" means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities; and air instruction.

(2) (a) "Aeronautics instructor" means an individual engaged in giving instruction or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising that occupation, without calling the facilities an "air school" or anything equivalent to an "air school", and without employing or using other instructors.

(b) ~~The term~~ *The term* does not include an instructor in a public school or university of this state or an institution of higher learning accredited and approved for carrying on collegiate work while engaged in duties as an instructor.

(3) "Air carrier" means a person or corporation owning, controlling, operating, or managing aircraft as a scheduled common carrier of passengers or freight for compensation within this state.

(4) "Aircraft" means a contrivance used or designed for navigation of or flight in the air.

(5) "Aircrew" includes:

(a) an individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way;

(b) an individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances except for an individual employed outside the United States, an individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection with them, and an individual performing inspection or mechanical duties in connection with aircraft owned or operated by the individual; and

(c) an individual who serves in the capacity of aircraft dispatcher or air traffic control tower operator.

(6) "Air instruction" means the imparting of aeronautical information by an aeronautics instructor or in or by an air school or flying club.

(7) "Air navigation" means the operation or navigation of aircraft in the air space over this state or upon an airport or restricted landing area within this state.

(8) "Air navigation facility" means a facility used in, available for use in, or designed for use in aid of air navigation, including airports, restricted landing areas, and structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft or the safe and efficient operation or maintenance of an airport or restricted area and any combination of these facilities.

(9) "Airport" means an area of land or water, ~~except a restricted landing area,~~ that is *intended or* designed for the landing and takeoff of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities and all appurtenant rights-of-way.

(10) ~~"Airport and landing field" means any area of land or water, or both, that is used or is made available for the landing and takeoff of aircraft, owned, leased, controlled, operated, or maintained by the United States, the state of Montana, or any county or municipality or any of the authorized agencies or branches of a county or municipality within the state of Montana.~~

~~(11)~~(10) "Airport authority" or "authority" means a regional airport authority or municipal airport authority created under chapter 11 and the governing body of a municipality that has determined to exercise the powers of a municipal airport authority under 67-11-102.

~~(12)~~(11) "Airport hazard" means a structure, object of natural growth, or use of land that obstructs the air space required for the flight of aircraft in landing or taking off at an airport or restricted landing area or is otherwise hazardous to landing or taking off.

~~(13)~~ "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this title.

~~(14)~~(12) "Airport protection privileges" means easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation of airports or restricted landing areas.

~~(15)~~(13) (a) "Air school" means a person engaged in giving or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for or without hire or reward, and advertising or representing to the public that the person gives or offers to give that instruction.

(b) ~~‡~~ *The term* does not include a public school or university of this state or an institution of higher learning accredited and approved for carrying on collegiate work.

~~(16)~~(14) "Board" means the board of aeronautics provided for in 2-15-2506.

~~(17)~~(15) "Bonds" means bonds, notes, interim certificates, debentures, or similar obligations issued by an authority under chapter 11.

~~(18)~~(16) "Building or structure" means any edifice, structure, or construction of any kind, character, or description and any object of natural growth erected, constructed, grown, located or proposed to be erected, constructed, grown, or located within the *airport affected area described in 67-5-201 hereof as safety zones designated pursuant to [section 6]*, including any edifice, structure, or construction or object within the restricted zones erected, constructed, placed, or located on or over land or water, or both.

~~(19)~~(17) "Civil aircraft" means an aircraft other than a public aircraft.

~~(20)~~(18) "Commercial air operator" means any person owning, controlling, operating, or managing aircraft for any commercial purpose for compensation.

~~(21)~~(19) "Department" means the department of transportation provided for in Title 2, chapter 15, part 25.

~~(22)~~ "Established perimeter of an airport or landing field", for the purposes of computing all distances and elevations as contemplated by chapter 5, is the metes and bounds and elevations along the respective sides of the airport or landing field as determined by the United States government, the state of Montana, a county, a municipality, or any other public authority owning, leasing, controlling, operating, or maintaining the airport or landing field. The determination and definition must be evidenced by a plat showing the metes and bounds and elevations that must be filed in the records of the public authority for official purposes and subject to inspection and examination at all reasonable times by any interested persons.

~~(23)~~(20) "Flying club" means a person other than an individual that, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction or pleasure, or both.

~~(24)~~(21) "Governing body" means, *except as provided in [section 5]*, a city commission, town council, or county commission and the boards, departments, and divisions of those entities, by whatever name they are known, that have charge of finances and management of a municipality or a county.

~~(25)~~(22) "Height of buildings and structures" means, for the purposes of ~~chapter 5 [sections 3 through 19]~~, the vertical distance measured from the ground or surface level of the airport or landing field on the side adjacent to the building or structure to the level of the highest point of the building or structure.

~~(26)~~(23) "Municipal airport authority" or "municipal authority" means a municipal airport authority created under 67-11-102.

