SENATE BILL NO. 445

INTRODUCED BY M. TAYLOR

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING THE DEPARTMENT OF COMMERCE; REASSIGNING CERTAIN FUNCTIONS OF THE DEPARTMENT TO OTHER ENTITIES; TRANSFERRING CERTAIN ECONOMIC DEVELOPMENT FUNCTIONS TO THE GOVERNOR'S OFFICE; CREATING THE GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT; TRANSFERRING FUNDING FROM THE DEPARTMENT OF COMMERCE TO THE GOVERNOR'S OFFICE TO REFLECT THE FUNCTION TRANSFER; ASSIGNING MOST PROFESSIONAL AND OCCUPATIONAL LICENSING FUNCTIONS, BUILDING CODE FUNCTIONS, AND WEIGHTS AND MEASURES FUNCTIONS TO THE DEPARTMENT OF LABOR AND INDUSTRY; ASSIGNING THE LOTTERY ~~TO THE DEPARTMENT OF REVENUE; ASSIGNING THE~~, FINANCIAL INSTITUTIONS, AND LOCAL GOVERNMENT AUDIT AND ASSISTANCE FUNCTIONS TO THE DEPARTMENT OF ADMINISTRATION; ELIMINATING THE BOARD OF COUNTY PRINTING AND ASSIGNING ITS FUNCTIONS TO THE DEPARTMENT OF ADMINISTRATION; ASSIGNING THE BOARD OF HORSERACING TO THE DEPARTMENT OF JUSTICE; ASSIGNING CONSUMER AFFAIRS FUNCTIONS TO THE DEPARTMENT OF JUSTICE; ELIMINATING THE PROPRIETARY POSTSECONDARY EDUCATIONAL ADVISORY COUNCIL; AMENDING SECTIONS 2-6-402, 2-6-403, 2-7-501, 2-7-518, 2-15-1803, 2-15-1852, 2-15-1859, 2-15-1860, 2-15-1872, 2-15-1882, 2-15-1883, 2-18-103, 5-5-223, ~~7-1-4121,~~ 7-1-4145, 7-1-4147, 7-1-4148, 7-2-4906, 7-2-4911, 7-2-4912, 7-3-146, 7-3-153, 7-3-187, 7-5-2401, 7-5-2404, 7-5-2405, 7-6-603, 7-6-604, ~~7-6-1501,~~ 7-6-2114, 7-6-2141, 7-6-2203, 7-6-2302, 7-6-2311, 7-6-2314, 7-6-2322, 7-6-4140, 7-6-4205, 7-6-4260, 15-35-108, ~~15-70-101, 16-4-420,~~ 17-2-304, 17-5-1529, 17-5-1651, 17-6-321, 18-1-106, 19-18-205, 19-18-206, 19-18-403, 20-6-621, 20-6-622, 20-9-203, 20-25-901, 22-3-804, 23-3-301, 23-4-101, 23-7-201, 23-7-210, 23-7-301, 25-1-1104, 27-12-206, 30-11-515, 30-11-801, 30-12-101, 30-12-105, 30-14-102, 30-14-202, 30-14-1403, 30-16-302, 31-1-202, 31-1-703, 31-3-125, 31-3-152, 31-3-203, 32-1-109, 32-1-201, 32-1-212, 32-1-382, 32-1-901, 32-1-1005, 32-1-1007, 32-2-101, 32-3-104, 32-3-201, 32-3-203, 32-3-205, 32-3-301, 32-3-302, 32-3-303, 32-3-307, 32-3-321, 32-3-322, 32-3-323, 32-3-404, 32-3-611, 32-3-703, 32-3-705, 32-4-201, 32-4-306, 32-5-102, 32-6-103, 32-7-101, 32-7-102, 32-8-103, 33-22-705, 37-1-101, 37-1-121, 37-1-130, 37-1-137, 37-1-302, 37-1-401, 37-3-102, 37-4-101, 37-5-101, 37-6-101, 37-7-101, 37-8-102, 37-9-101, 37-10-101, 37-11-101, 37-12-101, 37-14-102, 37-14-322, 37-15-102, 37-16-102, 37-17-102, 37-18-101, 37-19-101, 37-22-102, 37-23-201, 37-24-103, 37-26-103, 37-27-205, 37-29-102, 37-30-101,

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

NEW SECTION. **Section 1. Policy -- purpose.** (1) It is the policy of this state to:

(a) strengthen the foundations of the state's business environment and diversify and expand existing economic endeavors to achieve long-term economic stability;

(b) cooperate with business enterprises, local governments, other public organizations, and the federal government and use all practical means and measures, including financial and technical assistance, to:

(i) establish an economic climate in which the state's natural resources and agricultural operations remain constant contributors to the state's economic welfare;

(ii) articulate a coherent economic development vision for the future; and

(iii) take a proactive role to ensure that Montana has the flexibility and resources to be an effective competitor in the changing global marketplace.

(2) The purpose of [sections 1 through 5] is to provide a vision and a direction through the development of strategies and initiatives to ensure that the state's role in expanding the economy takes place in an orderly and effective manner.

NEW SECTION. **Section 2. Office of economic development -- structure.** (1) There is an office of economic development within the office of the governor.

(2) The head of the office is the chief business development officer, who must be appointed by the governor.

(3) The office of economic development is composed of the following policy and program specialties:

(a) business retention and recruitment;

(b) workforce development;

(c) technology development;

(d) infrastructure improvement; and

(e) permitting and regulatory processes.

(4) The office may employ or contract with policy specialists to implement the programs listed in subsection (3) of this section and the functions referred to in [section 3].

(5) The office may accept grants, loans, and other gifts from sources other than the state for the purpose of administering the provisions of [sections 1 through 5].

NEW SECTION. **Section 3. Chief business development officer -- duties.** (1) The chief business development officer shall:

(a) advise the governor on policy issues related to economic development;

(b) lead the state's business recruitment, retention, and expansion efforts;

(c) coordinate the development and distribution of a statewide coordinated strategic economic development plan;

(d) coordinate the individual functions and programs within the office as provided in [section 2]; and

(e) serve as the state's primary liaison between federal, state, and local agencies, private nonprofit economic development organizations, and the private sector.

NEW SECTION. **Section 4. Cooperation of state agencies.** State agencies that have economic development responsibilities shall cooperate with the office of economic development and provide information, technical expertise, and other assistance when requested by the office of economic development.

NEW SECTION. **Section 5. Rulemaking authority.** (1) The office of economic development shall adopt rules to implement the provisions of [sections 1 through 5]. The rules must include but are not limited to:

(a) criteria for providing assistance to communities; and

(b) coordinating economic development efforts among other state agencies, private enterprise, federal agencies, and local governments.

(2) The office may adopt rules necessary to administer the duties and responsibilities of the office.

Section 6. Section 2-6-402, MCA, is amended to read:

"2-6-402. Local government records committee -- creation. (1) There is a local government records committee.

(2) The committee consists of the following seven members:

(a) the state archivist;

(b) the state records manager;

(c) a representative of the department of ~~commerce~~ administration;

(d) two local records custodians, appointed by the director of the Montana historical society; and

(e) two additional local records custodians, appointed by the secretary of state.

(3) Committee members subject to appointment shall hold office for a period of 2 years beginning on January 1 of the year following their appointment.

(4) Any vacancies must be filled in the same manner that they were filled originally.

(5) The committee shall elect a presiding officer and a vice presiding officer.

(6) The committee shall meet twice a year upon the call of the secretary of state or the presiding officer.

(7) Members of the committee not serving as part of their compensated government employment must be compensated in accordance with 2-18-501 through 2-18-503 for each day in committee attendance. Members who serve as part of their compensated government employment may not receive additional compensation, but the employing governmental entity shall furnish, in accordance with the prevailing per diem rates, a reasonable allowance for travel and other expenses incurred in attending committee meetings."

Section 7. Section 2-6-403, MCA, is amended to read:

"2-6-403. Duties and responsibilities. (1) The local government records committee shall approve, modify, or disapprove proposals for local government records retention and disposition schedules.

(2) The local government records committee shall appoint a subcommittee, known as the local government records destruction subcommittee, to handle requests for disposal of records. The subcommittee consists of the state archivist and a representative of the department of ~~commerce~~ administration. Unless specifically authorized by statute or by the retention and disposition schedule, a local government public record may not be destroyed or otherwise disposed of without the unanimous approval of the subcommittee. When approval is required, a request for the disposal or destruction of any local government records must be submitted to the subcommittee by the entity concerned. If there is not unanimous approval of the subcommittee, the issue of the disposition of a record must be referred to the local government records committee for approval. When

approval is obtained from the subcommittee or from the local government records committee for the disposal of a record, the local government records committee shall consider the inclusion of a new category of record for which a disposal request is not required and shall update the schedule.

(3) The local government records committee shall establish a retention and disposition schedule for categories of records for which a disposal request is not required. The committee shall publish the retention and disposition schedules. Updates to those schedules, if any, must be published at least annually.

~~(4) The committee shall establish school records retention schedules by September 1, 1997.~~

~~(5)~~(4) The committee shall respond to requests for technical advice on matters relating to local government records.

~~(6)~~(5) The committee shall provide leadership and coordination in matters affecting the records of multiple local governments."

Section 8. Section 2-7-501, MCA, is amended to read:

"2-7-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Audit" means a financial audit and includes financial statement and financial-related audits as defined by government auditing standards as established by the U.S. comptroller general.

(2) "Board" means the Montana board of public accountants provided for in 2-15-1866.

(3) "Department" means the department of ~~commerce~~ administration.

(4) (a) "Financial assistance" means assistance provided by a federal, state, or local government entity to a local government entity or subrecipient to carry out a program. Financial assistance may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance. Financial assistance includes awards received directly from federal and state agencies or indirectly when subrecipients receive funds identified as federal or state funds by recipients. The granting agency is responsible for identifying the source of funds awarded to recipients. The recipient is responsible for identifying the source of funds awarded to subrecipients.

(b) Financial assistance does not include direct federal, state, or local government cash assistance to individuals.

(5) "Financial report" means a presentation of schedules that reflect a current financial position and the operating results for the 1-year reporting period.

(6) "Independent auditor" means:

(a) a federal, state, or local government auditor who meets the standards specified in the government

auditing standards; or

(b) a licensed accountant who meets the standards in subsection (6)(a).

(7) (a) "Local government entity" means a county, city, district, or public corporation that:

(i) has the power to raise revenue for the purpose of serving the general public;

(ii) is governed by a board, commission, or individual elected or appointed by the public or representatives of the public; and

(iii) receives local, state, or federal financial assistance.

(b) Local government entities include but are not limited to:

(i) airport authority districts;

(ii) cemetery districts;

(iii) counties;

(iv) county housing authorities;

(v) county road improvement districts;

(vi) county sewer districts;

(vii) county water districts;

(viii) county weed control districts;

(ix) drainage districts;

(x) fire department relief associations;

(xi) fire districts;

(xii) hospital districts;

(xiii) incorporated cities or towns;

(xiv) irrigation districts;

(xv) mosquito districts;

(xvi) municipal housing authority districts;

(xvii) port authorities;

(xviii) refuse disposal districts;

(xix) rural improvement districts;

(xx) school districts including a district's extracurricular funds;

(xxi) soil conservation districts;

(xxii) special education or other cooperatives;

(xxiii) television districts;

(xxiv) urban transportation districts;

(xxv) volunteer fire departments; and

(xxvi) water conservancy districts.

(8) "Revenues" means all receipts of a local government entity from any source excluding the proceeds from bond issuances."

Section 9. Section 2-7-518, MCA, is amended to read:

"2-7-518. Deposit of fees. All fees received from local government entities ~~after June 30, 1981, shall~~ must be deposited in the enterprise fund to the credit of the department of ~~commerce~~ administration for administration of Title 2, chapter 7, part 5."

Section 10. Section 2-15-1803, MCA, is amended to read:

"2-15-1803. State banking board -- composition -- allocation. (1) There is a state banking board.

(2) The board is composed of six members. The members of the board must be appointed with consideration given banks of small, medium, and large size and to geographical distribution. Two of the six members must be active officers in state banks of Montana; one must be an active officer of a national bank doing business in Montana; and three must be members of the public, none of whom is an officer, director, or shareholder of any state or national bank. The board shall elect a presiding officer from its members.

(3) The members must be appointed by the governor, with the consent of the senate, for terms of 3 years. Vacancies must be filled by appointment for the unexpired term. A member may not serve more than two consecutive terms.

(4) The board is allocated to the department of administration for administrative purposes only as provided in 2-15-121."

Section 11. Section 2-15-1852, MCA, is amended to read:

"2-15-1852. Board of veterinary medicine. (1) There is a board of veterinary medicine.

(2) The board consists of six members appointed by the governor with the consent of the senate, five of whom ~~shall~~ must be licensed veterinarians and one of whom ~~shall~~ must be a public member who is a consumer of veterinary services and who ~~shall~~ may not be a ~~licentiate~~ licensee of the board or of any other board under the department of ~~commerce~~ labor and industry.

(3) Each veterinarian member ~~shall~~ must be a reputable licensed veterinarian who has graduated from

a college authorized by law to confer degrees and have educational standards equal to those approved by the American veterinary medical association. Each veterinarian member shall have actually and legally practiced veterinary medicine in either private practice or public service in this state for at least 5 years immediately before his appointment.

(4) Each member shall serve for a term of 5 years. The governor may, after notice and hearing, remove a member for misconduct, incapacity, or neglect of duty.

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

Section 12. Section 2-15-1859, MCA, is amended to read:

"2-15-1859. Board of occupational therapy practice. (1) There is a board of occupational therapy practice.

(2) The board consists of five members appointed by the governor. The members are:

(a) three occupational therapists licensed under Title 37, chapter 24, who are actively engaged in the practice or teaching of occupational therapy; and

(b) two members of the general public with an interest in the rights of the consumers of health services.

(3) The Montana occupational therapy association may submit names of nominees under subsection (2)(a) of this section to the governor as provided in 37-1-132.

(4) Each appointment is subject to confirmation by the senate then meeting in regular session or next meeting in regular session following appointment.

(5) Members shall serve staggered 4-year terms. A term begins on the first day of the calendar year and ends on the last day of the calendar year or when a successor is appointed. A member who has served two successive complete terms is not eligible for reappointment until after 1 year.

(6) The governor may, after hearing, remove a member for neglect of duty or other just cause.

(7) The board is allocated to the department of ~~commerce~~ labor and industry for administrative purposes only as prescribed in 2-15-121."

Section 13. Section 2-15-1860, MCA, is amended to read:

"2-15-1860. Board of respiratory care practitioners. (1) There is a board of respiratory care practitioners. The board consists of five members appointed by the governor. Each member must be a citizen of the United States and a resident of this state. The governor may request advice from the Montana society for respiratory care in making appointments to the board.

(2) The board consists of:

(a) three respiratory care practitioners, each of whom has engaged in the practice of respiratory care for a period of at least 3 years immediately preceding their appointment to the board. At least one of these members must have passed the registry examination for respiratory therapists administered by the national board for respiratory care and at least one of these members must have passed the entry-level examination for respiratory therapy technicians administered by the national board for respiratory care.

(b) one physician licensed in Montana who has a special interest in the treatment of cardiopulmonary diseases; and

(c) one member of the public who is not a member of a health care profession.

(3) The board is a quasi-judicial board, except that one member of the board need not be an attorney licensed to practice law in this state. Members are appointed, serve, are compensated, and are subject to removal as provided in 2-15-124.

(4) The board is allocated to the department of ~~commerce~~ labor and industry for administrative purposes only as provided in 2-15-121."

Section 14. Section 2-15-1872, MCA, is amended to read:

"2-15-1872. Board of landscape architects. (1) There is a board of landscape architects.

(2) The board consists of five members. Members of the board ~~shall~~ must be appointed by the governor with the consent of the senate and must be residents of this state. Three members must be landscape architects licensed under Title 37, chapter 66. Two members must be representatives of the public who are not engaged in the practice of landscape architecture.

(3) The board is allocated to the department of ~~commerce~~ labor and industry for administrative purposes only as prescribed in 2-15-121.

(4) Terms are for 4 years. Each member shall hold office until the appointment and qualification of ~~his~~ a successor. Vacancies occurring prior to the expiration of the term ~~shall~~ must be filled in the same manner as original appointments. ~~No~~ A member may not serve more than 8 consecutive years."

Section 15. Section 2-15-1882, MCA, is amended to read:

"2-15-1882. Board of athletics. (1) There is a board of athletics.

(2) The board consists of three 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 ~~commerce~~ labor and industry for administrative purposes only as prescribed in 2-15-121."

Section 16. Section 2-15-1883, MCA, is amended to read:

"2-15-1883. Board of outfitters. (1) There is a board of outfitters.

(2) The board consists of the following seven members to be appointed by the governor:

(a) one big game hunting outfitter;

(b) one fishing outfitter;

(c) two outfitters who are engaged in the fishing and hunting outfitting business;

(d) two sportspersons; and

(e) one member of the general public.

(3) (a) A subcommittee composed of five members of the board shall review net client hunter use expansion requests as provided in 37-47-316, based on the criteria provided in 37-47-317, and report its determinations to the full board. A favorable vote of at least a majority of all members of the board is required to adopt any resolution, motion, or other decision.

(b) The subcommittee must consist of the two hunting outfitters, the two sportspersons, and the one member of the public serving on the board pursuant to subsection (2).

(4) A vacancy on the board must be filled in the same manner as the original appointment.

(5) The members shall serve staggered 3-year terms and take office on the day they are appointed.

(6) The board is allocated to the department of ~~commerce~~ labor and industry for administrative purposes only as prescribed in 2-15-121.

(7) Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133."

Section 17. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

(1) elected officials;

(2) county assessors and their chief deputies;

(3) employees of the office of consumer counsel;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;

(11) four professional staff positions under the board of oil and gas conservation;

(12) assistant director for security of the Montana state lottery;

(13) executive director and employees of the state compensation insurance fund;

(14) state racing stewards employed by the executive secretary of the Montana board of horseracing;

(15) executive director of the Montana wheat and barley committee;

(16) commissioner of banking and financial institutions;

(17) training coordinator for county attorneys;

(18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;

(19) chief business development officer and six professional staff positions in the office of economic development provided for in [section 2]."

Section 18. Section 5-5-223, MCA, is amended to read:

"5-5-223. Business and labor interim committee. The business and labor interim committee has administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

(1) department of agriculture;

(2) department of commerce;

(3) department of labor and industry;

(4) department of livestock;

(5) department of public service regulation; ~~and~~

(6) office of the state auditor and insurance commissioner; and

(7) office of economic development."

~~**Section 19.** Section 7-1-4121, MCA, is amended to read:~~

~~**"7-1-4121. General definitions.** As used in 7-1-4121 through 7-1-4149, unless otherwise provided, the following definitions apply:~~

~~(1) "Charter" means a written document defining the powers, structure, privileges, rights, and duties of the government and limitations thereon.~~

~~(2) "Chief executive" means the elected executive in a government adopting the commission-executive form, the manager in a government adopting the commission-manager form, the chairman in a government adopting the commission-chairman form, the town chairman in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers so designated in the charter in a government adopting a charter.~~

~~(3) "Elector" means a resident of the municipality qualified and registered to vote under state law.~~

~~(4) "Employee" means a person other than an officer who is employed by a municipality.~~

~~(5) "Executive branch" means that part of the municipality, including departments, offices, and boards, charged with implementing actions approved and administering policies adopted by the governing body of the local government or performing the duties required by law.~~

~~(6) "Governing body" means the commission or town meeting legislative body established in the alternative form of local government.~~

~~(7) "Guideline" means a suggested or recommended standard or procedure to serve as an index of comparison and is not enforceable as a regulation.~~

~~(8) "Law" means a statute enacted by the legislature of Montana and approved and signed by the governor or a statute adopted by the people of Montana through statutory initiative procedures.~~

~~(9) "Municipality" means an entity which incorporates as a city or town.~~

~~(10) "Office of the municipality" means the permanent location of the seat of government from which the records administrator, or the office of the clerk of the governing body where one is appointed, carries out his duties.~~

~~(11) "Officer" means a person holding a position with a municipality which is ordinarily filled by election or, in those municipalities with a manager, the manager.~~

~~(12) "Ordinance" means an act adopted and approved by a municipality, having effect only within the jurisdiction of the local government.~~

~~(13) "Person" means any individual, firm, partnership, company, corporation, trust, trustee, assignee or other representative, association, or other organized group.~~

~~(14) "Plan of government" means a certificate submitted by a governing body that documents the basic form of government selected, including all applicable suboptions. The plan must establish the terms of all officers and the number of commissioners, if any, to be elected.~~

~~(15) "Political subdivision" refers to a local government, authority, school district, or multicounty agency.~~

~~(16) "Population" means the number of inhabitants as determined by an official federal, state, or local census or official population estimate approved by the department of commerce~~ administration~~.~~

~~(17) "Printed" means the act of reproducing a design on a surface by any process~~ of printing ~~as defined by 1-1-203(3).~~

~~(18) "Public agency" means a political subdivision, Indian tribal council, state or federal department or office, or the Dominion of Canada or any provincial department or office or political subdivision thereof.~~

~~(19) "Public property" means any and all property owned by a municipality or held in the name of a municipality by any of the departments, boards, or authorities of the local government.~~

~~(20) "Real property" means lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term "real property", including not only fee simple absolute but also all lesser interests such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.~~

~~(21) "Reproduced" means the act of reproducing a design on any surface by any process.~~

~~(22) "Resolution" means a statement of policy by the governing body or an order by the governing body that a specific action be taken.~~

~~(23) "Service" means an authorized function or activity performed by local government.~~

~~(24) "Structure" means the entire governmental organization through which a local government carries out its duties, functions, and responsibilities."~~

Section 19. Section 7-1-4145, MCA, is amended to read:

"7-1-4145. State reports. (1) Municipal governing bodies, chief executives, officers, employees, departments, boards, and authorities shall file with state agencies in a timely fashion all reports and information required by state law.

(2) The department of ~~commerce~~ administration shall coordinate to the greatest extent possible the collection of data by state and federal agencies in order to minimize the requests of municipalities and to maximize access to information collected on municipalities.

(3) Prior to requesting reports from a municipality, all state agencies shall notify the department of ~~commerce~~ administration of the intended request."

Section 20. Section 7-1-4147, MCA, is amended to read:

"7-1-4147. State technical advice and assistance. (1) All state agencies are authorized and encouraged to provide technical assistance to municipalities.

(2) The technical assistance services ~~shall~~ may not include those that can be as reasonably and expeditiously obtained through business channels.

(3) State agencies are encouraged to develop the capacity to provide technical advice and assistance without charge to municipalities, but they are also encouraged to establish service charges for special or extraordinary technical advice.

(4) The department of ~~commerce~~ administration shall coordinate technical advice and assistance provided to municipalities by state agencies.

(5) State agencies may lend personnel, equipment, and machinery to municipalities."

Section 21. Section 7-1-4148, MCA, is amended to read:

"7-1-4148. Penalty. ~~Where~~ When a municipality is required by state law to provide information to a state agency and fails to provide the required information, the department of ~~commerce~~ administration may issue an order stopping payment of any state financial aid to the municipality. Upon provision of the information, all financial aid ~~which~~ that was stopped because of failure to provide the information ~~shall~~ must be paid to the municipality."

Section 22. Section 7-2-4906, MCA, is amended to read:

"7-2-4906. Effect of sufficient vote to disincorporate. (1) ~~In case~~ If the canvass reveals that 60% or more of all the votes cast were in favor of disincorporation, the county commissioners shall~~, under their hands, make and~~ file in their office and cause to be entered upon their proceedings an order ~~that~~ granting the petition for disincorporation ~~be granted~~ and declaring that the city or town is disincorporated. The order takes effect within 60 days following the date of the order.

(2) A certified copy of the order ~~shall~~ must be sent to the secretary of state and the ~~head~~ director of the department of ~~commerce~~ administration."

Section 23. Section 7-2-4911, MCA, is amended to read:

"7-2-4911. Certification of financial condition. (1) Upon receiving a certified copy of the order of disincorporation, the director of the department of ~~commerce~~ administration shall certify a current statement of the financial condition of the disincorporating city or town to the board of county commissioners.

(2) The statement ~~shall~~ must include but is not ~~be~~ limited to:

(a) a determination of all assets of the city or town, including any current or delinquent utility accounts ~~and/or~~ and taxes receivable; and

(b) a statement of all city or town indebtedness, including any revenue or general obligation bonds, special improvement district obligations outstanding, contracts payable, all other obligations of the city, and a schedule for the repayment of indebtedness."

Section 24. Section 7-2-4912, MCA, is amended to read:

"7-2-4912. Management of unencumbered cash. (1) Under the supervision of the director of the department of ~~commerce~~ administration or ~~his agent~~ the director's designee, the city treasurer or town clerk shall draw a treasurer's check for the amount of unencumbered cash in the city or town treasury. The check ~~shall~~ must be made payable to and delivered to the county treasurer of the county in which the disincorporating city or town is situated.

(2) The county treasurer shall immediately place ~~said~~ the money in a special fund, to be drawn upon as provided in this part."

Section 25. Section 7-3-146, MCA, is amended to read:

"7-3-146. Filing of petitions. (1) Two copies of a petition ~~shall~~ must be filed with the department of ~~commerce~~ administration.

(2) One copy of a petition ~~shall~~ must be filed with the local government records administrator.

(3) The filings required by this section ~~shall~~ must be done within 45 days of submission of the petition."

Section 26. Section 7-3-153, MCA, is amended to read:

"7-3-153. Filing of approved plan. (1) A copy of the existing or proposed plan of government ratified

by the voters and any apportionment plan or consolidation or merger plan ~~shall~~ must be certified by the ~~chairman~~ presiding officer of the governing body and filed with the department of ~~commerce~~ administration, the county records administrator, and the municipal records administrator if it is a municipal plan.

(2) The approved plan filed with the department of ~~commerce~~ administration is the official plan and is a public record open to inspection by the public and judicially noticeable by all courts."

Section 27. Section 7-3-187, MCA, is amended to read:

"7-3-187. Final report. (1) A study commission shall adopt a final report. If the study commission recommends an alternative form of government, the final report must contain the following materials and documents, each signed by a majority of the study commission members:

(a) those materials and documents required of a petition proposing an alteration of an existing form of government in 7-3-142;

(b) a certificate establishing the date of the special election, which must be held in conjunction with a regular or primary election, at which the alternative form of government is presented to the electors and a certificate establishing the form of the ballot question or questions; and

(c) a certificate establishing the dates of the first primary and general elections for officers of a new government if the proposal is approved and establishing the effective date of the proposal if approved.

(2) The final report must contain any minority report signed by members of the commission who do not support the majority proposal.

(3) If the study commission is not recommending any changes, its final report must indicate that changes are not recommended.

(4) The study commission shall file two copies of the final report with the department of ~~commerce~~ administration, one of which the department shall forward to the state library. A copy of the final report must be certified by the study commission to the municipal or county records administrator within 30 days after the adoption of the final report.

(5) Sufficient copies of the final report must be prepared for public distribution. The final report must be available to the electors not later than 30 days prior to the election on the issue of adopting the alternative plan. Copies of the final report may be distributed to electors or residents of the local government or governments affected.

(6) After submission of the final report, the commission shall deposit copies of its minutes and other records with the county clerk and recorder."

Section 28. Section 7-5-2401, MCA, is amended to read:

"7-5-2401. Purpose of part. The purpose of this part is to provide:

(1) for the ~~board of county printing~~ department of administration to set maximum prices that may be charged for county legal advertising; and

(2) for the purchase of county printed forms and materials."

Section 29. Section 7-5-2404, MCA, is amended to read:

"7-5-2404. Establishment of maximum prices. (1) The ~~board~~ department of administration shall adopt and publish a schedule of maximum prices to be charged for county legal advertising.

(2) The ~~board~~ department of administration shall conduct hearings when required to determine maximum rates for county legal advertising. Notice of the hearing must be mailed to the Montana association of counties and the Montana newspaper association.

(3) The ~~board~~ department of administration shall deliver, free of charge, to each board of county commissioners in this state a copy of every schedule of maximum prices adopted by the ~~board~~ department within 30 days of its publication, together with a notice of the date fixed by the ~~board~~ department when the prices will be effective.

(4) The county commissioners shall require each establishment that prints county legal advertising to verify that:

(a) the legal advertisement was published on the dates ordered by the county and in the style set by the ~~board~~ department; and

(b) the price was not in excess of the maximum price set by the ~~board~~ department.

(5) The ~~board~~ department may not establish maximum prices for printed county forms."

Section 30. Section 7-5-2405, MCA, is amended to read:

"7-5-2405. Adoption of printing standards. The ~~board~~ department of administration shall adopt necessary standards for typeface, type size, type style, and type leading for county legal advertising."

Section 31. Section 7-6-603, MCA, is amended to read:

"7-6-603. Adoption of alternative accounting method. (1) A local government entity may by resolution adopt the alternative accounting method established in 7-6-604.

(2) A local government entity that adopts the alternative accounting method is considered to have

complied with state accounting and financial reporting standards and requirements.

(3) A local government entity that does not adopt the alternative accounting method is subject to state accounting and financial reporting standards and requirements.

(4) A local government entity may not adopt the alternative accounting method unless it has received an auditor's unqualified opinion on its annual financial statements prepared for its preceding fiscal year.

(5) A local government entity that adopts the alternative accounting method by resolution shall submit a copy of the resolution to the department of ~~commerce~~ administration."

Section 32. Section 7-6-604, MCA, is amended to read:

"7-6-604. Alternative accounting method -- requirements. A local government entity that adopts the alternative accounting method shall:

(1) prepare its accounting records and financial reports in accordance with generally accepted accounting principles established by the governmental accounting standards board or its generally recognized successor;

(2) adopt a fiscal year that commences on July 1 of each year;

(3) (a) compile an annual financial report covering the preceding fiscal year and submit a copy of the annual financial report or an annual audit, pursuant to subsection (3)(b), to the department of ~~commerce~~ administration within 6 months of the end of that reported fiscal year; or

(b) if the local government entity submits an audit report in lieu of an annual financial report, ensure that the audit report contains, at a minimum, the entity's general purpose financial statements and combining and individual fund and account group statements as defined under the principles described in subsection (1);

(4) cause an annual audit in accordance with the provisions of Title 2, chapter 7, part 5; and

(5) ensure that a budget is made each year that:

(a) shows the complete expenditure program for the local government entity for the coming fiscal year and the sources by which it will be funded;

(b) must be completed on or before the second Monday in August of the current fiscal year;

(c) must be approved or amended by the governing body in a regularly scheduled meeting;

(d) must be the subject of one or more advertised public hearings, pursuant to the provisions of 7-1-2121 or 7-1-4127, prior to approval or amendment; and

(e) must be submitted to the department of ~~commerce~~ administration by September 15."

~~**Section 34.** Section 7-6-1501, MCA, is amended to read:~~

~~**"7-6-1501. Resort tax -- definitions.** As used in 7-6-1501 through 7-6-1509, the following definitions apply:~~

~~(1) "Luxuries" means any gift item, luxury item, or other item normally sold to the public or to transient visitors or tourists. The term does not include food purchased unprepared or unserved, medicine, medical supplies and services, appliances, hardware supplies and tools, or any necessities of life.~~

~~(2) "Medical supplies" means items that are sold to be used for curative, prosthetic, or medical maintenance purposes, whether or not prescribed by a physician.~~

~~(3) "Medicine" means substances sold for curative or remedial properties, including both physician prescribed and over-the-counter medications.~~

~~(4) "Resort area" means an area that:~~

~~(a) is an unincorporated area and is a defined contiguous geographic area;~~

~~(b) has a population of less than 2,500 according to the most recent federal census or federal estimate;~~

~~(c) derives the major portion of its economic well-being from businesses catering to the recreational and personal needs of persons traveling to or through the area for purposes not related to their income production; and~~

~~(d) has been designated by the department of commerce~~ administration ~~as a resort area prior to its establishment by the county commissioners as provided in 7-6-1508.~~

~~(5) "Resort community" means a community that:~~

~~(a) is an incorporated municipality;~~

~~(b) has a population of less than 5,500 according to the most recent federal census or federal estimate;~~

~~(c) derives the primary portion of its economic well-being related to current employment from businesses catering to the recreational and personal needs of persons traveling to or through the municipality for purposes not related to their income production; and~~

~~(d) has been designated by the department of commerce~~ administration ~~as a resort community."~~

Section 33. Section 7-6-2114, MCA, is amended to read:

"7-6-2114. Inspection of treasurer's books and records. (1) The books, accounts, and vouchers of the treasurer are at all times subject to the inspection and examination of the board of county commissioners and the grand jury.

(2) The treasurer ~~must~~ shall permit the department of ~~commerce~~ administration and county clerk or the

board of county commissioners to examine ~~his~~ the treasurer's books and count the money in the treasury when ~~any of them wants~~ they wish to make an examination or counting."

Section 34. Section 7-6-2141, MCA, is amended to read:

"7-6-2141. Coordination of state revenue collected by counties -- duties of department of ~~commerce~~ administration. (1) The department of ~~commerce~~ administration shall advise the counties concerning any questions involving collection of revenue on behalf of the state. The department shall prepare and distribute a county collections manual to county treasurers, setting forth the procedures and forms to be used by the counties in collecting revenue for the state. The manual must be revised at least biennially, with the manual and revisions being sent to each county treasurer.

(2) State agencies receiving revenue collected by the counties shall coordinate the collection of revenue with the department. Necessary instructions or procedures must be submitted to the counties by state agencies through the department to provide coordination and ensure placement in the county collections manual."