~~(27)~~(24) "Municipality" or "~~political subdivision~~" means a county, city, village, or town of this state and any other political subdivision, public corporation, authority, or district in this state authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities.

~~(28)~~(25) "Navigable air space" means air space above the minimum altitudes of flight prescribed by the laws of this state or by regulations of the department.

(26) "NPIAS airport" means an airport that is included in the federal aviation administration's national plan of integrated airport systems.

~~(29)~~(27) "Operation of aircraft" or "operate aircraft" means the use of aircraft for the purpose of air navigation and includes the navigation or piloting of aircraft. A person who causes or authorizes the operation of aircraft, whether with or without the right of legal control, (in the capacity of owner, lessee, or otherwise), of the aircraft, operates the aircraft.

~~(30)~~(28) "Person" means an individual, firm, partnership, *private, municipal, or public* corporation (~~private, municipal, or public~~), company, association, joint-stock association, or body politic and includes a trustee, receiver, assignee, or other similar representative.

(29) "*Political subdivision*" has the same meaning as *municipality*.

~~(31)~~(30) "Public aircraft" means an aircraft used exclusively in the service of any government or of a political subdivision of a government, including the government of a state, territory, or possession of the United States, or the District of Columbia, but not including a government-owned aircraft engaged in carrying persons or property for commercial purposes.

~~(32)~~(31) "Real property" means lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term real property, including not only fee simple absolute but also all lesser interests, such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

~~(33)~~(32) "Regional airport authority" or "regional authority" means a regional airport authority created under 67-11-103.

~~(34)~~(33) "Restricted landing area" means an area of land or water, or both, that is used or is made available for the landing and takeoff of aircraft, the use of which must, except in case of emergency, be only as provided by the department.

~~(35)~~(34) "State airway" means a route in the navigable air space over and above the lands or waters of this state, designated by the department as a route suitable for air navigation.

~~(36)~~(35) "Structure" means any object constructed or installed by a person, including but not limited to buildings, towers, smokestacks, and overhead transmission lines.

~~(37)~~(36) "Tree" means any object of natural growth.

(37) "YDNL" means the 365-day average, in decibels, day-night average sound level as provided in 14 CFR 150.7."

Section 3. Short title. [Sections 3 through 19] may be cited as the "Airport Compatibility Act".

Section 4. Legislative finding and purpose. The legislature finds that tall trees and structures and certain types of development located in the vicinity of airports endanger the lives and property of users of the airport and of occupants of land in its vicinity. The legislature also finds that the location of tall trees and structures and certain types of development near airports reduce the area available for landing, taking off, and maneuvering aircraft and increase the likelihood of legal action against a local government for noise nuisance, thus destroying the utility of the airports and the public investment in them. It is the purpose of [sections 3 through 19] to promote the public health, safety, and general welfare by the delineation of an airport affected area and by the development of compatible noise, height, and land use regulations to control airport hazards. The prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and in which political subdivisions may acquire land or property interests.

Section 5. Definitions. (1) Except as provided in subsection (2)(b), the definitions in 67-1-101 apply to [sections 3 through 19].

(2) In [sections 3 through 19], the following definitions also apply:

(a) "Airport affected area" means the land and space above the ground surface of an airport in the proximity of the airport, the use of which may be affected by the airport's existence, including the areas described in 14 CFR, part 77.

(b) "Governing body" means a city commission, town council, county commission, or the commissioners of a municipal or regional airport authority.

Section 6. Designation of airport affected area — regulations required — maps and descriptions required — public hearing required — effect of designation. (1) Subject to the provisions of subsection (5), a governing body of a political subdivision that owns or controls an NPIAS airport or that has an airport affected area for an NPIAS airport within its territorial limits or a joint board established pursuant to [section 7] shall, by ordinance or resolution, exercising its police power:

(a) designate an airport affected area within 1 year of [the effective date of this act];

(b) concurrently adopt regulations for the airport affected area that comply with [section 8]; and

(c) administer and enforce the regulations that are adopted.

(2) A governing body of a political subdivision that owns or controls a non-NPIAS airport or that has an airport affected area for a non-NPIAS airport within its territorial limits or a joint board established pursuant to [section 7] may, by ordinance or resolution, exercising its police power, designate an airport affected area. If the governing body or joint board makes the designation, it shall concurrently adopt regulations for the airport affected area that may comply with [section 8] and shall administer and enforce the regulations.

(3) The airport affected area may not be less than 10,000 feet from the thresholds of each runway or less than 1 mile wide on each side of each runway unless evaluations for a specific runway show that the accident data justifies a lesser area. A greater area may be regulated as an airport affected area if:

(a) studies have been conducted in accordance with 14 CFR, part 150, maps of the area have been prepared, and a program has been approved by the federal aviation administration; or

(b) the governing body intends to protect imaginary surfaces as provided in 14 CFR, part 77.