Section 35. Section 7-6-2203, MCA, is amended to read:

"7-6-2203. Annual financial statement -- exception. (1) Within 120 days after the close of each fiscal year, the county clerk shall compile and present to the board of county commissioners and the department of ~~commerce~~ administration a complete statement of the financial condition of the county. The statement must show:

(a) a detailed description of all of the resources and liabilities of the county and the book value of the resources and liabilities;

(b) the amount of money received, showing the source of that revenue;

(c) the amount of money disbursed, with the purpose of disbursement;

(d) the operation of each of the cash and warrant accounts, showing the balance at the beginning of the year, the credits, the debits, and the balance at the end of the year;

(e) the assessed valuation of the real and personal property of the county;

(f) the rate of taxation and the amount of taxes delinquent for the preceding years; and

(g) other items that the department of ~~commerce~~ administration may prescribe.

(2) The statement must be on the form designated by the department.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 36. Section 7-6-2302, MCA, is amended to read:

"7-6-2302. Role of department of ~~commerce~~ administration -- exception. (1) The department of ~~commerce~~ administration shall make rules and classifications and prescribe forms necessary to carry out the provisions of this part, to define ~~what~~ those expenditures that are chargeable to each budget account, and to establish accounting and cost systems necessary to provide accurate budget information.

(2) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 37. Section 7-6-2311, MCA, is amended to read:

"7-6-2311. Filing of estimate of revenues and expenses with county clerk and recorder -- exception. (1) Before June 1 each year the county clerk and recorder shall notify in writing each county official in charge of an office, department, service, institution, or county-funded district court program of the county to file with the county clerk and recorder, before June 10, detailed and itemized estimates, both of the probable revenue from sources other than taxation and of all expenditures required by the office, department, service, or institution for the next fiscal year.

(2) (a) The county commissioners shall submit to the county clerk and recorder the estimate of expenditures for all purposes for the board and a detailed statement showing all new road and bridge construction to be financed from county road and bridge funds, from any special road or bridge fund, from any special highway fund, and from bond issues issued or authorized for the next fiscal year, together with the cost of that construction as computed by the county surveyor or, if for construction in charge of a special engineer, then by that engineer. The county commissioners shall also submit to the county clerk and recorder detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies that are required to be approved at an election to be held.

(b) The county surveyor and any special engineer shall prepare the estimates of cost of road and bridge construction for the county commissioners. They shall also submit a similar statement showing road and bridge maintenance expenditures as nearly as can be estimated.

(c) The county treasurer shall prepare the estimates for interest and debt reduction.

(d) The county clerk and recorder shall prepare all other estimates that properly fall within the duties of the office.

(3) The estimates required in this section must be submitted on forms provided by the county clerk and recorder and prescribed by the department of ~~commerce~~ administration. The forms may ~~only~~ be varied or

departed from only with permission and approval of ~~that~~ the department. Each of the officials shall file the estimates within the time and in the manner provided in the form and notice.

(4) In the absence or disability of an official, the duties required by ~~this section or~~ 7-6-2312 or this section devolve upon the official or employee in charge of the office, department, service, or institution.

(5) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 38. Section 7-6-2314, MCA, is amended to read:

"7-6-2314. Classification of estimates, appropriations, and expenditures -- exception. (1) In the tabulation required by 7-6-2313, the estimates, appropriations, and expenditures must be classified as:

(a) salaries and wages;

(b) maintenance and operation;

(c) capital outlay;

(d) interest and debt redemption;

(e) miscellaneous; and

(f) expenditures proposed to be made from bond issues not yet authorized or from the proceeds of a tax levy or levies that are required to be submitted to and approved at an election to be held later.

(2) (a) Within the general class of salaries and wages, each salary must be set forth separately, together with the title or position of the recipient. An unitemized appropriation may be made to cover the expenses of special deputies or assistants in any office where the services of the special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made, but the proposed rate per day for each class or kind of labor must be set forth.

(b) Expenditures under the general class of maintenance and operation must be classified according to a standard classification to be established by the department of ~~commerce~~ administration.

(c) Expenditures for capital outlay must set forth and describe each object of expenditure separately.

(d) Under the general class of interest and debt redemption, proposed expenditures for interest and for redemption of principal must be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements must be set forth in a similar manner.

(e) Under the general class of miscellaneous, expenditures for all purposes not listed in or that cannot properly be assigned to any of the general classes must be set forth and itemized in detail.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 39. Section 7-6-2322, MCA, is amended to read:

"7-6-2322. Budget and tax levies to be supplied to department of ~~commerce~~ administration. (1) The county clerk and recorder shall, not later than September 15, forward a full and detailed copy of the final budget, together with the tax levies, to the department of ~~commerce~~ administration.

(2) If a county clerk and recorder fails to forward a copy of the budget to the department within that time, that department shall, before October 1, notify the board of county commissioners of the county that a copy of the budget has not been forwarded by the county clerk and recorder. The board ~~must~~ shall then withhold the county clerk and recorder's salary for September until the county clerk and recorder files with the board a receipt from the department showing the receipt of a copy."

Section 40. Section 7-6-4140, MCA, is amended to read:

"7-6-4140. Role of department of ~~commerce~~ administration. (1) The department of ~~commerce~~ administration shall prescribe for all municipalities:

(a) general methods and details of accounting as provided in 2-7-504;

(b) uniform internal and interim reporting systems as provided in 2-7-503;

(c) annual financial report forms as provided in 2-7-503; and

(d) general methods and details of accounting for the annual financial report as provided in 2-7-513.

(2) Municipalities shall file with the department of ~~commerce~~ administration:

(a) an annual financial report within 6 months of the fiscal yearend; and

(b) an audit report within 12 months of the end of the audited period.

(3) The audit report must be accepted in lieu of the annual financial report if it contains, at a minimum, the municipality's general purpose financial statements and combining and individual fund and account group statements.

(4) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 41. Section 7-6-4205, MCA, is amended to read:

"7-6-4205. Budget and levies to be supplied to department of ~~commerce~~ administration. (1) The

finance officer shall, not later than October 1, forward a complete copy of the final budget together with tax levies to the department of ~~commerce~~ administration.

(2) The finance officer shall use standard forms prescribed by the department of ~~commerce~~ administration or shall use an alternative budget format acceptable to the department of ~~commerce~~ administration.

(3) This section does not apply to a city or town that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 42. Section 7-6-4260, MCA, is amended to read:

"7-6-4260. Preliminary annual operating budget. (1) The finance officer shall prepare, under the direction of the chief executive, a preliminary annual operating budget for the municipality. The finance officer shall use standard forms prescribed by the department of ~~commerce~~ administration or an alternative budget format acceptable to the department of ~~commerce~~ administration.

(2) The preliminary annual operating budget for each fund must include, at a minimum:

(a) a listing of all revenue and other resources for the prior year, current year budget, and proposed budget year. Revenue and other resources must be summarized into the following categories: taxes; special assessment principal; special assessment interest; licenses and permits; intergovernmental revenue; charges for services, fines, and forfeitures; interest on investments~~,~~; other revenue~~,~~; and operating transfers in.

(b) a listing of all expenditures for the prior year, current year budget, and proposed budget year. All expenditures must be classified under one of the following categories: salaries and wages, operation and maintenance, capital outlay, debt service, or transfers out.

(c) a projection of changes in fund balances or cash balances available for governmental fund types and a projection of changes in cash balances and working capital for proprietary fund types. This projection must be supported by a summary for each fund or group of funds listing the estimated beginning balance, plus estimated revenue, less proposed expenditures, cash reserves, and estimated ending balances.

(d) a detailed list of proposed capital expenditures and a list of proposed major capital projects for the budget year;

(e) financial data on current and future debt obligations;

(f) schedules or summary tables of personnel or position counts for the prior year, current year, and budget year. The budgeted amounts for personnel services must be supported by a listing of positions, salaries, and benefits for all positions of the municipality. The listing of positions, salaries, and benefits is not required to

be part of the budget document.

(g) all other estimates that fall under the purview of the budget.

(3) The preliminary annual operating budget for each fund for which the municipality will levy an ad valorem tax must include the amount to be raised by taxation, the taxable value, and the number of mills to be levied.

(4) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 43. Section 15-35-108, MCA, is amended to read:

"15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) (a) Subject to subsection (7)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, for the biennium ending June 30, 2001, as follows:

(i) $65,000 to the cooperative development center;

(ii) $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) to the department of commerce:

~~(A) $350,000 for business recruitment;~~

~~(B)~~(A) $125,000 for a small business development center;

~~(C)~~(B) $50,000 for a small business innovative research program;

~~(D)~~(C) $425,000 for certified communities;

~~(E)~~(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

~~(F)~~(E) $300,000 for export trade enhancement; ~~and~~

(iv) $350,000 to the office of economic development for business recruitment and retention; and

~~(iv)~~(v) $600,000 to the department of administration for the purpose of reimbursing tax increment financing industrial districts as provided in 7-15-4299. Reimbursement must be made to qualified districts on a proportional basis to the loss of taxable value as a result of Chapter 285, Laws of 1999, and as documented by the department of revenue. This documentation must be provided to the budget director and to the legislative fiscal analyst. The reimbursement may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the district. (Terminates June 30, 2001--sec. 10(1), Ch. 10, Sp. L. May 2000.)

15-35-108. (Effective July 1, 2001) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 8.36% must be credited to an account in the state special revenue fund to be allocated

by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) (a) Subject to subsections (7)(b) and (7)(c), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from $140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) $65,000 to the cooperative development center;

(ii) $1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) to the department of commerce:

~~(A) $350,000 for business recruitment;~~

~~(B)~~(A) $125,000 for a small business development center;

~~(C)~~(B) $50,000 for a small business innovative research program;

~~(D)~~(C) $425,000 for certified communities;

~~(E)~~(D) $200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

~~(F)~~(E) $300,000 for export trade enhancement; ~~and~~

(iv) $350,000 to the office of economic development for business recruitment and retention; and

~~(iv)~~(v) $600,000 to the department of administration for the purpose of reimbursing tax increment financing industrial districts as provided in 7-15-4299. Reimbursement must be made to qualified districts on a

proportional basis to the loss of taxable value as a result of Chapter 285, Laws of 1999, and as documented by the department of revenue. This documentation must be provided to the budget director and to the legislative fiscal analyst. The reimbursement may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the district.

(c) Beginning July 1, 2001, there is transferred annually from the interest income referred to in subsection (7)(b) ~~$4.85~~ $4 million to the research and commercialization expendable trust fund created in 90-3-1002 AND $850,000 TO THE OFFICE OF THE GOVERNOR. (Terminates June 30, 2005--sec. 10(2), Ch. 10, Sp. L. May 2000.)

15-35-108. (Effective July 1, 2005) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) ~~Beginning July 1, 1997, and ending June 30, 1999, the amount of 0.87% must be allocated to an account in the state special revenue fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Beginning July 1, 1999, the~~ The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects.

Income from this trust fund must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

~~**Section 46.** Section 15-70-101, MCA, is amended to read:~~

~~**"15-70-101. Disposition of funds.** (1) All taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be placed in a highway revenue account in the state special revenue fund to the credit of the department of transportation. Beginning July 1, 2001, all~~ All ~~interest and income earned on the account must be deposited to the credit of the account and any unexpended balance in the account must remain in the account. Those funds allocated to cities, towns, counties, and consolidated city-county governments in this section must, in accordance with the provisions of 15-1-501, be paid by the department of transportation from the state special revenue fund to the cities, towns, counties, and consolidated city-county governments.~~

~~(2) The amount of $16,766,000 of the taxes collected under this chapter is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated each fiscal year on a monthly basis to the counties, incorporated cities and towns, and consolidated city-county governments in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (2)(a) through (2)(c):~~

~~(a) The amount of $54,000 must be designated for the purposes and functions of the Montana local technical assistance transportation program in Bozeman.~~

~~(b) The amount of $6,323,000 must be divided among the various counties in the following manner:~~

~~(i) 40% in the ratio that the rural road mileage in each county, exclusive of the national highway system and the primary system, bears to the total rural road mileage in the state, exclusive of the national highway system and the primary system;~~

~~(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;~~

~~(iii) 20% in the ratio that the land area of each county bears to the total land area of the state.~~

~~(c) The amount of $10,389,000 must be divided among the incorporated cities and towns in the following manner:~~

~~(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;~~

~~(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the national highway system and the primary system, within corporate limits bears to the total street and alley mileage, exclusive of the national highway system and primary system, within the corporate limits of all cities and towns in Montana.~~

~~(3) (a) For the purpose of allocating the funds in subsections (2)(b) and (2)(c) to a consolidated city-county government, each entity must be considered to have separate city and county boundaries. The city limit boundaries are the last official city limit boundaries for the former city unless revised boundaries based on the location of the urban area have been approved by the department of transportation and must be used to determine city and county populations and road mileages in the following manner:~~

~~(i) Percentage factors must be calculated to determine separate populations for the city and rural county by using the last official decennial federal census population figures that recognized an incorporated city and the rural county. The factors must be based on the ratio of the city to the rural county population, considering the total population in the county minus the population of any other incorporated city or town in the county.~~

~~(ii) The city and county populations must be calculated by multiplying the total county population, as determined by the latest official decennial census or the latest interim year population estimates from the Montana department of commerce~~ administration ~~as supplied by the United States bureau of the census, minus the population of any other incorporated city or town in that county, by the factors established in subsection (3)(a)(i).~~

~~(b) The amount allocated by this method for the city and the county must be combined, and single monthly payments must be made to the consolidated city-county government.~~

~~(4) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, county, or consolidated city-county government might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the primary or secondary highway system or urban extensions to those systems. The governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys.~~

~~(5) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of $4,000.~~

~~(6) For the purposes of this section in which distribution of funds is made on a basis related to population,~~

~~the population must be determined annually for counties and biennially for cities according to the latest official decennial census or the latest interim year population estimates from the Montana department of commerce administration as supplied by the United States bureau of the census.~~

~~(7) For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns, counties, and consolidated city-county governments to furnish to the department of transportation a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted is subject to review and approval by the department of transportation.~~

~~(8) Except by a town or third-class city as provided in subsection (4), the funds authorized by this section may not be used for the purchase of capital equipment.~~

~~(9) Funds authorized by this section must be used for construction and maintenance programs."~~

~~**Section 47.** Section 16-4-420, MCA, is amended to read:~~

~~**"16-4-420. Restaurant beer and wine license.** (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and conditions:~~

~~(a) in the case of an individual applicant:~~

~~(i) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and~~

~~(ii) the applicant is not under 19 years of age;~~

~~(b) in the case of a corporate applicant:~~

~~(i) in the case of a corporation listed on a national stock exchange, the corporate officers and the board of directors shall meet the requirements of subsection (1)(a);~~

~~(ii) in the case of a corporation not listed on a national stock exchange, each owner of 10% or more of the outstanding stock shall must meet the requirements for an individual listed in subsection (1)(a); and~~

~~(iii) the corporation is authorized to do business in Montana;~~

~~(c) in the case of any other business entity, including but not limited to partnerships, including limited liability partnerships, limited partnerships, and limited liability companies, but not including any form of a trust:~~

~~(i) if the applicant consists of more than one individual, all individuals shall must meet the requirements of subsection (1)(a); and~~

~~(ii) if the applicant consists of more than one corporation, all corporations listed on a national stock exchange shall must meet the requirements of subsection (1)(b)(i) and corporations not listed on a national stock exchange shall must meet the requirements of subsection (1)(b)(ii);~~

~~(d) the applicant operates a restaurant at the location where the restaurant beer and wine license will be used or satisfies the department:~~

~~(i) that the applicant intends to open a restaurant that will meet the requirements of subsection (6) and intends to operate the restaurant so that at least 65% of the restaurant's gross income during its first year of operation is expected to be the result of the sale of food;~~

~~(ii) that the restaurant beer and wine license will be used in conjunction with that restaurant, that the restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be stated on the food bill; and~~

~~(iii) that the restaurant will serve beer and wine from a service bar, as service bar is defined by the department by rule;~~

~~(e) the applicant understands and acknowledges in writing on the application that this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine license will be used, the activity must be discontinued or the machines must be removed before the restaurant beer and wine license takes effect; and~~

~~(f) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current seating capacity if the restaurant is operating.~~

~~(2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic beverage may not be considered for a restaurant beer and wine license at the same location.~~

~~(b) A restaurant that sells its existing retail license may not apply for a license under this section for a period of 1 year from the date that license is transferred to a new purchaser.~~

~~(3) (a) A completed application for a license under this section and the appropriate application fee, as provided in subsection (11), must be submitted to the department. The department shall request that the department of justice make an investigation of all the items relating to the application as described in subsections (3)(a)(i) through (3)(a)(iv). Based on the results of the investigation or in exercising its sound discretion, the department shall determine whether:~~

~~(i) the applicant is qualified to receive a license;~~

~~(ii) the applicant's premises are suitable for the carrying on of the business;~~

~~(iii) the requirements of this code and the rules promulgated by the department are met and complied with; and~~

~~(iv) the seating capacity as stated on the application is correct.~~

~~(b) The department may retain 20% of the application fee collected under subsection (11) to defray the costs of the department and department of justice associated with investigating and processing applications.~~

~~(4) An application for a beer and wine license submitted under this section is subject to the provisions of 16-4-203, 16-4-207, and 16-4-405.~~

~~(5) If a premises proposed for licensing under this section is a new or remodeled structure, then the department may issue a conditional license prior to completion of the premises based on reasonable evidence, including a statement from the applicant's architect or contractor confirming that the seating capacity stated on the application is correct, that the premises will be suitable for the carrying on of business as a bona fide restaurant, as defined in subsection (6).~~

~~(6) For purposes of this section, "restaurant" means a public eating place where individually priced meals are prepared and served for on-premises consumption. At least 65% of the restaurant's annual gross income from the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file with the department a statement, in a form approved by the department, attesting that at least 65% of the gross income of the restaurant during the prior year resulted from the sale of food. The restaurant must have a dining room, a kitchen, and the number and kinds of employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use as a full-service restaurant. A full-service restaurant is a restaurant that provides an evening dinner meal.~~

~~(7) (a) (i) Subject to the conditions of subsection (7)(a)(ii), a restaurant beer and wine license may be transferred, upon approval by the department, from the original applicant to a new owner of the restaurant if there is no change of location, and the original owner may transfer location after the license is issued by the department to a new location, upon approval by the department.~~

~~(ii) A new owner may not transfer the license to a new location for a period of 1 year following the transfer of the license to the new owner.~~

~~(b) A license issued under this section may be jointly owned, and the license may pass to the surviving joint tenant upon the death of the other tenant. However, the license may not be transferred to any other person or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property upon the death of the owner in this state or in another state.~~

~~(c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of~~

~~the department, transfer a restaurant beer and wine license to a new owner.~~

~~(8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:~~

~~(i) for a restaurant located in a quota area with a population of 20,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;~~

~~(ii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 50% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;~~

~~(iii) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 40% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and~~

~~(iv) for a restaurant located in a quota area that is also a resort community, as the resort community is designated by the department of commerce~~ administration ~~under 7-6-1501(5), if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal to or less than 100% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.~~

~~(b) In determining the number of restaurant beer and wine licenses that may be issued under this subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(iii), the department shall round to the nearer whole number.~~

~~(c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota area under subsections (8)(a)(i) through (8)(a)(iii), there must be a one-time adjustment of one additional license for that quota area.~~

~~(d) If there are more applicants than licenses available in a quota area, then the license must be awarded by lottery as provided in subsection (9).~~

~~(9) (a) When a restaurant beer and wine license becomes available by the initial issuance of licenses under this section or as the result of an increase in the population in the quota area, the nonrenewal of a restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department shall advertise the availability of the license in the quota area for which it is available. If there are more applicants than number of licenses available, the license must be awarded to an applicant by a lottery.~~

~~(b) Any applicant who operates a restaurant that meets the qualifications of subsection (6) for at least 12 months prior to the filing of an application must be given a preference, and any unsuccessful lottery applicants from previous selections must also be given a preference. An applicant with both preferences must be awarded a license before any applicant with only one preference.~~

~~(c) The department shall numerically rank all applicants in the lottery. Only the successful applicants will be required to submit a completed application and a one-time required fee. An applicant's ranking may not be sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the intended license advertised by the department or to the number of licenses determined under subsection (8) when there are more applicants than licenses available. The applicant's qualifications for any other restaurant beer and wine license awarded by lottery must be determined at the time of the lottery.~~

~~(10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises consumption.~~

~~(11) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20% of the initial licensing fee. If the department does not make a decision either granting or denying the license within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate set in 16-1-409(4) until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies issuing a license to an applicant, the application fee, plus any interest, less a $100 processing fee, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial licensing fee is determined according to the following schedule:~~

~~(a) $5,000 for restaurants with a stated seating capacity of 60 persons or less;~~

~~(b) $10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or~~

~~(c) $20,000 for restaurants with a stated seating capacity of 101 persons or more.~~

~~(12) The annual fee for a restaurant beer and wine license is $400.~~

~~(13) If a restaurant licensed under this part increases the stated seating capacity of the licensed restaurant or if the department determines that a licensee has increased the stated seating capacity of the licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the time of filing the original application and issuance of a license and the applicable fees for the additional seating.~~

~~(14) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the total licenses issued.~~

~~(15) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license."~~

Section 44. Section 17-2-304, MCA, is amended to read:

"17-2-304. Reports required. (1) The approving authority for a state agency shall annually report in writing to the legislative finance committee by August 1:

(a) each state agency that had a cash balance in a state charge for services fund contrary to the limitation provided in 17-2-302(1) during the previous 12 months;

(b) the facts certified for each state agency by the approving authority pursuant to 17-2-302(2);

(c) each state agency that has complied with the requirements of 17-2-303 and the circumstances of the agency's compliance; and

(d) each state agency that has not complied with 17-2-303 and the circumstances of the agency's noncompliance.

(2) The director of the department of ~~commerce~~ administration shall report to the legislature at the time and in the manner required by 5-11-210 a list of each local government entity that had a balance in a local charge for services fund contrary to the limitation provided by 17-2-302(1)~~,~~ or that failed to reduce the charge as provided in 17-2-303, or both, during the previous 12 months."

Section 45. Section 17-5-1529, MCA, is amended to read:

"17-5-1529. Annual audits. (1) At least once each year, the bank examiners of the department of administration shall examine loans and investments of the board. The actual cost of this examination must be paid from the board's funds.

(2) The board's books and records must be audited at least once each fiscal year by or at the direction of the legislative auditor. The actual costs of the audit ~~shall~~ must be paid from the board's funds."

Section 46. Section 17-5-1651, MCA, is amended to read:

"17-5-1651. Limitations on board's power. Under this part, the board may not:

(1) make loans of money to any person, firm, or corporation other than an eligible government unit or purchase securities issued by any person, firm, or corporation other than an eligible government unit as provided in this part;

(2) emit bills of credit, accept deposits of money for time or demand deposit, engage in any form or manner in the conduct of any private or commercial banking business, or act as a savings bank or savings and loan association;

(3) be or constitute a bank or trust company within the jurisdiction or under the control of the state banking board, the department of ~~commerce~~ administration, or the comptroller of the currency of the United States department of the treasury;

(4) be or constitute a bank, banker, or dealer in securities within the meaning of or subject to the provisions of any securities, securities exchange, or securities dealers law of the United States or of this state or of any other state."

Section 47. Section 17-6-321, MCA, is amended to read:

"17-6-321. Audits. (1) At least once each year, the bank examiners of the department of administration shall examine loans and investments of the board. The actual cost of this examination must be paid from the board's funds.

(2) The board's books and records must be audited once each fiscal year by or at the direction of the legislative auditor. The actual cost of this audit must be paid from the board's funds."

Section 48. Section 18-1-106, MCA, is amended to read:

"18-1-106. Department of ~~commerce~~ labor and industry to determine residency of selected contractors -- applications for redetermination -- determination as prima facie evidence. (1) The department of ~~commerce~~ labor and industry shall determine whether or not certain contractors are residents of the state of Montana within the meaning of 18-1-102 and 18-1-103. Any public agency charged by law with the responsibility for the execution of any contract subject to the provisions of 18-1-102 may request that a determination of ~~resident/nonresident~~ resident or nonresident status be made by the department of labor and industry. All requests must specify the name and address of the licensed public contractor for whom a determination of ~~resident/nonresident~~ resident or nonresident status is required.

(2) If a determination is made that a public contractor is not a resident but ~~thereafter~~ the public contractor later qualifies as a resident, the contractor may apply to the department of ~~commerce~~ labor and industry for a redetermination of residency. If, upon redetermination, the public contractor is found to qualify as a resident, the contractor must be furnished a letter by the department of labor and industry attesting to resident status.

(3) The determination of the department of ~~commerce~~ labor and industry that a public contractor is or

is not a resident within the meaning of 18-1-102 and 18-1-103 is prima facie evidence of that fact."

Section 49. Section 19-18-205, MCA, is amended to read:

"19-18-205. Annual report of secretary and treasurer to association and state auditor. The secretary and treasurer of the association shall annually prepare a report of its receipts and expenditures for the preceding year in accordance with 2-7-503, showing to whom and for what purposes money has been expended. ~~They~~ The secretary and treasurer shall file the report with the association, the department of ~~commerce~~ administration, and the state auditor. Money may not be paid to the treasurer of the association until the report is filed."

Section 50. Section 19-18-206, MCA, is amended to read:

"19-18-206. Authority of department of ~~commerce~~ administration -- mishandling of funds. (1) All of the financial books and accounts of the association are subject at all times to examination by the department of ~~commerce~~ administration.

(2) When a complaint is made to the department of ~~commerce~~ administration that any money paid to the treasurer of the association has been or is being spent for an unauthorized purpose and, upon examination, the money is found to have been spent contrary to the authority given, the department shall ~~so~~ report to the governor, upon whose directions to the state auditor ~~no further~~ warrants may not be issued to the association treasurer until the misspent money has been returned."

Section 51. Section 19-18-403, MCA, is amended to read:

"19-18-403. Investment of fund by board of investments. (1) Whenever the average yield on investments of public retirement funds under the board of investments exceeds by 1% in any fiscal year the average yield on investments of the fund made pursuant to 19-18-402, the surplus money in the fund ~~shall~~ must be remitted to the state treasurer for investment under the direction of the board of investments as is provided in 17-6-204. The ~~department of commerce~~ board of investments shall advise the association of the current yield on investments of public retirement funds.

(2) As used in subsection (1), "surplus money" means the excess over the greater of the following:

(a) 1 1/2 times the monthly benefit paid in the preceding month; or

(b) $5,000."

Section 52. Section 20-6-621, MCA, is amended to read:

"20-6-621. Selection of school sites -- approval election. (1) (a) Except as provided in subsection (1)(b), the trustees of a district may select the sites for school buildings or for other school purposes, but the selection must first be approved by the qualified electors of the district before a contract for the purchase of a site is entered into by the trustees.

(b) The trustees may purchase or otherwise acquire property contiguous to an existing site that is in use for school purposes without a site approval election. The trustees may take an option on a site prior to the site approval election.

(2) The election for the approval of a site must be called under the provisions of 20-20-201 and must be conducted in the manner prescribed by this title for school elections. An elector who may vote at a school site election is qualified to vote under the provisions of 20-20-301. If a majority of those voting at the election approve the site selection, the trustees may purchase the site. A site approval election is not required when the site was specifically identified in an election at which an additional levy or the issuance of bonds was approved for the purchase of the site.

(3) Any site for a school building or other building of the district that is selected or purchased by the trustees must:

(a) be in a place that is convenient, accessible, and suitable;

(b) comply with the minimum size and other requirements prescribed by the department of public health and human services; and

(c) comply with the statewide building regulations, if any, promulgated by the department of ~~commerce~~ labor and industry."

Section 53. Section 20-6-622, MCA, is amended to read:

"20-6-622. Review and approval of school building plans and specifications. (1) ~~No~~ A school building, either publicly or privately owned or operated, in which students are housed or instructed may not be built, enlarged, or remodeled until the plans and specifications for ~~such~~ construction have been submitted to and approved by the department of ~~commerce~~ labor and industry or a municipality or county with a building code adopted as provided in 50-60-301.

(2) The plans and specifications required in subsection (1) ~~shall~~ must show in detail the proposed construction of the building and ~~shall~~ must illustrate and indicate conformity with the applicable building code.

(3) As a service to districts, the superintendent of public instruction may review the plans and

specifications required in subsection (1) to assist the districts in designing facilities for optimum utilization."

Section 54. Section 20-9-203, MCA, is amended to read:

"20-9-203. Examination of district accounting records. The accounting records of all first-, second-, and third-class school districts must be audited in accordance with 2-7-503. The trustees of the district shall file a copy of the completed audit report with the department of ~~commerce~~ administration, the superintendent of public instruction, and the county superintendent."

Section 55. Section 20-25-901, MCA, is amended to read:

"20-25-901. Family education savings program oversight committee -- membership -- powers and duties. (1) There is created a family education savings program oversight committee under the authority of the board.

(2) The committee consists of seven members appointed by the governor to staggered 4-year terms. The members must include:

(a) the commissioner of insurance or the commissioner's designee;

(b) ~~the director of the department of commerce or the director's designee;~~

~~(c)~~ the state treasurer or the state treasurer's designee;

~~(d)~~(c) the presiding officer of the board or the presiding officer's designee; and

~~(e)~~(d) ~~three~~ four members of the general public, each of whom possesses knowledge, skill, and experience in accounting, risk management, or investment management or as an actuary.

(3) The committee shall select a presiding officer and a vice presiding officer from among the committee's membership.

(4) A majority of the membership constitutes a quorum for the transaction of business. The committee shall meet at least once a year, with additional meetings called by the presiding officer.

(5) The committee:

(a) shall recommend financial institutions for approval by the board to act as the depositories and managers of family education savings accounts pursuant to 15-62-201; and

(b) may submit proposed policies to the board to assist in the implementation and administration of Title 15, chapter 62.

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

(7) Members of the committee must be compensated as provided in 2-15-124.

(8) The definitions in 15-62-103 apply to this section."

Section 56. Section 22-3-804, MCA, is amended to read:

"22-3-804. Board -- composition -- rights -- responsibilities. (1) There is a burial preservation board. The board is composed of:

(a) one representative of each of the seven reservations, appointed by the governor from a list of up to three nominees provided by each of the respective tribal governments;

(b) one person appointed by the governor from a list of up to three nominees submitted by the Little Shell band of Chippewa Indians;

(c) one person appointed by the governor from a list of up to three nominees submitted by the Montana state historic preservation officer;

(d) one representative of the Montana archaeological association appointed by the governor from a list of up to three nominees submitted by the Montana archaeological association;

(e) one physical anthropologist appointed by the governor;

(f) one representative of the Montana coroners' association appointed by the governor from a list of up to three nominees submitted by the Montana coroners' association; and

(g) one representative of the public, appointed by the governor, who is not associated with tribal governments; state government; the fields of historic preservation, archaeology, or anthropology; or the Montana coroners' association.

(2) Members of the board shall serve staggered 2-year terms. A vacancy on the board must be filled in the same manner as the original appointment and only for the unexpired portion of the term.

(3) The board shall:

(a) provide for the establishment and maintenance of a registry of burial sites located in the state;

(b) designate the appropriate member or members of the board or a representative or representatives of the board to conduct a field review upon notification of the discovery of human skeletal remains, a burial site, or burial materials;

(c) assist interested landowners in the development of agreements with the board for the treatment and disposition, with appropriate dignity, of human skeletal remains and burial material;

(d) mediate, upon application of either party, disputes that may arise between a landowner and known descendants that relate to the treatment and disposition of human skeletal remains and burial material;

(e) assume responsibility for final treatment and disposition of human skeletal remains and burial material

if the field review recommendation is not accepted by the board's representatives and the landowner;

(f) establish a nonrefundable application fee, not to exceed $50, for a permit for scientific analysis of human skeletal remains or burial material from burial sites as provided by 22-3-806;

(g) issue permits authorizing scientific analysis;

(h) accept grants or real or in-kind donations to carry out the purposes of this part;

(i) adopt rules necessary to administer and enforce the provisions of this part; and

(j) perform any other duties necessary to implement the provisions of this part.

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

(5) Members of the board shall serve without pay but are entitled to reimbursement for travel, meals, and lodging pursuant to 2-18-501 through 2-18-503."

Section 57. Section 23-3-301, MCA, is amended to read:

"23-3-301. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of athletics provided for in 2-15-1882.

(2) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17."

Section 58. Section 23-4-101, MCA, is amended to read:

"23-4-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of horseracing provided for in 2-15-1881.

(2) "Board of stewards" means a board composed of three stewards who supervise race meets.

(3) "Department" means the department of ~~commerce~~ justice provided for in Title 2, chapter 15, part ~~18~~ 20.

(4) "Immediate family" means the spouse, parents, children, grandchildren, brothers, or sisters of an official or licensee regulated by this chapter who have a permanent or continuous residence in the household of the official or licensee and all other persons who have a permanent or continuous residence in the household of the official or licensee.

(5) "Minor" means a person under 18 years of age.

(6) "Persons" means individuals, firms, corporations, fair boards, and associations.

(7) (a) "Race meet" means racing of registered horses or mules at which the parimutuel system of wagering is used. The term includes horseraces, mule races, and greyhound races that are simulcast.

(b) The term does not include live greyhound racing.

(8) "Racing" means live racing of registered horses or mules and simulcast racing of horses, mules, and greyhounds.

(9) "Simulcast" means a live broadcast of an actual horserace, mule race, or greyhound race at the time it is run. The term includes races of local or national prominence.