(4) The designation must be accompanied by maps and legal descriptions of the airport affected area. The maps must be filed with the clerk and recorder of each affected county and with the clerk of each affected city or town.

(5) (a) Before a governing body designates an airport affected area and adopts or amends regulations governing the airport affected area, the governing body shall hold at least one public hearing.

(b) The notice of the public hearing must be published as provided in 7-1-2121 if the governing body is a county commission or the commissioners of a regional airport authority and as provided in 7-1-4127 if the governing body is a city commission, town council, or the commissioners of a municipal airport authority.

(6) After the designation of an airport affected area, a person may not recover from a local government, an airport authority, an airport operator, or an airport owner damages caused by noise, fumes, vibrations, light, or any other effects from normal and anticipated normal airport operations.

Section 7. Joint airport affected area regulation board authorized — may adopt regulations. (1) If an airport affected area is located outside of the jurisdictional area of the governing body of the political subdivision that owns or controls the airport, the governing body of the political subdivision that owns or controls the airport and the governing body of the political subdivision within which the airport affected area is located may by ordinance or resolution create a joint airport affected area regulation board.

(2) The joint board may adopt, administer, and enforce airport affected area regulations, as provided in [section 6], subject to the provisions of [section 8].

(3) The joint board must have two members appointed by the governing body of each political subdivision participating in its creation, and a presiding officer must be elected by a majority of the members appointed. The members of the joint board who are appointed shall select an additional at-large member who resides in the county in which the airport is located.

(4) If, in the judgment of the governing body of the political subdivision that owns or controls an airport, the governing body of the political subdivision that contains the airport affected area has failed to adopt or enforce reasonably

adequate airport affected area regulations for the airport affected area and if the governing body of the political subdivision that contains the airport affected area has refused to join in creating a joint board under this section, the governing body of the political subdivision that owns or controls the airport may adopt, administer, and enforce airport affected area regulations for the airport affected area. The regulations adopted by the governing body of the political subdivision that owns or controls the airport prevail if a conflict arises between regulations adopted by that governing body and the governing body of the political subdivision that contains the airport affected area.

Section 8. Airport affected area regulations — contents. (1) Subject to the provisions of [section 11], regulations adopted for the airport affected area must be reasonable, be designed to promote the public health, safety, and general welfare, and, for an NPIAS airport, at a minimum, give consideration to:

(a) the safety of airport users and persons and property in the vicinity of the airport;

(b) the character of the flying operations conducted or expected to be conducted at the airport;

(c) the nature of the terrain;

(d) the future development of the airport; and

(e) federal aviation administration recommendations for the aeronautical surfaces necessary for safe flying operations.

(2) Airport affected area regulations may:

(a) designate the airport or airports that are subject to the regulations, with a description of existing and future runways and approaches;

(b) define the terms used in the regulations based on the definitions provided in Title 67 and 14 CFR, part 77;

(c) describe the airport affected area by referencing maps and describing existing airport hazards and natural terrain that intrude into the airport affected area;

(d) designate and describe zones within the airport affected area, along with the height limitations for structures and trees within each zone, considering local conditions and needs, as well as the notice requirements and obstructions standards provided in 14 CFR, part 77;

(e) show the contours for decibel levels of 65 YDNL or greater on the maps that designate an airport affected area, if a study has been conducted pursuant to 14 CFR, part 150, and require that information to be considered by anyone who builds within the airport affected area;

(f) specify permitted and conditional uses within each zone of the airport affected area by addressing:

(i) incompatible land uses, such as uses for residences, schools, hospitals, day-care centers, or other concentrations of people indoors or outdoors;

(ii) the land uses that are considered incompatible with certain noise levels, as provided in 14 CFR, part 150;

(iii) bird attractants such as solid waste disposal sites and lagoons;

(iv) sources of electromagnetic radiation that may interfere with electronic navigational aids;

(v) lights other than navigational aids that glare upward or shine on or in the direction of the airport; and

(vi) the national transportation safety board's accident investigation data in the vicinity of airports and specific accident data for a particular airport, if that information is available;

(g) define nonconforming uses, measures to be taken to mitigate the nonconforming uses, and the expiration of the uses in accordance with [sections 3 through 19];

(h) provide for an inventory of existing land uses, structures, and trees within the airport affected area;

(i) expand on the permit system provided pursuant to [section 14] for changes to existing land uses, including changes that affect structures or trees, and for new land uses, structures, or trees;

(j) subject to the provisions of [section 17], provide a variance procedure from the literal application of the regulations, including the conditions for granting a variance; and

(k) establish or designate local boards, commissions, or agents to administer and adjudicate interpretations of the regulations.

Section 9. State lands. When an airport affected area lies partially or entirely on state-owned lands, the department of natural resources and conservation shall administer the affected lands in conformance with the airport affected area regulations adopted by the local governing body.

Section 10. Procedure for developing or amending regulations — assistance from existing boards or zoning commissions. (1) In adopting, amending, and repealing airport affected area regulations under [sections 3 through 19], a governing body or a joint airport affected area regulation board may request the assistance of existing planning boards or zoning commissions.

(2) If a political subdivision does not have an existing planning board or zoning commission to assist with recommendations for airport affected area regulations, the governing body may:

(a) request that an existing airport board recommend the boundaries of the airport affected area and the various zones to be established and the regulations that will govern the airport affected area; or

(b) act without assistance of an airport board, planning board, or zoning commission.

(3) If a governing body or joint airport affected area regulation board uses a separate airport board, planning board, or zoning commission to assist the governing body or joint board in designating the airport affected area and establishing regulations to govern the airport affected area, the airport board, planning board, or zoning commission shall make a preliminary report and hold public hearings on the report before submitting its final report to the governing body or joint board. The governing body or joint board may not hold a public hearing or take action on the regulations until it has received the final report from the airport board, planning board, or zoning commission.

Section 11. Prior nonconforming uses. (1) All regulations adopted under [sections 3 through 19] must be reasonable and may not require the removal or alteration of any structure or tree or require cessation or alteration of a use that is lawfully in existence when the regulations become effective. Those

structures, trees, or uses must be treated as prior nonconforming structures, trees, or uses that may remain or continue, but regulations may prohibit their expansion or their reconstruction or replacement following destruction or substantial damage. For the purposes of this section, "substantial damage" has occurred when 80% or more of a structure or tree is deteriorated or decayed or has been torn down or destroyed.

(2) The regulations may require that trees in place at the time that the regulations take effect be maintained by the political subdivision, at its expense, at heights attained at that time.

(3) The regulations may require the owner of structures or trees to permit the political subdivision, at its expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an airport hazard.

(4) Land in existing residential subdivisions or platted for residential subdivision at the time that regulations are adopted may continue to be used for residential purposes, subject to notification provided to property owners that the lots are within an adopted airport affected area.

Section 12. Acquisition of property rights when regulations not sufficient. The political subdivision within which a property or nonconforming use is located or the political subdivision owning the airport or served by the airport may acquire, by purchase, grant, or condemnation pursuant to Title 70, chapter 30, an air right, aviation easement, or other estate or interest in the property or nonconforming structure or use that is necessary to effectuate the purposes of [sections 3 through 19]. The governing body of the political subdivision may acquire an interest when:

(1) it is desirable to remove, lower, or otherwise terminate a nonconforming structure or use;

(2) the necessary approach protection cannot, because of constitutional limitations, be provided by airport affected area regulations under [sections 3 through 19]; or

(3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport affected area regulations.

Section 13. Regulations relative to zoning ordinances. (1) Subject to the provisions of subsections (2) and (3), if a governing body has adopted a zoning ordinance or resolution, any regulations adopted under [sections 3 through 19] may be made a part of the zoning ordinance or resolution and may be administered and enforced in connection with it.

(2) The zoning ordinance or resolution may not limit the effectiveness or scope of the regulations adopted pursuant to [sections 3 through 19].

(3) When a conflict exists between the regulations adopted pursuant to [sections 3 through 19] and any zoning ordinances or resolutions applicable to the same area that the regulations are intended to govern, the more stringent limitation or requirement prevails.

Section 14. Permit system. (1) The regulations adopted pursuant to [sections 3 through 19] must provide for a permit system for erecting new structures or trees, changing uses of land or structures, and substantially altering, repairing, or replacing existing structures or replacing existing trees within the airport affected area.

(2) A permit may not be granted that would allow the establishment of an airport hazard or that would allow a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of the designation of the airport affected area and the regulations adopted to protect the airport affected area.

(3) A permit granted pursuant to [sections 3 through 19] may require the owner of a structure or tree to allow the governing body, at the owner's expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an airport hazard.

Section 15. Enforcement. The governing body or its designated agent or agency is responsible for enforcing the regulations adopted pursuant to [sections 3 through 19]. The regulations must provide for an enforcement officer and an appeal process from the decision of the enforcement officer, who may be an existing employee of the local government.

Section 16. Appeals. (1) The governing body that designated the airport affected area shall act as an airport appeals board or appoint an airport appeals board that functions in the same manner as a board of adjustment provided for in Title 76, chapter 2. If the governing body appoints an airport appeals board, the board must have at least three members.

(2) The provisions of 76-2-223 and 76-2-225 through 76-2-228 apply to the governing body of a county or an airport appeals board appointed by that governing body and the provisions of 76-2-323 and 76-2-325 through 76-2-328 apply to the governing body of a municipality or an airport appeals board appointed by that governing body when considering grievances relating to regulations, variances, or permits.

(3) If a governing body has appointed a board of adjustment under the provisions of 76-2-221 through 76-2-228 or 76-2-321 through 76-2-328, the governing body may designate the members of that board as the airport appeals board, in which case the terms of the members for the purposes of [sections 3 through 19] are concurrent with their terms as members of the board of adjustment.