(10) "Simulcast facility" means a facility at which horseraces, mule races, or greyhound races are simulcast and wagering on the outcome is permitted under the parimutuel system.

(11) "Steward" means an official hired by the department and by persons sponsoring a race meet to regulate and control the day-to-day conduct and operation of a sanctioned meet."

Section 59. Section 23-7-201, MCA, is amended to read:

"23-7-201. State lottery commission -- allocation -- composition -- compensation -- quorum. (1) There is a state lottery commission.

(2) The commission consists of five members, who shall reside in Montana, appointed by the governor.

(3) At least one commissioner must have 5 years of experience as a law enforcement officer. At least one commissioner must be an attorney admitted to the practice of law in Montana. At least one commissioner must be a certified public accountant licensed in Montana.

(4) After initial appointments, each commissioner ~~shall~~ must be appointed to a 4-year term of office, and the terms ~~shall~~ must be staggered.

(5) A commissioner may be removed by the governor for good cause. An office that for any reason becomes vacant must be filled within 30 days by the governor, and the commissioner filling the vacancy shall serve for the rest of the unexpired term.

(6) The commission shall elect one of its members as ~~chairman~~ presiding officer.

(7) Three or more commissioners constitute a quorum to do business, and action may be taken by a majority of a quorum.

(8) Commissioners are entitled to compensation, to be paid out of the state lottery fund, at the rate of $50 for each day in which they are engaged in the performance of their duties and are entitled to travel, meals, and lodging expenses, to be paid out of the state lottery fund, as provided for in Title 2, chapter 18, part 5.

(9) The commission is allocated to the department of ~~commerce revenue~~ ADMINISTRATION for administrative purposes only as prescribed in 2-15-121."

Section 60. Section 23-7-210, MCA, is amended to read:

"23-7-210. Director -- appointment -- compensation -- qualifications. (1) The director must be appointed by the governor and shall hold office at the pleasure of the governor.

(2) The director must be qualified by training and experience to direct the state lottery. ~~He~~ The director must be a full-time employee and may not engage in any other occupation.

(3) The director's salary is equal to 90% of the salary of the director of the department of ~~commerce revenue~~ ADMINISTRATION."

Section 61. Section 23-7-301, MCA, is amended to read:

"23-7-301. Ticket or chance sales agents -- licenses. (1) Lottery tickets or chances may be sold only by ticket or chance sales agents licensed by the director in accordance with this section.

(2) The commission shall by rule determine the places at which state lottery game tickets or chances may be sold.

(3) (a) Before issuing a license, the director shall consider:

(i) the financial responsibility and security of the applicant and the applicant's business or activity;

(ii) the accessibility of the applicant's place of business or activity to the public; and

(iii) the sufficiency of existing licenses to serve the public convenience and the volume of the expected sales.

(b) A person under 18 years of age may not sell lottery tickets or chances.

(c) A license as an agent to sell lottery tickets or chances may not be issued to any person to engage in business exclusively as a lottery ticket or chance sales agent.

(4) The director may issue temporary licenses upon conditions that the director considers necessary.

(5) License applicants shall pay a $50 fee to cover the cost of investigating and processing the application.

(6) The director may require a bond from any licensed agent in an amount provided in the commission's rules and may purchase a blanket bond covering the activities of licensed agents.

(7) A licensed agent shall display the license or a copy of the license conspicuously in accordance with the commission's rules.

(8) A license is not assignable or transferable.

(9) An employee of a ticket or chance sales agent may not be required to sell lottery game tickets or chances if the sale is against the employee's religious or moral beliefs.

(10) Sales agents are entitled to a commission of no more than 10% of the face value of tickets and chances that they purchase from the lottery and do not return. However, to further the sale of lottery products, the lottery commission may adopt rules providing additional commissions to sales agents based on incremental sales. Commissions may not come from that part of all gross revenue that is net revenue and is paid to the general fund. The commissions are statutorily appropriated, as provided in 17-7-502, to the lottery.

(11) Each sales agent shall keep a complete and up-to-date set of records and accounts fully showing the agent's sales and provide it for inspection upon request of the commission, the director, the department of ~~commerce revenue~~ ADMINISTRATION, the office of the legislative auditor, or the office of the attorney general.

(12) Sales agents may pay the state lottery only by check, bankdraft, electronic funds transfer, or other recorded, noncash, financial transfer method as determined by the director.

(13) A license may be suspended or revoked for failure to maintain the license qualifications provided in subsection (3) or for violation of any provision of this chapter or a commission rule. Prior to suspension or revocation, the licensee must be given notice and an opportunity for a hearing."

Section 62. Section 25-1-1104, MCA, is amended to read:

"25-1-1104. Handbook for process servers. (1) The department of ~~commerce~~ labor and industry shall publish a handbook for process servers and levying officers.

(2) Each person who applies to the clerk of the district court of any county for registration as a process server ~~must~~ shall demonstrate that ~~he~~ the person has passed an examination based on the handbook and administered by the board of private security patrol officers and investigators provided for in 2-15-1891.

(3) The department of ~~commerce~~ labor and industry may charge a reasonable examination fee to cover the costs of publishing the handbook and administering the examination provided for in this section."

Section 63. Section 27-12-206, MCA, is amended to read:

"27-12-206. Funding. (1) There is an account in the state special revenue fund. Money from the assessments levied under this section must be deposited in the account.

(2) For each fiscal year, beginning July 1, an annual assessment is levied on all chiropractic physicians. The amount of the assessment must be annually set by the director and equally assessed against all chiropractic

physicians. A fund surplus at the end of a fiscal year, not required for the administration of this chapter, must be retained in the account and used to finance the administration of this chapter during the next fiscal year, in which event the director shall reduce the next annual assessment to an amount estimated to be necessary for the proper administration of this chapter during that fiscal year.

(3) The annual assessment must be paid on or before the date that the chiropractic physician's annual renewal fee under 37-12-307 is due. An unpaid assessment bears a late charge fee of $25. The late charge fee is part of the annual assessment. The director has the same powers and duties in connection with the collection of and failure to pay the annual assessment as the department of ~~commerce~~ labor and industry has under 37-12-307 with regard to a chiropractic physician's annual license fee."

Section 64. Section 30-11-515, MCA, is amended to read:

"30-11-515. Enforcement. The provisions of this part ~~shall~~ must be enforced by the department of ~~commerce~~ labor and industry and the county attorney of the county in which the violation occurred."

Section 65. Section 30-11-801, MCA, is amended to read:

"30-11-801. Definitions. As used in this part, the following definitions apply:

(1) "Community of interest" means a continuing financial interest that the grantor and grantee have in common.

(2) "Dealer" means a person who is a grantee of a farm implements dealership situated in this state.

(3) "Dealership" means a contract or agreement, expressed or implied, whether oral or written, including a franchise as defined in 61-4-201, by which a person is granted the right to sell or distribute farm implements, in which there is a community of interest in the business of offering, selling, or distributing farm implements.

(4) "Department" means the department of ~~commerce~~ labor and industry established in ~~2-15-1801~~ 2-15-1701.

(5) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer.

(6) "Designated successor" means a person designated in writing by the retiring dealer to succeed ~~him~~ the retiring dealer in the dealership or, in the case of an incapacitated dealer, a person appointed by a court as the legal representative of the dealer's property or the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

(7) "Farm implement" means any vehicle, machine, or attachment designed or adapted and used

exclusively for agricultural operations and only incidentally operated or used on the highways.

(8) (a) "Good cause", when used in 30-11-801 through 30-11-803 and 30-11-811, means:

(i) failure by a dealer to comply substantially with essential and reasonable requirements imposed upon ~~him~~ the dealer by the grantor or sought to be imposed by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers either by the terms of the requirements or in the manner of their enforcement; or

(ii) bad faith by the dealer in carrying out the terms of the dealership.

(b) Good cause, when used in 30-11-804 through 30-11-809, means a showing that succession to a dealership would be detrimental to the public interest or to the representation of the grantor.

(9) "Grantor" means a person who grants a dealership.

(10) "Person" means any individual, partnership, association, corporation, or other entity."

Section 66. 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~~, however,~~ 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 ~~as defined in this section~~ 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 ~~commerce~~ labor and industry provided for in Title 2, chapter

15, part ~~18~~ 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) "Person" includes individuals, partnerships, corporations, companies, societies, and associations.

(10) "Sell" and "sale" include but are not limited to barter and exchange.

(11) "Ton" means a unit of 2,000 pounds avoirdupois weight.

(12) "Weight", when used in connection with any commodity, means net weight.

(13) (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. ~~None of the~~ 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 67. Section 30-12-105, MCA, is amended to read:

"30-12-105. Use of metric sizes in sale of commodities -- department to make rules. ~~Notwithstanding any other provision, metric~~ Metric sizes as defined by the department of ~~commerce~~ labor and industry by rule will be permitted~~, provided~~ if there is compliance with all labeling requirements of the state ~~of Montana~~."

Section 68. Section 30-14-102, MCA, is amended to read:

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

(1) "Department" means the department of ~~commerce~~ justice created in ~~2-15-1801~~ 2-15-2001.

(2) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document

or recording, wherever situate.

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

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

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

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

Section 69. 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) ~~A~~ The term does not include a product or service of a public utility ~~is not included within the term "article of commerce"~~.

(2) "Business" includes any person, ~~as defined in (7),~~ 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 ~~lesser~~ less, ~~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~~, without being~~ 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 ~~such~~ the vendor pays for merchandise within a limited or specified time.

(6) "Department" means the department of ~~commerce~~ justice provided for in ~~2-15-1801~~ 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 70. 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 ~~commerce~~ justice created in ~~2-15-1801~~ 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 71. Section 30-16-302, MCA, is amended to read:

"30-16-302. Board of review. (1) There is a board of review. The board of review's duty is to provide policy direction to the department of revenue in the establishment and operation of the system. The board of review includes the directors of the departments of agriculture, ~~commerce~~ labor and industry, environmental

quality, livestock, revenue, justice, and public health and human services~~,~~ and the secretary of state~~, the president of the senate or a designee, and the speaker of the house or a designee~~. If an agency that is not a member of the board of review requests inclusion in the streamlined registration and licensing plan as provided in 30-16-303, that agency's director must be appointed to the board of review.

(2) The governor shall appoint a presiding officer from among the members of the board of review.

(3) The board of review shall meet at the call of the presiding officer at least once each calendar quarter to:

(a) establish interagency policy and guidelines for the plan;

(b) review the findings, status, and problems of system operations and recommend courses of action; and

(c) receive reports from industry and agency task forces that the board of review may request to inquire into particular issues.

(4) The board of review may implement a plan for streamlined registration and licensing to include licenses not specified in 30-16-301, as provided in 30-16-303."

Section 72. Section 31-1-202, MCA, is amended to read:

"31-1-202. Definitions. (1) Unless the context requires otherwise, in this part the following definitions apply:

(a) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services ~~which~~ that are the subject matter of the retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license, and official fees and cash sale prices for services, if any, and for accessories and their installation and for delivering, servicing, repairing, or improving the goods.

(b) "Department" means the department of ~~commerce~~ administration provided for in Title 2, chapter 15, part ~~18~~ 10.

(c) "Finance charge" means the amount, as limited by 31-1-241, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

(d) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or

coupons exchangeable for chattels personal but not including money or things in action. The term includes goods that, at the time of the sale or subsequently, are to be so affixed to realty as to become a part of the realty, whether or not severable from it.

(e) "Holder" means:

(i) the retail seller of the goods or services under the retail installment contract or retail charge account agreement or a person who establishes and administers retail charge account agreements with retail buyers;

(ii) the assignee, if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred; or

(iii) any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.

(f) "Manufactured structure" means any structure, transportable in one or more sections, designed to be used as a single-family dwelling or commercial building with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.

(g) (i) "Motor vehicle" means any new or used automobile, motorcycle, quadricycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway~~,~~.

(ii) ~~excepting, however,~~ The term does not include any vehicle ~~which~~ that runs only on rails or tracks or in the air.

(h) "Official fees" means:

(i) the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction; or

(ii) the premium for insurance in lieu of filing, recording, or otherwise perfecting any title or lien retained or taken by a seller in connection with a retail installment transaction to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(i) "Person" means an individual, partnership, corporation, association, and any other group, however organized.

(j) "Principal balance" means the cash sale price of the goods or services ~~which~~ that are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made and stated in the contract, for insurance and other benefits and official fees, minus the amount

of the buyer's down payment in money or goods.

(k) "Recreational vehicle" means a vehicular type unit that either has its own motor power or is mounted on or drawn by another vehicle, primarily designed as temporary living quarters for recreational, camping, or travel use.

(l) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.

(m) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions ~~which~~ that may be made under it from time to time under which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller and under the terms of which a finance charge may be computed in relation to the buyer's average daily balance in the account during the billing cycle or the buyer's balance from time to time.

(n) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state under which a buyer promises to pay in one or more deferred installments the time sale price of goods or services, or both. The term includes a chattel mortgage, a conditional sales contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(o) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of, goods or services by a retail seller to a retail buyer pursuant to a retail charge account agreement or under a retail installment contract.

(p) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction.

(q) (i) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, or savings and loan association, if engaged in purchasing retail installment contracts.

(ii) The term does not include a person who makes only isolated purchases of retail installment contracts~~,~~ ~~which purchases~~ that are not being made in the course of repeated and successive purchases of retail installment

contracts from the same seller.

(r) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods.

(s) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits, if a separate identified charge is made for insurance and benefits, and the amounts of the official fees and the finance charge.

(2) (a) This part does not apply to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by those banks or other lending institutions.

(b) ~~However, this~~ This part ~~pertains~~ applies to the extension of credit by those banks or other lending institutions under retail installment contracts or credit cards issued by those banks or other lending institutions."

Section 73. Section 31-1-703, MCA, is amended to read:

"31-1-703. Definitions. For the purposes of this part, the following definitions apply:

(1) "Check" means a negotiable instrument, as defined in 30-3-104, that is drawn on a bank and is payable on demand at the maturity of a deferred deposit loan.

(2) "Consumer" means a natural person who, singly or jointly with another natural person, enters into a deferred deposit loan.

(3) "Deferred deposit lender" or "licensee" means a person engaged in the business of making deferred deposit loans.

(4) "Deferred deposit loan" means an arrangement, including all representations made by the deferred deposit lender whether express or implied, in which:

(a) a person accepts a check dated on the date the check is written and agrees to hold the check for a period of days prior to deposit or presentment; or

(b) a person accepts a check dated subsequent to the date on which the check is written and agrees to hold the check for deposit or presentment until the date written on the check.

(5) "Department" means the department of ~~commerce~~ administration.

(6) "Person" means a natural person, sole proprietorship, firm, partnership, corporation, or other entity."

Section 74. Section 31-3-125, MCA, is amended to read:

"31-3-125. Fees for disclosures to consumers. A consumer reporting agency shall make all

disclosures pursuant to 31-3-122 and 31-3-124 to the consumer, with appropriate fees to be established by the department of ~~commerce administration~~ JUSTICE in accordance with the Montana Administrative Procedure Act."

Section 75. Section 31-3-152, MCA, is amended to read:

"31-3-152. Rules. The department of ~~commerce administration~~ JUSTICE shall enforce this part and ~~promulgate~~ adopt rules necessary to carry out the intent of this part."

Section 76. Section 31-3-203, MCA, is amended to read:

"31-3-203. Exemptions. Section 31-3-202 does not apply to:

(1) ~~those~~ situations involving debt adjusting incurred incidentally in the lawful practice of law in this state;

(2) banks and fiduciaries ~~duly~~ authorized ~~and admitted~~ to transact business in this state and performing credit and financial adjusting service in the regular course of their principal business;

(3) title insurers and abstract companies, while doing an escrow business;

(4) judicial officers or others acting under court orders;

(5) nonprofit or charitable corporations or associations engaged in debt adjusting;

(6) ~~those~~ situations involving debt adjusting incurred incidentally in connection with the lawful practice of a certified public accountant;

(7) bona fide trade or mercantile associations in the course of arranging adjustment of debts with business establishments;

(8) employers for their employees;

(9) any person ~~(~~,other than a collection agency~~)~~:

(a) who provides a bond in the amount of $10,000 to the department of ~~commerce administration~~ JUSTICE under which the person is the obligor and the bond is conditioned that the obligor shall apply all funds received and discharge all obligations for which the obligor has contracted; and

(b) whose maximum fees do not exceed:

(i) a processing and documentation fee of $75; and

(ii) for debt adjusting as defined in 31-3-201, 15% of the total amounts that are owed by the debtor and that are reduced in equal monthly portions over the life of a contract;

(10) any person who, at the request of a debtor, arranges for or makes a loan to the debtor and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan without compensation for the services rendered in adjusting the debts."

Section 77. Section 32-1-109, MCA, is amended to read:

"32-1-109. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Affiliate" has the meaning given that term in 12 U.S.C. 1841(k).