Section 17. Variance. (1) A person intending to erect or increase the height of a structure, permit the growth of a tree, or use property in a manner that is not in accordance with the requirements of the regulations adopted pursuant to [sections 3 through 19] may apply to the governing body or an enforcement officer appointed for this purpose by the governing body for a variance from the regulations.

(2) If an enforcement officer has been appointed by the governing body, the decision of the officer is final unless it is appealed to either the governing body or the airport appeals board, if one exists.

(3) A variance must be granted when a literal application or enforcement of the regulations would result in substantial practical difficulty or unnecessary hardship and when the variance would not be contrary to the public interest.

(4) A variance must be granted for a nonconforming use when there is no immediate hazard to safe flying operations or to persons and property in the vicinity of the airport and when the noise or vibrations from normal and anticipated normal airport operations would not be likely to cause damage to structures.

(5) A variance granted under this section may require the owner of a structure or tree to allow the political subdivision, at the owner's expense, to

install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an airport hazard.

(6) A person who builds a structure pursuant to a variance from the airport affected area regulations or who takes or buys property in an airport affected area for which a variance has been granted is on notice that the airport existed before the variance was granted and that normal and anticipated normal operations of the airport will result in noise, vibrations, and fumes being projected over the property. A person using a structure built pursuant to a variance may not collect damages from a governing body or local government or from an airport authority, airport operator, or airport owner for interference with the enjoyment of that structure caused by noise, vibrations, and fumes from normal and anticipated normal airport operations.

Section 18. Penalty. A person who violates the provisions of [sections 3 through 19] or the regulations adopted under [section 8] is subject to a civil penalty and a criminal penalty. The civil penalty is a fine of \$100 for each day that the violation is not remedied after the governing body has given notification of the violation and held a hearing on the violation. The criminal penalty is a fine of \$500, pursuant to 45-2-104.

Section 19. Injunction. A local governing body may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of [sections 3 through 19] or the regulations adopted pursuant to [sections 3 through 19].

Section 20. Section 67-10-102, MCA, is amended to read:

“67-10-102. Acquisition and establishment of airports and landing fields. (1) Counties, cities, and towns may, either individually or by the joint action of a county and one or more of the cities and towns within the county, acquire by gift, deed, purchase, or condemnation pursuant to Title 70, chapter 30, land for airport or landing field purposes. The local governments may use the land to establish, construct, own, control, lease, equip, improve, operate, and regulate airports or landing fields for the use of airplanes and other aircraft.

(2) In addition, a county, city, or town may exercise the authority granted by this section by acting jointly with one or more counties, with one or more cities, with one or more towns, or with any combination of counties, cities, or towns. A multijurisdictional airport is not required to be located, in whole or in part, within the limits of each subdivision participating in the joint venture.”

Section 21. Section 67-10-202, MCA, is amended to read:

“67-10-202. Creation of board — funding — rules. (1) The county, city, or town, acting individually or acting jointly as authorized by 67-10-102, having established an airport or landing field and acquired property for such that purpose, may construct, improve, equip, maintain, and operate the same and for that purpose airport. ~~The county, city, or town may create a board or body from the inhabitants residents of such the county, city, or town, or such joint subdivisions subdivision of the state for the purpose of conferring upon them, and may confer upon them, the board or body the jurisdiction for the improvement, equipment, maintenance, and operation of such the airport or landing field. The board of county commissioners, the city or town council, as the case may be, or the board of county commissioners and the council or councils under a joint venture may adopt rules and establish fees and charges for the use of such the airport or landing field or may authorize such the board or body to do so, subject, however, to the approval of the appointing power before the same shall~~

fees or charges may take effect. All expenses of ~~such the~~ construction, improvement, equipment, maintenance, and operation ~~shall be~~ are a charge against ~~such the~~ county, city, or town; ~~or when~~ When a county, city, or town acts jointly under the authority ~~herein given provided in this section, such the~~ charges ~~shall be~~ are against the joint ~~subdivisions~~ subdivision of the state and ~~shall~~ must be apportioned according to benefits to accrue, the proportion to be paid by each to be fixed in advance by joint resolution of the governing bodies.

(2) For the purpose of ~~meeting the charges mentioned complying with subsection (1), when the airport or landing field is such a joint venture, a joint fund shall~~ must be created and maintained into which each of the political subdivisions ~~interested in the joint venture~~ shall deposit its proportionate share in accordance with the predetermination of the board of county commissioners and council or councils affected.

(3) All disbursements from ~~such the fund shall~~ must be made by order of ~~such the~~ joint board or body, if one ~~be is~~ created as authorized, otherwise under ~~such the~~ rules ~~as that~~ the joint control by the commissioners and council or councils may adopt.”

Section 22. Section 67-10-231, MCA, is amended to read:

“67-10-231. No limitation on airport hazard zoning. Nothing contained in this chapter ~~shall be construed to limit~~ *limits* any right, power, or authority of a municipality to regulate airport hazards by zoning ~~or by establishing airport affected area regulations as provided in [sections 3 through 19].”~~

Section 23. Section 67-10-402, MCA, is amended to read:

“67-10-402. Tax levy. (1) Subject to 15-10-420 and for the purpose of establishing, constructing, equipping, maintaining, and operating airports, ~~landing fields,~~ and ports under the provisions of this chapter and as provided in Title 7, chapter 14, part 11, the county commissioners or the city or town council may each year assess and levy, in addition to the annual levy for general administrative purposes or the all-purpose mill levy authorized by 7-6-4451, a tax on the taxable value of all taxable property in the county, city, or town for airports and ~~landing fields and for~~ ports.

(2) In the event of a jointly established airport, ~~landing field,~~ or port, the county commissioners and the city or town council or councils involved shall determine in advance the levy necessary for those purposes and the proportion that each political subdivision joining in the venture is required to pay.

(3) If the levy is insufficient for the purposes enumerated in subsection (1), the commissioners and councils are authorized and empowered to contract an indebtedness on behalf of the county, city, or town by borrowing money or issuing bonds for those purposes. However, bonds may not be issued until the proposition has been submitted to the qualified electors and approved by a majority vote, except as provided in subsection (4).

(4) For the purpose of establishing a reserve fund to resurface, overlay, or improve existing runways, taxiways, and ramps, the governing bodies may set up annual reserve funds in their annual budget if:

(a) the reserve is approved by the governing bodies during the normal budgeting procedure;

(b) the necessity to resurface or improve runways by overlays or similar methods periodically is based upon competent engineering estimates; and

(c) the funds are expended at least within each 10-year period.

(5) The reserve fund may not exceed at any time a competent engineering estimate of the cost of resurfacing or overlaying the existing runways, taxiways, and ramps of any one airport for each fund. The governing body of the airport or port, if in its judgment it considers it advantageous, may invest the fund in any interest-bearing deposits in a state or national bank insured by the FDIC or obligations of the United States of America, either short-term or long-term. Interest earned from the investments must be credited to the operations and maintenance budget of the airport or port governing body. ~~Due to the uniqueness of the subject matter, the provisions of this section are declared necessary in the interests of the public health and safety.~~

Section 24. Section 67-10-902, MCA, is amended to read:

“67-10-902. Definitions. As used in this part, the following definitions apply:

(1) “Airport” means an airport and landing field, as defined in 67-1-101, that does not have commercial automobile rental services available. The term includes a regional airport authority or municipal airport authority as defined in 67-1-101.

(2) “Courtesy car” means a motor vehicle provided by, and titled in the name of, a municipality for the purposes and pursuant to the conditions set out in this part.

(3) (a) “User” means an airplane pilot or an airplane passenger who flies into an airport.

(b) The term does not include local residents or airport personnel.”

Section 25. Section 67-11-103, MCA, is amended to read:

“67-11-103. Regional airport authority. (1) Two or more municipalities may by joint resolution create a public body, corporate and politic, to be known as a regional airport authority. The resolution creating a regional airport authority ~~shall~~ *must* create a board of not less than five commissioners; the number to be appointed, their term and compensation, if any, ~~shall~~ *must* be provided for in the resolution. Each ~~such~~ regional airport authority shall organize, select officers for terms to be fixed by agreement, and adopt and amend from time to time rules for its own procedure ~~not inconsistent~~ *consistent* with 67-11-104.

(2) A regional airport authority may be increased ~~from time to time~~ to serve one or more additional municipalities if each additional municipality and each of the municipalities then included in the regional authority and the commissioners of the regional authority, respectively, adopt a joint resolution consenting ~~thereto; provided that if to the increase.~~ *If* a municipal airport authority for any municipality seeking to be included in the regional authority is then in existence, the commissioners of the municipal authority ~~must~~ *shall* consent to the inclusion of the municipality in the regional authority. Upon the inclusion of any municipality in the regional authority, all rights, contracts, obligations, and property, real and personal, of the municipal authority ~~shall~~ *must* be in the name of and vest in the regional authority.

(3) A regional airport authority may be decreased if each of the municipalities then included in the regional authority and the commissioners of the regional authority consent to the decrease and make provisions for the retention or disposition of its assets and liabilities.

(4) A municipality ~~shall~~ *may* not adopt any resolution authorized by this section without a public hearing ~~thereon on the resolution~~. Notice ~~thereof shall~~ *of the hearing must* be given at least 10 days prior ~~thereto to the hearing~~ in a newspaper published in the municipality or, if there is no newspaper published ~~therein in the municipality~~, ~~then~~ in a newspaper having general circulation in the municipality.