(2) "Bank holding company" means a bank holding company registered under the federal Bank Holding Company Act of 1956, as amended.

(3) "Board" means the state banking board provided for in 2-15-1803.

(4) "Branch bank" means:

(a) a banking house, other than the main banking house, maintained and operated by a bank doing business in the state and at which deposits are received, checks are paid, or money is lent, but does not include a satellite terminal, as defined in 32-6-103, or the office of an affiliated depository institution acting as an agent; and

(b) in the case of a trust company, any office at which trust services are provided.

(5) "Capital", "capital stock", and "paid-in capital" mean that fund for which certificates of stock are issued to stockholders.

(6) "Consolidate" and "merge" mean the same thing and may be used interchangeably in this chapter.

(7) "Demand deposits" means all deposits, the payment of which can legally be required when demanded.

(8) "Department" means the department of ~~commerce~~ administration provided for in Title 2, chapter 15, part ~~18~~ 10.

(9) "Depository institution" means a bank or savings association organized under the laws of a state or the United States.

(10) "Division" means the division of banking and financial institutions of the department.

(11) "Insured depository institution" means a bank or savings association in which the deposits are insured by the federal deposit insurance corporation.

(12) "Main banking house" means the designated principal place of business of a bank in the state.

(13) "Net earnings" means the excess of the gross earnings of a bank over expenses and losses chargeable against those earnings during any 1 year.

(14) "Principal shareholder" means a person who directly or indirectly owns or controls, individually or through others, more than 10% of any class of voting stock.

(15) "Profit and loss account" or "profit and loss" means that account carried on the books of the bank

into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings", and against which all loss and other disbursement items are charged, revealing "net earnings", which are then properly closed to "undivided profits accounts" or "undivided profits", out of which dividends are paid and reserves set aside.

(16) "Savings association" means a savings association or savings bank organized under the laws of the United States or a building and loan association, savings and loan association, or similar entity organized under the laws of a state.

(17) "Shell bank" means a bank organized solely for the purpose of, and that does not conduct any banking business prior to, acquiring control of, merging with, or acquiring all or substantially all of the assets of an existing bank or savings association.

(18) "Subsidiary" means a company 25% or more of whose voting shares or equity interests are owned and controlled by a bank.

(19) "Surplus" means a fund paid in or created under this chapter by a bank from its net earnings or undivided profits that, when set apart and designated as surplus, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as the bank has undivided profits.

(20) "Time deposits" means all deposits, the payment of which cannot legally be required within 7 days.

(21) "Undivided profits" means the credit balance of the profit and loss account of a bank."

Section 78. Section 32-1-201, MCA, is amended to read:

"32-1-201. State banking board -- secretary -- meetings -- per diem. (1) The state banking board, created in 2-15-1803, shall elect a secretary from its members to serve at the pleasure of the board.

(2) In performing its functions, the board shall have use of the offices, equipment, and personnel of the department as it requires.

(3) The board shall hold meetings at the office of the department at dates and times set by the department. Special meetings may be called by the presiding officer at any time upon 3 days' notice to the members.

(4) A quorum for all meetings is a majority of the board members, and a majority of the quorum present at any meeting may take action.

(5) A board member may be removed by the governor without cause in any case.

(6) The board members shall receive compensation and travel expenses in the same manner and amount as provided for in 37-1-133 for boards allocated to the department of ~~commerce~~ ~~labor and industry~~ ADMINISTRATION. The costs and expenses of the board are legitimate charges of the department."

Section 79. Section 32-1-212, MCA, is amended to read:

"32-1-212. Director and employees not to be interested in banks. ~~Neither the~~ The director of the department of ~~commerce~~ administration ~~nor~~ and any bank examiner may not be interested in or a borrower from any state bank, directly or indirectly."

Section 80. Section 32-1-382, MCA, is amended to read:

"32-1-382. Definitions. As used in 32-1-381 through 32-1-384, unless the context requires otherwise, the following definitions apply:

(1) "Acquire" means:

(a) the direct or indirect purchase or exchange of stock;

(b) the direct or indirect purchase of assets and liabilities; or

(c) a merger.

(2) "Bank" means a commercial bank, as defined in 32-1-105, or a national banking association as designated by 12 U.S.C. 24.

(3) "Bank holding company" means a bank holding company that is registered under the Bank Holding Company Act of 1956, as amended, regardless of where it is located or has its headquarters.

(4) "Control" means:

(a) ownership of, authority over, or power to vote, directly or indirectly, 25% or more of any class of voting security;

(b) authority in any manner over the election of a majority of directors; or

(c) power to exercise, directly or indirectly, a controlling influence over management and policies.

(5) "Department" means the department of ~~commerce~~ administration provided for in ~~2-15-1801~~ 2-15-1001.

(6) "Financial institution" means a bank or bank holding company.

(7) "Headquarters" means the state in which the activities of a bank holding company or a company controlling the bank holding company are "principally conducted" within the meaning of the Bank Holding Company Act of 1956, as amended.

(8) "Located in this state" means:

(a) in the case of a bank, that the organizational certificate identifies an address in this state as the principal place of conducting its business; and

(b) in the case of a bank holding company, an entity, partnership, or trust organized under the laws of

this state."

Section 81. Section 32-1-901, MCA, is amended to read:

"32-1-901. Definitions. For purposes of this part, the following definitions shall apply:

(1) "Board member" means a member of the board of directors of the institution.

(2) "Cease and desist order which has become final" and "order which has become final" mean a cease and desist order or an order issued by the director with the consent of the institution or the board member, officer, or other person concerned, with respect to which:

(a) ~~no~~ a timely petition for review of the action of the director has not been filed in a district court as specified in 32-1-908(2); or

(b) ~~with respect to which~~ the action of the court in which a petition for review has been filed is not subject to further review by the courts of the state.

(3) "Director" means the director of the department of ~~commerce~~ administration.

(4) "Institution" means a commercial bank, savings bank, trust company, or investment company chartered under Title 32, chapter 1.

(5) "Violation" includes without limitation any action, alone or with others, causing, counseling, aiding, or abetting a violation."

Section 82. Section 32-1-1005, MCA, is amended to read:

"32-1-1005. Bond. Before accepting an appointment or acting as a trustee, guardian, or conservator, a foreign trust company shall file a bond with a court of competent jurisdiction in an amount as the court directs, with sufficient sureties, conditioned on the faithful discharge of its duties as trustee, guardian, or conservator. In lieu of the bond, the foreign trust company shall certify, in a manner acceptable to the department of ~~commerce~~ administration, that the capital stock of the foreign trust company is fully paid in cash, on deposit with an appropriate bank, and is of a sufficient amount to meet the requirements of 32-1-307 for a trust company organized under the laws of this state. The deposit must be maintained until the foreign trust company ceases to act as trustee, guardian, or conservator under this part. A foreign trust company is not required to file a bond or certify the deposit of its capital with respect to a trust, created other than a trust created by a will, if the trust instrument requests or directs that a bond is not required of the trustee."

Section 83. Section 32-1-1007, MCA, is amended to read:

"32-1-1007. Solicitation of business. A foreign trust company may conduct business in Montana only in accordance with rules ~~promulgated~~ adopted by the department ~~of commerce~~."

Section 84. Section 32-2-101, MCA, is amended to read:

"32-2-101. Purpose -- definitions. (1) A corporation operated for the purpose of encouraging home ownership and thrift and making substantially all of its loans on real estate mortgage security ~~shall be~~ is known in this chapter as a building and loan association or a savings and loan association and is under the supervision of the department, which shall enforce all laws with respect to it.

(2) The associations have continual succession and ~~shall~~ must be organized under the provisions of this chapter.

(3) When used in this chapter, the following definitions apply:

(a) "Building and loan association" includes savings and loan associations organized under this chapter.

(b) "Capital stock" means the aggregate of shares of nonwithdrawable capital issues by a capital stock association.

(c) "Department" means the department of ~~commerce~~ administration provided for in Title 2, chapter 15, part ~~18~~ 10.

(d) (i) "Member" means:

~~(i)~~(A) a person holding a savings account of a mutual association;

~~(ii)~~(B) a person borrowing from or assuming or obligated upon a loan or an interest ~~therein~~ in a loan held by the association;

~~(iii)~~(C) a person purchasing property securing a loan or interest ~~therein~~ in the loan held by ~~such~~ the association; or

~~(iv)~~(D) any other person obligated to the association.

(ii) A joint, survivorship, or any other multiple owner or borrower relationship constitutes a single membership.

(e) "Mutual association" means a building and loan association formed without authority to issue stock.

(f) "Savings account" means that part of the savings liability of the association ~~which~~ that is credited to the account of the holder ~~thereof~~ and includes any form of withdrawable deposit.

(g) "Stock association" means a building and loan association formed with authority to issue stock.

(h) "Stockholder" means the holder of one or more shares of any class of capital stock of a capital stock association organized and operating pursuant to the provisions of this chapter.

~~(4) For the purposes of subsection (3)(d), a joint, survivorship, or any other multiple owner or borrower relationship constitutes a single membership.~~"

Section 85. Section 32-3-104, MCA, is amended to read:

"32-3-104. Office facilities. (1) A credit union may change its place of business within this state upon written notice to the department of ~~commerce~~ administration.

(2) A credit union may share office space with one or more credit unions and contract with any person or corporation to provide facilities or personnel.

(3) A credit union may maintain, upon prior written notice to the department, additional offices at locations other than its principal place of business if the purpose of maintaining the additional offices is to furnish service to its members.

(4) The department shall approve any additional office unless a compelling reason for disapproval is found by the department. Competition with other financial institutions is not a sufficiently compelling reason for disapproval.

(5) If the department disapproves an additional office, the credit union ~~shall~~ must be afforded an opportunity for a hearing according to Title 2, chapter 4, part 6. The purpose of the hearing ~~shall be~~ is to determine whether a compelling reason exists for disapproval of the additional office."

Section 86. Section 32-3-201, MCA, is amended to read:

"32-3-201. Director of ~~the~~ department of ~~commerce~~ administration. (1) The director of the department of administration shall administer the laws of this state relating to credit unions. ~~He~~ The director may appoint or employ ~~such~~ special assistants, deputies, examiners, or other employees ~~as~~ that are necessary for the purpose of administering or enforcing this chapter.

(2) The director may ~~prescribe~~ adopt rules for the administration of this chapter and may establish chartering, supervisory, and examination fees. Fees ~~so~~ collected must be deposited in the state special revenue fund for the use of the department in its supervision function.

(3) The director shall~~, from time to time, issue~~ adopt rules prescribing the minimum amount of surety bond coverage and casualty, liability, and fire insurance required of credit unions in relation to their assets or to the money and other personal property involved or their exposure to risk."

Section 87. Section 32-3-203, MCA, is amended to read:

"32-3-203. Examinations. (1) The department of ~~commerce~~ administration shall annually examine or cause to be examined each credit union. Each credit union and all of its officers and agents ~~shall~~ must be required to give to representatives of the director of the department full access to all books, papers, securities, records, and other sources of information under their control~~;~~. ~~and for~~ For the purpose of the examination the representatives may subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

(2) A report of the examination ~~shall~~ must be forwarded to the executive officer of each credit union promptly after completion. The report ~~shall~~ must contain comments relative to the management of the affairs of the credit union and also as to the general condition of its assets. Within 60 days after the receipt of the report, the directors and ~~committeemen~~ committee members shall meet to consider matters contained in the report.

(3) In lieu of making an annual examination of a credit union, the director may accept an audit report of the condition of the credit union made by an auditor approved by the director. The cost of the audit ~~shall~~ must be borne by the credit union."

Section 88. Section 32-3-205, MCA, is amended to read:

"32-3-205. Suspension. (1) If it appears that any credit union is bankrupt or insolvent or that it has willfully violated this chapter or is operating in an unsafe or unsound manner, the director of the department of ~~commerce~~ administration shall issue an order temporarily suspending the credit union's operations for not less than 30 or more than 60 days. The board of directors ~~shall~~ must be given notice by certified ~~or registered~~ mail of ~~such~~ the suspension~~;~~. ~~which~~ The notice ~~shall~~ must include a list of the reasons for ~~such~~ the suspension ~~and/or~~ and a list of the specific violations of this chapter.

(2) Upon receipt of ~~such~~ a suspension notice, the credit union shall cease all operations, except those authorized by the director. The credit union shall then file with the director a reply to the suspension notice and may request a hearing to present a plan of corrective actions proposed if it desires to continue operations. The board may request that the credit union be declared insolvent and a liquidating agent be appointed.

(3) Upon receipt from the suspended credit union of evidence that the conditions causing the order of suspension have been corrected, the director may revoke the suspension notice and permit the credit union to resume normal operations.

(4) If the director, after issuing a notice of suspension and providing an opportunity for a hearing, rejects the credit union's plan to continue operations, ~~he~~ the director may issue a notice of involuntary liquidation and appoint a liquidating agent. The credit union may request the appropriate court to stay execution of ~~such~~ the

action. Involuntary liquidation may not be ordered prior to the conclusion of suspension procedures outlined in this section.

(5) If, within the suspension period, the credit union fails to answer the suspension notice or request a hearing, the director may then revoke the credit union's charter, appoint a liquidating agent, and liquidate the credit union."

Section 89. Section 32-3-301, MCA, is amended to read:

"32-3-301. Organization procedure. (1) Any seven or more residents of this state, of legal age, who have a common bond defined in 32-3-304, may organize a credit union and become charter members ~~thereof~~ of the credit union by complying with this section.

(2) The subscribers shall execute in duplicate articles of incorporation, which conform to the applicable Montana corporation law, and agree to the terms ~~thereof~~, of the articles. ~~which~~ The articles ~~shall~~ must state:

(a) the name, which shall include the words "credit union" and which ~~shall~~ may not be the same as that of any other existing credit union in this state, and the location where the proposed credit union is to have its principal place of business;

(b) that the existence of the credit union is perpetual;

(c) the par value of the shares of the credit union, which ~~shall~~ must be in $5 multiples of not less than $5 or more than $25;

(d) that the credit union ~~shall~~ must be organized under this chapter for the purposes set forth ~~therein~~ in this chapter;

(e) the names and addresses of the subscribers to the articles of incorporation and the value of shares subscribed to by each, which ~~shall~~ may not be ~~not~~ less than $5; and

(f) that the credit union may exercise ~~such~~ incidental powers ~~as~~ that are necessary or requisite to enable it to carry on effectively the business for which it is incorporated and those powers ~~which~~ that are inherent in the credit union as a legal entity.

(3) The subscribers shall prepare and adopt bylaws for the general government of the credit union, consistent with this chapter, and execute the ~~same~~ bylaws in duplicate.

(4) The subscribers shall select at least five qualified persons who agree to serve on the board of directors and at least three qualified persons who agree to serve on the supervisory committee. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, ~~shall~~ must be executed by ~~those who so agree~~ the parties. This agreement ~~shall~~ must be

submitted to the director of the department of ~~commerce~~ administration.

(5) The subscribers shall forward the articles of incorporation and the bylaws to the director of the department of ~~commerce~~ administration. The director may issue a certificate of approval if the articles and the bylaws are in conformity with this chapter and ~~he~~ the director is satisfied that the proposed field of operation is favorable to the success of ~~such~~ the credit union and that the standing of the proposed organizers ~~is such as to give~~ gives assurance that its affairs will be properly administered. ~~He~~ The director shall return to the applicants or their representatives a copy of the bylaws and the articles ~~to the applicants or their representatives~~, which ~~shall~~ must be preserved in the permanent files of the credit union. The application ~~shall~~ must be acted upon within 30 days. The articles of incorporation ~~shall then~~ must be filed with the secretary of state who, upon payment of the filing fees ~~therefor~~, shall issue a certificate of incorporation.

(6) The subscribers for a credit union charter ~~shall~~ may not transact any business until formal approval of the charter has been received."

Section 90. Section 32-3-302, MCA, is amended to read:

"32-3-302. Form of articles and bylaws. In order to simplify the organization of credit unions, the director of the department of ~~commerce~~ administration shall cause to be prepared a form of articles of incorporation and a form of bylaws, consistent with this chapter, which may be used by credit union incorporators for their guidance. ~~Such~~ The articles of incorporation and bylaws ~~shall~~ must be available without charge to persons desiring to organize a credit union."

Section 91. Section 32-3-303, MCA, is amended to read:

"32-3-303. Amendments. (1) The articles of incorporation or the bylaws may be amended as provided in the bylaws. Amendments to the articles of incorporation or bylaws ~~shall~~ must be submitted to the director of the department of ~~commerce~~ administration who shall approve or disapprove the amendments within 60 days.

(2) Amendments ~~shall~~ become effective upon:

(a) approval in writing by the director, for which ~~no~~ a fee may not be charged; and

(b) in the case of articles of incorporation, filing with the secretary of state."

Section 92. Section 32-3-307, MCA, is amended to read:

"32-3-307. Limited-income persons. Existing credit unions may include within their field of membership limited-income persons, as defined by the director of the department of ~~commerce~~ administration, for whom credit

union services are otherwise unavailable."

Section 93. Section 32-3-321, MCA, is amended to read:

"32-3-321. Liquidation. (1) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section and the applicable Montana corporation laws.

(2) The board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily and directing that the question of liquidation be submitted to the members.

(3) Within 10 days after the board of directors decides to submit the question of liquidation to the members, the president shall notify the director of the department of ~~commerce thereof~~ administration in writing, setting forth the reasons for the proposed action. Within 10 days after the members act on the question of liquidation, the president shall notify the director in writing as to whether or not the members approved the proposed liquidation.

(4) As soon as the board of directors decides to submit the question of liquidation to the members, payment on shares, withdrawal of shares, making any transfer of shares to loans and interest, making investments of any kind, and granting loans ~~shall~~ must be suspended pending action by members on the proposal to liquidate. On approval by the members of ~~such~~ the proposal, all ~~such~~ business transactions ~~shall~~ must be permanently discontinued. Necessary expenses of operation ~~shall, however,~~ must continue to be paid on authorization of the board of directors or liquidating agent during the period of liquidation.

(5) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds majority of the members present at a regular or special meeting of the members is required. If authorization for liquidation is to be obtained at a meeting of the members, notice in writing ~~shall~~ must be given to each member, by first-class mail, at least 10 days prior to ~~such~~ the meeting.

(6) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business and may sue and be sued for the purpose of enforcing ~~such~~ debts and obligations until its affairs are fully adjusted.

(7) The board of directors or the liquidating agent shall use the assets of the credit union to pay:

(a) expenses incidental to liquidating, including any surety bond that may be required;

(b) any liability due nonmembers; and

(c) special purpose thrift accounts as provided in this chapter. ~~Assets then remaining shall~~ Remaining assets must be distributed to the members proportionately to the shares held by each member as of the date dissolution was ~~voted~~ approved.

(8) As soon as the board of directors or the liquidating agent determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, ~~he~~ the board or the agent shall execute a certificate of dissolution on a form prescribed by the department. ~~and file the same with the department~~ The form, together with all pertinent books and records of the liquidating credit union~~,~~ ~~whereupon such~~ must be filed with the department. Upon filing, the credit union ~~shall be~~ is dissolved."

Section 94. Section 32-3-322, MCA, is amended to read:

"32-3-322. Merger. (1) Any credit union may, with the approval of the director of the department of ~~commerce~~ administration and compliance with the applicable Montana corporation law, merge with another credit union under the existing charter of the other credit union, pursuant to any plan agreed upon by the majority of each board of directors of each credit union joining in the merger and approved by the affirmative vote of a majority of the members of the merging credit union present at a meeting of its members ~~duly~~ called for ~~such~~ that purpose.

(2) After agreement by the directors and approval by the members of the merging credit union, the president and secretary of the credit union shall execute a certificate of merger, which ~~shall~~ must set forth all of the following:

(a) the time and place of the meeting of the board of directors at which the plan was agreed upon;

(b) the vote in favor of the adoption of the plan;

(c) a copy of the resolution or other action by which the plan was agreed upon;

(d) the time and place of the meeting of the members at which the plan agreed upon was approved; and

(e) the vote by which the plan was approved by the members.

(3) ~~Such~~ The certificate and a copy of the plan of merger agreed upon ~~shall~~ must be forwarded to the director, certified by ~~him~~ the director, and returned to both credit unions within 30 days.

(4) Upon return of the certificate from the director, all property rights and members' interest of the merged credit union ~~shall~~ vest in the surviving credit union without deed, endorsement, or other instrument of transfer, and all debts, obligations, and liabilities of the merged credit union ~~shall be deemed~~ are considered to have been assumed by the surviving credit union under whose charter the merger was effected. The rights and privileges of the members of the merged credit union ~~shall~~ remain intact.

(5) This section ~~shall~~ must be construed, whenever possible, to permit a credit union chartered under any other law to merge with one chartered under this chapter or to permit one chartered under this chapter to merge with one chartered under any other law."

Section 95. Section 32-3-323, MCA, is amended to read:

"32-3-323. Conversion of charter. (1) A credit union chartered under the laws of this state may be converted to a credit union chartered under the laws of any other state or under the laws of the United States, subject to regulations issued by the director of the department of ~~commerce~~ administration.

(2) A credit union chartered under the laws of the United States or of any other state may convert to a credit union chartered under the laws of this state. To effect ~~such~~ a conversion, a credit union ~~must~~ shall comply with all the requirements of the jurisdiction under which it was originally chartered and the requirements of the director of the department of ~~commerce~~ administration and file proof of ~~such~~ compliance with ~~said~~ the director."

Section 96. Section 32-3-404, MCA, is amended to read:

"32-3-404. Record of board and committee members. Within 15 days after election or appointment, a record of the names and addresses of the members of the board, committees, and all officers of the credit union ~~shall~~ must be filed with the department of ~~commerce~~ administration on forms provided by the department."

Section 97. Section 32-3-611, MCA, is amended to read:

"32-3-611. Share insurance. (1) Each credit union shall maintain insurance on its share accounts under the provisions of Title II of the Federal Credit Union Act or through a legally constituted insurance plan approved by the commissioner of insurance and the director of the department of administration.

(2) ~~No~~ A credit union may not begin operation or transact any business until proof that it has obtained insurance under the provisions of Title II of the Federal Credit Union Act or under an approved insurance plan has been furnished to the director of the department of ~~commerce~~ administration.

(3) A credit union operating in violation of this section is subject to an order of suspension as provided for in 32-3-205.

(4) The director of the department of ~~commerce~~ administration shall make available reports of condition and examination reports to the administrator of the national credit union administration or any official of an insurance plan and may accept any report of examination made on behalf of such administrators or officials. The director may appoint the administrator of the national credit union administration or any official of an insurance plan as liquidating agent of an insured credit union."

Section 98. Section 32-3-703, MCA, is amended to read:

"32-3-703. Use of regular reserve. The regular reserve ~~shall belong~~ belongs to the credit union and

~~shall~~ must be used to meet losses including, with prior approval of the director of the department of ~~commerce~~ administration, losses from the sale of investments or securities. The regular reserve may not be used to meet losses resulting from an excess of expenses over income and may not be distributed except on liquidation of the credit union or in accordance with a plan approved by the director of the department of ~~commerce~~ administration."

Section 99. Section 32-3-705, MCA, is amended to read:

"32-3-705. Special reserves. In addition to ~~such~~ the regular reserve, special reserves to protect the interest of members ~~shall~~ must be established:

(1) when required by regulation; or

(2) when found by the board of directors of the credit union or by the director of the department of ~~commerce~~ administration~~, in any special case,~~ to be necessary ~~for that purpose~~."

Section 100. Section 32-4-201, MCA, is amended to read:

"32-4-201. Incorporators -- general powers -- capital stock -- articles of incorporation. Nine or more persons, a majority of whom ~~shall~~ must be residents of this state, who desire to create a development corporation under the provisions of this chapter for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges ~~hereinafter~~ provided in this part may be incorporated in the following manner:

(1) The persons shall, by articles of incorporation filed in the manner prescribed in Title 35, ~~under their hands and seals,~~ set forth:

(a) the name of the corporation, which ~~shall~~ must include the words "Development Corporation of Montana";

(b) the location of the principal office of the corporation, but the corporation may have offices in other places within the state as ~~may be~~ fixed by the board of directors;

(c) the purposes for which the corporation is founded, which ~~shall~~ must include the following:

(i) to elect, appoint, and employ officers, agents, and employees;

(ii) to make contracts and incur liabilities for any of the purposes of the corporation, provided that the corporation may not incur any secondary liability by way of guaranty or endorsement of obligations of any person, firm, corporation, joint-stock company, association, or trust or in any other manner;

(iii) to borrow money from members, nonmember persons, firms, or corporations and state, federal, county, or municipal agencies or authorities for any of the purposes of the corporation;

(iv) to issue for the purposes of the corporation its bonds, debentures, convertible debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and to secure the indebtedness by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature or any part or interest in its property, franchises, rights, and privilege, without securing stockholder or member approval~~;~~. ~~provided that~~ However, a loan to the corporation may not be secured in any manner unless all outstanding loans to the corporation are secured equally and ratably in proportion to the unpaid balance of the loans and in the same manner~~;~~.

~~(iv)~~(v) to make loans to any person, firm, corporation, joint-stock company, association, or trust and establish and regulate the terms and conditions with respect to any loans and the charges for interest and service connected with the loans~~;~~. ~~provided, however~~ However, ~~that~~ the corporation may not approve any application for a loan unless the person applying for the loan shows that ~~he~~ the person has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution~~;~~.

~~(v)~~(vi) to participate with any ~~duly~~ authorized private lending agency or city, county, state, or federal governmental lending agencies in the making of loans;

~~(vi)~~(vii) to purchase, receive, hold, lease, or otherwise acquire, except by condemnation, and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with rights and privileges ~~as~~ that may be incidental and appurtenant to the property and the use of the property, including but not restricted to any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations;

~~(vii)~~(viii) to acquire the goodwill, business, rights, real and personal property, and other assets or any part or interest in the assets of any persons, firms, corporations, joint-stock companies, associations, or trusts and to assume, undertake, or pay the obligations, debts, and liabilities of any person, firm, corporation, joint-stock company, association, or trust;

~~(viii)~~(ix) to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments or for the purpose of disposing of real estate to others for the construction of industrial plants or other business establishments;

~~(ix)~~(x) to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments;

~~(x)~~(xi) to acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in or indebtedness of any person, firm, corporation, joint-stock company, association, or trust and while the owner or holder of

interest for indebtedness to exercise all the rights, powers, and privileges of ownership, including the right to vote;

~~(xi)~~(xii) to mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired pursuant to the powers contained in subsections ~~(1)(c)(vi)~~ (1)(c)(vii) through ~~(1)(c)(x)~~ (1)(c)(xi) ~~of this section~~, as security for the payment of any part of the purchase price of the property, right, or thing of value;

~~(xii)~~(xiii) to cooperate with and avail itself of the facilities of the ~~state planning and economic development divisions of the~~ department of commerce and any similar governmental ~~agencies~~ agency and to cooperate with, assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of the communities or of this state or of any part of the state;

~~(xiii)~~(xiv) to accept gifts, donations, bequests, devises, or grants from any person, corporation, association, or governmental agency or authority, whether state, federal, county, or municipal;

~~(xiv)~~(xv) to do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter;

(d) the amount of total authorized capital stock and the number of shares in which it is divided, the par value of each share, the amount of capital stock with which it will commence business and, if there is more than one class of stock, a description of the different classes, and the names and post-office addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription ~~shall~~ must be the amount of capital with which the corporation will commence business.

(2) The articles of incorporation may also contain any provision consistent with the laws of this state for the regulation of the affairs of the corporation or creating, defining, limiting, and regulating its powers. The articles of incorporation ~~shall~~ must be in accordance with the provisions of Title 35, so far as they are consistent with this chapter."

Section 101. Section 32-4-306, MCA, is amended to read:

"32-4-306. Control -- supervision -- reports. The corporation is subject to the examination of the department of ~~commerce~~ administration and shall make reports of its condition not less than annually to ~~that~~ the department~~,~~. The department ~~which in turn~~ shall make copies of the reports available to the commissioner of insurance and to the governor. The corporation shall also file an annual statement required by Title 35."

Section 102. Section 32-5-102, MCA, is amended to read:

"32-5-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions

apply:

(1) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal, family, or household purposes, including loans for personal, family, or household purposes that are secured by a mortgage, deed of trust, trust indenture, or other security interest in real estate.

(b) Consumer loans do not include loan transactions that are governed by 12 U.S.C. 1735f-7a, but a consumer loan business may engage in transactions that are governed by 12 U.S.C. 1735f-7a.

(2) "Consumer loan business" means the business of making consumer loans as a licensee under this chapter.

(3) "Department" means the department of ~~commerce~~ administration provided for in Title 2, chapter 15, part ~~18~~ 10.

(4) "License" means one or both of the licenses provided for by this chapter.

(5) "Licensee" means the person holding a license.

(6) "Person" means individuals, partnerships, associations, corporations, and all legal entities in the loaning business."

Section 103. Section 32-6-103, MCA, is amended to read:

"32-6-103. Definitions. As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Customer", in relation to a financial institution, means a holder of a demand or time account or a membership share in the institution or a person who is a borrower or a mortgagor; in relation to a merchant, it means a purchaser of goods or services.

(2) "Department" means the department of ~~commerce~~ administration.

(3) (a) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes but is not limited to point-of-sale transfers, automated teller machine transfers, direct deposits or withdrawals of funds, and transfers initiated by telephone. It also includes a transfer resulting from a debit card transaction, including a transaction that does not involve an electronic terminal at the time of the transaction.

(b) The term does not include payments made by check, draft, or similar paper instrument at an electronic terminal.

(4) "Electronic terminal" means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic funds transfer. The term includes but is not limited to point-of-sale terminals, automated teller machines, and cash dispensing machines.

(5) "Financial institution" means a bank chartered under chapter 1 of this title, a bank chartered under the National Banking Acts in Title 12 of the United States Code, a building and loan association chartered under chapter 2 of this title, 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 chapter 3 of this title, or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code. For purposes of this chapter only, a consumer loan company licensed under chapter 5 is considered a financial institution.

(6) "Merchant" means a natural person, corporation, partnership, or association engaged in buying and selling goods or services, except that a financial institution is not a merchant.

(7) "Person" means an individual, partnership, corporation, association, or any other business organization.

(8) "Premises" means those locations where, by applicable law, financial institutions are authorized to maintain a principal place of business and other offices for the conduct of their respective businesses. The term includes a detached drive-in or walk-up facility approved under 32-1-372.

(9) (a) "Satellite terminal" means any machine or device that is located off the premises of a financial institution and that a financial institution or its customers may use to carry out electronic funds transfers.

(b) Satellite terminal includes:

(i) an automated teller machine, which means a satellite terminal to make electronic funds transfers, located off the premises of financial institutions, operated by customers of financial institutions without assistance, and activated by a unique identification device and personal identification number;

(ii) a point-of-sale terminal, which means a satellite terminal located on the premises of a merchant, operated by a customer, a merchant, or the merchant's employees solely to debit or credit a customer's deposit or share account in a financial institution and solely to credit or debit the merchant's account commensurately for transactions in goods or services. A point-of-sale terminal need not be activated by a unique personal identification device. A merchant has the option, if the necessary computer capability exists at a reasonable cost, of selling goods or services by point-of-sale terminals with the electronic funds transfer taking effect at the time of the transaction or at a stated time after the transaction.

(c) The definition of satellite terminal does not include and nothing in this chapter may be construed to apply to:

(i) an automated teller machine located on the premises of a financial institution;

(ii) an automated clearinghouse or any equivalent system designed to transfer funds between financial institutions; or

(iii) a point-of-sale terminal that is used by a merchant in the merchant's business only and does not provide access to a financial institution.

(10) "Unique identification device" means a magnetic encoded plastic card or equivalent device that contains either a number or a dollar balance, or both, that is unique to a customer and that is issued by a financial institution, merchant, or other person."

Section 104. Section 32-7-101, MCA, is amended to read:

"32-7-101. Title and purpose. (1) This part ~~shall~~ must be known and may be cited as the "Regulation of Escrow Businesses Act".

(2) It is the intent of the legislature that the escrow industry be supervised and regulated by the ~~financial division of the~~ department of ~~commerce~~ administration in order to protect the citizens of the state and to provide that the business practices of the escrow industry are fair and orderly among the members of the escrow industry, with due regard to the ultimate consumers in this important area of property protection."

Section 105. Section 32-7-102, MCA, is amended to read:

"32-7-102. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of ~~commerce~~ administration as provided for in Title 2, chapter 15, part ~~18~~ 10.

(2) "Director" means the director of the department of ~~commerce~~ administration.

(3) "Escrow" means any transaction in which one person, for the purpose of effecting the sale, transfer, encumbrance, or lease of real or personal property to another person or for the purpose of making payments under any encumbrance of the property, delivers any written instrument, money, evidence, title to real or personal property, or other thing of value to a third person to be held by that third person until the happening of a specified event or the performance of a prescribed condition, when the instrument, money, evidence, title, or thing of value is to be delivered by the third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, or bailor or to any ~~of his~~ agents or employees pursuant to the written escrow instructions.

(4) "Escrow business" means a commercial activity characterized by the regular and continuous carrying

on of escrow transactions.

(5) "Licensee" means a person holding a valid license under this part as an escrow business.

(6) "Person" means an individual, cooperative, association, company, firm, partnership, corporation, or other legal entity."

Section 106. Section 32-8-103, MCA, is amended to read:

"32-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Bank holding company" means a company registered under the federal Bank Holding Company Act of 1956, as amended.