(5) For the purpose of this chapter, a regional airport authority ~~shall have~~ *has* the same powers as all other political subdivisions in the adoption and enforcement of ~~comprehensive airport zoning affected area~~ regulations as provided ~~by the laws of this state in this title.~~

Section 26. Section 67-11-201, MCA, is amended to read:

“67-11-201. General powers of authority. An authority has all the powers necessary or convenient to carry out the purposes of this chapter, including, subject to 15-10-420, the power to certify annually to the governing bodies creating it the amount of tax to be levied by the governing bodies for airport purposes. Authority powers include but are not limited to the power to:

- (1) sue and be sued, have a seal, and have perpetual succession;
- (2) execute contracts and other instruments and take other action that may be necessary or convenient to carry out the purposes of this chapter;
- (3) plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities, within this state and within any adjoining state, including the acquisition, construction, installation, equipment, maintenance, and operation at the airports or buildings and other facilities for the servicing of aircraft or for comfort and accommodation of air travelers and the purchase and sale of supplies, goods, and commodities that are incident to the operation of its airport properties. For the authorized purposes, an authority may, by purchase, gift, devise, lease, eminent domain proceedings pursuant to Title 70, chapter 30, or otherwise, acquire property, real or personal, or any interest in property, including easements in airport hazards or land outside the boundaries of an airport or airport site, that is necessary to permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards or to prevent the establishment of airport hazards.
- (4) establish ~~comprehensive airport zoning affected area~~ regulations in accordance with ~~the laws of this state~~ *this title*;
- (5) acquire, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, existing airports and air navigation facilities. However, an authority may not acquire or take over any airport or air navigation facility owned or controlled by another authority, a municipality, or a public agency of this or any other state without the consent of the authority, municipality, or public agency.
- (6) establish or acquire and maintain airports in, over, and upon any public waters of this state or any submerged lands under public waters, provided that the authority has obtained the approval of the owner or agency that controls the water, and construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any airport and landing floats and breakwaters for the protection of the airport.”

Section 27. Section 67-11-241, MCA, is amended to read:

“67-11-241. No limitation on airport hazard zoning. Nothing contained in this chapter ~~shall be construed to limit~~ *limits* any right, power, or authority of

a municipality to regulate airport hazards by zoning *or by establishing airport affected area regulations as provided in [sections 3 through 19].*"

Section 28. Section 70-30-102, MCA, is amended to read:

"70-30-102. Public uses enumerated. Subject to the provisions of this chapter, the right of eminent domain may be exercised for the following public uses:

- (1) all public uses authorized by the government of the United States;
- (2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;
- (3) public buildings and grounds for the use of any county, city, town, or school district;
- (4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town;
- (5) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen, or straighten stream channels;
- (6) water and water supply systems as provided in Title 7, chapter 13, part 44;
- (7) roads, streets, alleys, controlled-access facilities, and all other public uses for the benefit of a county, city, or town or the inhabitants of a county, city, or town;
- (8) acquisition of road-building material as provided in 7-14-2123;
- (9) stock lanes as provided in 7-14-2621;
- (10) parking areas as provided in 7-14-4501 and 7-14-4622;
- (11) airport ~~and landing field~~ purposes as provided in 7-14-4801, 67-2-301, ~~67-5-202, 67-6-301~~, [section 12], and Title 67, chapters 10 and 11;
- (12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43;
- (13) housing authority purposes as provided in Title 7, chapter 15, part 44;
- (14) county recreational and cultural purposes as provided in 7-16-2105;
- (15) city or town athletic fields and civic stadiums as provided in 7-16-4106;
- (16) county cemetery purposes as provided in 7-35-2201, cemetery association purposes as provided in 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;
- (17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);
- (18) public assistance purposes as provided in 53-2-201;
- (19) highway purposes as provided in 60-4-103 and 60-4-104;
- (20) common carrier pipelines as provided in 69-13-104;
- (21) water supply, water transportation, and water treatment systems as provided in 75-6-313;
- (22) mitigation of the release or threatened release of a hazardous or deleterious substance as provided in 75-10-720;
- (23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;

(24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;

(25) water conservation and flood control projects as provided in 76-5-1108;

(26) acquisition of natural areas as provided in 76-12-108;

(27) acquisition of water rights for the natural flow of water as provided in 85-1-204;

(28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;

(29) conservancy district purposes as provided in 85-9-410;

(30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and railroads;

(31) canals, ditches, flumes, aqueducts, and pipes for:

(a) supplying mines, mills, and smelters for the reduction of ores;

(b) supplying farming neighborhoods with water and drainage;

(c) reclaiming lands; and

(d) floating logs and lumber on streams that are not navigable;

(32) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(33) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;

(34) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores;

(35) an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However, the reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(36) private roads leading from highways to residences or farms;

(37) telephone or electrical energy lines;

(38) telegraph lines;

(39) sewerage of any:

(a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or unincorporated;

(b) settlement consisting of not less than 10 families; or

(c) public buildings belonging to the state or to any college or university;

(40) tramway lines;

(41) logging railways;

(42) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However, the grounds of state institutions may not be used for this purpose.

(43) underground reservoirs suitable for storage of natural gas;

(44) projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath or upon the surface of property where the title to the surface vests in others. However, the use of the surface of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose.

(45) projects to restore and reclaim lands that were strip mined or underground mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse affects of strip or underground mining on those lands.”

Section 29. Repealer. Sections 67-4-101, 67-4-102, 67-4-201, 67-4-202, 67-4-203, 67-4-204, 67-4-211, 67-4-301, 67-4-302, 67-4-303, 67-4-304, 67-4-311, 67-4-312, 67-4-313, 67-4-314, 67-4-401, 67-4-402, 67-5-101, 67-5-102, 67-5-201, 67-5-202, 67-5-203, 67-5-204, 67-5-211, 67-5-212, 67-6-101, 67-6-102, 67-6-103, 67-6-201, 67-6-202, 67-6-203, 67-6-204, 67-6-205, 67-6-206, 67-6-207, 67-6-211, and 67-6-301, MCA, are repealed.

Section 30. Codification instruction. [Sections 3 through 19] are intended to be codified as an integral part of Title 67, and the provisions of Title 67 apply to [sections 3 through 19].

Section 31. Effective date. [This act] is effective on passage and approval.

Section 32. Applicability. (1) Except as provided in subsection (2), [sections 3 through 19] do not apply to a governing body that had expended funds to begin the process of designating or had already designated an airport influence area or that had established a zoning district and airport zoning regulations on or before [the effective date of this act]. The provisions of Title 67, chapters 4, 5, and 6 apply to the governing body as those provisions read before [the effective date of this act].

(2) If a governing body alters an airport influence area established before [the effective date of this act] or amends the regulations for the airport influence area or any adopted airport zoning regulations, then the provisions of [sections 3 through 19] apply.

Approved April 19, 2005

CHAPTER NO. 301

[SB 274]

AN ACT REVISING THE MONTANA MORTGAGE BROKER AND LOAN ORIGINATOR LICENSING ACT TO REVOKE AN EXEMPTION FOR MORTGAGE BANKERS ACTING AS MORTGAGE BROKERS; EXPANDING CERTAIN EXEMPTIONS; REQUIRING CERTAIN MORTGAGE BANKERS TO BE LICENSED AS MORTGAGE BROKERS; INCLUDING MORTGAGE BANKER EXPERIENCE AS QUALIFYING EXPERIENCE FOR A MORTGAGE BROKER LICENSE; AND AMENDING SECTIONS 32-9-102, 32-9-104, AND 32-9-109, MCA.

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

Section 1. Section 32-9-102, MCA, is amended to read:

“32-9-102. License requirement. (1) A person or entity may not act as a residential mortgage broker or loan originator ~~after September 1, 2004~~, unless licensed under the provisions of this part.

(2) *A mortgage banker who provides services for a fee as an intermediary between a borrower and a lender in obtaining financing for a borrower that is to be secured by a residential dwelling for between one and four families is acting as a mortgage broker and must be licensed as a mortgage broker.”*

Section 2. Section 32-9-104, MCA, is amended to read:

“32-9-104. Exemptions. The provisions of this part do not apply to:

(1) a person or entity that makes or collects loans, to the extent that those activities are subject to licensure or registration by this state under other provisions of Montana law unless the person or entity is also acting as a mortgage broker or loan originator;

(2) (a) a bank or trust company chartered under Title 32, chapter 1, a bank or trust company chartered under the National Bank Acts in Title 12 of the United States Code, a building and loan association chartered under Title 32, chapter 2, a savings and loan association chartered under the Home Owners’ Loan Act in Title 12 of the United States Code, a credit union chartered under Title 32, chapter 3, or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code;

(b) *any employee of an entity listed in subsection (2)(a); or*

(c) *any subsidiary of an entity listed in subsection (2)(a) and any employee of the subsidiary if the subsidiary is subject to the examination and supervision of:*

(i) *the department;*

(ii) *the federal deposit insurance corporation;*

(iii) *the federal reserve system;*

(iv) *the national credit union administration; or*

(v) *the department of the treasury through its office of the comptroller of the currency or office of thrift supervision;*

(3) a person or entity engaged solely in commercial mortgage lending; or

(4) a political subdivision or governmental entity of the United States or any state of the United States; ~~or~~

~~(5) a mortgage banker, except that a mortgage banker that also provides services as a mortgage broker for more than four mortgage loans in a calendar year must be licensed as a mortgage broker with respect to those mortgage broker services.”~~

Section 3. Section 32-9-109, MCA, is amended to read:

“32-9-109. Experience requirements. (1) Except as provided in 32-9-111:

(a) an individual applying for a license as a mortgage broker must have a minimum of 3 years of experience working as a loan originator, *as a mortgage banker*, or in a related field; and

(b) an individual applying for a license as a loan originator must have a minimum of 6 months of experience working in a related field.

(2) The department shall by rule establish what constitutes work in a related field.”

Approved April 20, 2005