(2) "Board" means the state banking board provided for in 2-15-1803.

(3) "Capital" means currency that is convertible to U.S. dollars or personal property, including tangible personal property.

(4) "Cash" means currency, cashier's checks, money orders, and other monetary instruments as defined in the Bank Secrecy Act (Public Law 91-508).

(5) "Charter" means a certificate issued by the state banking board through the commissioner to a corporation verifying that the corporation is authorized to conduct business in Montana as a foreign capital depository.

(6) "Commissioner" means the commissioner of banking and financial institutions provided for in 32-1-211.

(7) "Controlling person" means a person who holds 5% or more of the equity in a depository or who is otherwise determined by the board to exercise controlling authority over decisions affecting the management and operation of the depository.

(8) "Customer" means a person who is using or has used the services of a foreign capital depository or for whom a foreign capital depository has acted as a fiduciary.

(9) "Department" means the department of ~~commerce~~ administration established in ~~2-15-1801~~ 2-15-1001.

(10) "Foreign bank" means a bank that has its primary office outside the jurisdiction of the United States and is licensed under the laws of a foreign country or a political subdivision of a foreign country.

(11) "Foreign capital depository" or "depository" means a financial institution incorporated in Montana and chartered by the board to conduct business as a foreign capital depository in accordance with parts 1 through

5 of this chapter.

(12) "Money laundering" is the process through which the existence, illegal source, true ownership, or unlawful application of illicitly derived funds is concealed or disguised to make the funds appear legitimate, thereby helping to evade detection, prosecution, seizure, or taxation.

(13) "Nonresident alien" means a person who is not a citizen or a resident of the United States.

(14) "Person" means an individual, partnership, corporation, limited liability company, association, trust, or other legal entity.

(15) "Supervisory agency" means any of the following:

(a) the attorney general and the department of justice, established by 2-15-2001, for the purpose of the enforcement of all criminal laws of the state;

(b) the department, for the purposes of the administration and enforcement of the state laws relating to the examination and supervision of a foreign capital depository;

(c) the commissioner, for the purposes of the administration and enforcement of the state laws relating to the chartering and supervision of a foreign capital depository;

(d) the board, for the purposes of chartering a foreign capital depository;

(e) the federal reserve system, when the chartered depository is a subsidiary of a financial institution domiciled outside the jurisdiction of the United States, for the purposes of examining a foreign capital depository;

(f) the legislative audit division, established by 5-13-301, for the purposes of the administration of state laws relating to the audit of state agencies and the collection and disbursement of public funds;

(g) the department of revenue, established by 2-15-1301, for the purposes of the administration and enforcement of laws relating to the collection of taxes or fees from a foreign capital depository;

(h) the insurance department, established by 2-15-1902, and the commissioner of insurance, established by 2-15-1903, for the purpose of the administration and enforcement of state laws relating to the regulation of an insurer of accounts in a foreign capital depository.

(16) "Tangible personal property" includes platinum, palladium, gold, or silver bullion or coins, precious stones, jewelry, works of art, furnishings, and other objects of value that are not legal tender."

Section 107. Section 33-22-705, MCA, is amended to read:

"33-22-705. Inpatient and outpatient benefits. (1) "Inpatient benefits" are benefits payable for charges made by a hospital or freestanding inpatient facility for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient and, with respect to

major medical policies or contracts, also includes those benefits payable for charges made by a physician for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient. Care and treatment of alcoholism or drug addiction in a freestanding inpatient facility must be in a chemical dependency treatment center that is approved by the department of public health and human services under 53-24-208. Inpatient benefits include payment for medically monitored and medically managed intensive inpatient services and clinically managed high-intensity residential services.

(2) "Outpatient benefits" are benefits payable for:

(a) reasonable charges made by a hospital for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as an inpatient;

(b) reasonable charges for services rendered or prescribed by a physician for the necessary care and treatment for mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as an inpatient;

(c) reasonable charges made by a mental health or chemical dependency treatment center for the necessary care and treatment of a covered person provided in the treatment center. The chemical dependency treatment center must be approved by the department of public health and human services under 53-24-208.

(d) reasonable charges for services rendered by a licensed psychiatrist, psychologist, licensed professional counselor, licensed social worker, or chemical dependency counselor certified by the department of ~~commerce~~ labor and industry under Title 37, chapter 35."

Section 108. Section 37-1-101, MCA, is amended to read:

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

(1) provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, taking applications for licenses, issuing and denying licenses granted by the boards, renewing licenses, disciplining licensees, registering, taking minutes of board meetings and hearings, and filing;

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

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

(4) administer and grade examinations required by each board or by law for licensing, unless the board determines that experts or professionals are necessary to administer or grade a particular examination;

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the

profession or occupation under the jurisdiction of a board within the department;

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

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

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

Section 109. Section 37-1-121, MCA, is amended to read:

"37-1-121. Duties of ~~director~~ commissioner. In addition to the powers and duties under 2-15-112 and 2-15-121, the ~~director of commerce~~ commissioner of labor and industry shall:

(1) at the request of a party, appoint an impartial ~~hearing~~ hearings examiner to conduct hearings before each board within the department whenever any board holds a contested case hearing. The ~~hearing~~ hearings examiner shall conduct hearings in a proper and legal manner.

(2) hire all personnel to perform the administrative, legal, and clerical functions of the department for the boards. Boards within the department do not have authority to hire personnel.

(3) approve all contracts and expenditures by boards within the department. A board within the department may not enter into a contract or expend funds without the approval of the ~~director~~ commissioner."

Section 110. Section 37-1-130, MCA, is amended to read:

"37-1-130. Definition. As used in this part, "board" means each board in this title that regulates a profession or occupation and that is allocated to the department of ~~commerce~~ labor and industry."

Section 111. Section 37-1-137, MCA, is amended to read:

"37-1-137. Grounds for disciplinary action as grounds for license denial -- conditions to new licenses. (1) Unless otherwise provided by law, grounds for disciplinary action by a board allocated to the department of ~~commerce~~ labor and industry against a holder of an occupational or professional license may be, under appropriate circumstances, grounds for either issuance of a probationary license for a period not to exceed 1 year or denial of a license to an applicant.

(2) The denial of a license or the issuance of a probationary license under subsection (1) must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act."

Section 112. Section 37-1-302, MCA, is amended to read:

"37-1-302. Definitions. As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of ~~commerce~~ labor and industry.

(4) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the board;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term, such as permit, certificate, recognition, or registration, used for the permission.

(7) "Profession" or "occupation" means a profession or occupation regulated by a board."

Section 113. Section 37-1-401, MCA, is amended to read:

"37-1-401. Uniform regulation for licensing programs without boards -- definitions. As used in this part, the following definitions apply:

(1) "Complaint" means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(2) "Department" means the department of ~~commerce~~ labor and industry provided for in ~~2-15-1801~~ 2-15-1701.

(3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of

determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the department;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether the department should seek an injunction.

(4) "License" means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by Title 50, chapter 39, 74, or 76.

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of Title 50, chapter 39, 74, or 76."

Section 114. Section 37-3-102, MCA, is amended to read:

"37-3-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) ~~An "approved~~ "Approved internship" ~~is~~ means an internship training program of at least 1 year in a hospital ~~which~~ that is either approved for intern training by the American osteopathic association or conforms to the minimum standards for intern training established by the council on medical education of the American medical association or successors. However, the board ~~shall have the authority~~ may, upon investigation, ~~to~~ approve any other internship.

(2) ~~An "approved~~ "Approved medical school" ~~is~~ means a school ~~which~~ that either is accredited by the American osteopathic association or conforms to the minimum education standards established by the council on medical education of the American medical association or successors for medical schools or is equivalent in the sound discretion of the board. The board may, on investigation of the education standards and facilities, approve any medical school, including foreign medical schools.

(3) ~~An "approved~~ "Approved residency" ~~is~~ means a residency training program in a hospital conforming to the minimum standards for residency training established by the council on medical education of the American medical association or successors or approved for residency training by the American osteopathic association. However, the board ~~shall have the authority~~ may upon investigation ~~to~~ approve any other residency.

(4) "Board" means the Montana state board of medical examiners provided for in 2-15-1841.

(5) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(6) "Practice of medicine" means the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities. If a person who does not possess a license to practice medicine in this state under this chapter and who is not exempt from the licensing requirements of this chapter performs acts constituting the practice of medicine, ~~he~~ the person is practicing medicine in violation of this chapter."

Section 115. Section 37-4-101, MCA, is amended to read:

"37-4-101. Definitions -- practice of dentistry. (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of dentistry provided for in 2-15-1842.

(b) "Conscious sedation" means a minimally depressed level of consciousness in which the patient breathes normally without assistance, retains protective reflexes, and responds to physical stimulation or verbal command in a manner appropriate to the patient's cognitive level. Conscious sedation is not a form of general anesthesia, and brief interludes of unconsciousness during conscious sedation do not bring conscious sedation within the scope of general anesthesia.

(c) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(d) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body and a greater or lesser degree of muscular relaxation. The drugs producing this state can be administered by inhalation, intravenously, intramuscularly, or via the gastrointestinal tract. General anesthesia is divided into:

(i) full general anesthesia, which means a level of consciousness in which the patient is without intact protective reflexes, is unable to maintain an airway, and is incapable of rational response to query or command; and

(ii) light general anesthesia, which means a level of consciousness in which the patient breathes normally without assistance and retains protective reflexes throughout most of the procedure.

(e) (i) "General anesthetic" means any recognized anesthetic agent, sedative, hypnotic, tranquilizer, or narcotic used in sufficient prescribed dosages for the purpose of inducing general anesthesia.

(ii) The term does not include a nitrous ~~oxide/oxygen~~ oxide and oxygen mixture or any other anesthetic administered to produce conscious sedation.

(2) Except for the provisions of 37-4-104, a person is ~~"practicing dentistry"~~ practicing dentistry under this chapter if the person:

(a) performs, attempts, advertises to perform, causes to be performed by the patient or any other person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind gratuitously or for a salary, fee, money, or other remuneration paid or to be paid, directly or indirectly, to the person, any other person, or any agency;

(b) is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed, unless the person is the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist, as provided in 37-4-104;

(c) directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or repairs a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(d) places the appliance or structure in the human mouth or attempts to adjust it;

(e) advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(f) diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(g) extracts or attempts to extract human teeth or corrects, attempts, or professes to correct malpositions of teeth or of the jaw;

(h) gives or professes to give interpretations or readings of dental roentgenograms;

(i) administers an anesthetic of any nature, subject to the limitations provided in 37-4-511, in connection with a dental operation;

(j) uses the words "dentist", "dental surgeon", or "oral surgeon", the letters "D.D.S."~~,~~ or "D.M.D.", or any other words, letters, title, or descriptive matter that in any way represents the person as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(k) states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill, newspaper, radio, or otherwise, that the person can perform or will attempt to perform dental operations or render a diagnosis in connection with dental operations; or

(l) engages in any of the practices included in the curricula of recognized dental colleges."

Section 116. Section 37-5-101, MCA, is amended to read:

"37-5-101. Definitions -- practice of osteopathy. (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of medical examiners provided for in 2-15-1841.

(b) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(2) ~~Every~~ A person is ~~"practicing osteopathy"~~ practicing osteopathy within the meaning of this chapter ~~who~~ if the person:

(a) appends to or uses in connection with ~~his or her~~ the person's name the words ~~"doctor of osteopathy, diplomate of osteopathy, osteopath, osteopathist, osteopathic practitioner, osteopathic physician"~~ "doctor or osteopathy", "diplomate of osteopathy", "osteopath", "osteopathist", "osteopathic practitioner", "osteopathic physician", or words of like import or any abbreviation ~~thereof~~ of the phrases or the letters "D.O."; or

(b) professes publicly to or ~~who~~, either on ~~his~~ the person's own behalf, in ~~his~~ person's own name, ~~or~~ in ~~his~~ the person's trade name, or in behalf of any other person, corporation, association, partnership (as manager, bookkeeper, practitioner, or agent), treats, cures, alleviates, or relieves any ailment or disease of either mind or body or cures or relieves any fracture or misplacement or abnormal condition or bodily injury or deformity by any treatment or manipulation or method of manipulating a human body or any of its limbs, muscles, or parts by the use of the hands or mechanical appliances in an effort or attempt to relieve any pressure, obstruction, misplacement, or defect in any bone, muscle, ligament, nerve, vessel, organ, or part of the body, after having received or with the intent or expectation of receiving ~~therefor~~, either directly or indirectly, any bonus, gift, or compensation ~~whatsoever;~~. ~~provided, however~~ However, ~~that nothing in~~ this section ~~restrains or restricts~~ does not restrain or restrict any legally licensed physician or surgeon in the practice of ~~his~~ the physician's or surgeon's licensed profession."

Section 117. Section 37-6-101, MCA, is amended to read:

"37-6-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of medical examiners provided for in 2-15-1841.

(2) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(3) "Podiatrist" means a physician or surgeon of the foot and ankle, licensed to diagnose and treat ailments of the human functional foot and ankle.

(4) "Podiatry" means the diagnosis and treatment of ailments of the human functional foot and ankle as provided in 37-6-102."

Section 118. Section 37-7-101, MCA, is amended to read:

"37-7-101. Definitions. Unless the context requires otherwise, in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Board" means the board of pharmacy provided for in 2-15-1843.

(2) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(3) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(4) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(5) (a) "Drug" means:

(i) articles recognized in the official United States Pharmacopoeia/National Formulary or a supplement;

(ii) articles intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in people or other animals;

(iii) articles, other than food, intended to affect the structure or function of the body of an individual or other animal; and

(iv) articles intended for use as a component of an article specified in subsection (5)(a)(i), (5)(a)(ii), or (5)(a)(iii).

(b) Drug does not include devices or their components, parts, or accessories.

(6) "Intern" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons under the supervision of a registered and licensed pharmacist.

(7) "Medicine" means a remedial agent ~~which~~ that has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

(8) "Person" includes an individual, partnership, corporation, or association.

(9) "Pharmacist" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons and who may affix to the person's name the term "R.Ph.".

(10) "Pharmacy" means an established place registered by the department ~~of commerce~~ in which prescriptions, drugs requiring a prescription, medicines, chemicals, and poisons are compounded, dispensed,

vended, or sold.

(11) "Pharmacy technician or auxiliary" means an individual who assists a pharmacist in the practice of pharmacy pursuant to an approved utilization plan.

(12) "Poison" means a substance ~~which~~ that, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or ~~which~~ that destroys living tissue with which it comes in contact.

(13) "Prescription" means an order given individually for the person for whom prescribed, directly from the prescriber to the furnisher or indirectly to the furnisher, by means of an order signed by the prescriber and bearing the name and address of the prescriber, the prescriber's license classification, the name of the patient, the name and the quantity of the drug or drugs prescribed, the directions for use and the date of its issue. These stipulations apply to both written and telephoned prescriptions.

(14) "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician or auxiliary in the practice of pharmacy to perform tasks that:

(a) do not require the exercise of the pharmacist's independent professional judgment; and

(b) are verified by the pharmacist.

(15) "Wholesale" means a sale for the purpose of resale."

Section 119. Section 37-8-102, MCA, is amended to read:

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

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

(2) "Board" means the board of nursing provided for in 2-15-1844.

(3) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

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

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

(b) practical nursing may be a department, school, division, or other administrative unit in a

vocational-technical institution or junior college.

(5) "Practice of nursing" embraces two classes of nursing service and activity, as follows:

(a) "Practice of practical nursing" means the performance for compensation of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. Practical nursing practice uses standardized procedures in the observation and care of the ill, injured, and infirm~~;~~ in the maintenance of health~~;~~ in action to safeguard life and health~~;~~ and in the administration of medications and treatments prescribed by a physician, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

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

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

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

Section 120. Section 37-9-101, MCA, is amended to read:

"37-9-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of nursing home administrators provided for in 2-15-1845.

(2) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(3) "Long-term care facility" means a skilled nursing facility, nursing home, or intermediate care facility as defined for licensing purposes under state law or the rules for long-term care facilities of the department of public health and human services, whether proprietary or nonprofit, including facilities owned or administered by the state or a political subdivision.

(4) "Nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility, whether the individual has an ownership interest in the facility and whether the individual's functions and duties are shared with one or more other individuals."

Section 121. Section 37-10-101, MCA, is amended to read:

"37-10-101. Definitions -- practice of optometry. (1) The practice of optometry is the profession constituting the art and science of visual care and includes any one of the following acts:

(a) the optometric examination or optometric diagnosis of all of those physiological or anatomical parts or functions that consummate the process of human vision to ascertain the presence of abnormal conditions or functions that may be optometrically diagnosed, corrected, remedied, or relieved;

(b) the employment of any optometric means for the purpose of detecting any condition of the process of vision that may have any significance in a complete optometric eye and vision examination, including the employment and administration of drugs topically applied for examination purposes, limited to cycloplegics, mydriatics, topical anesthetics, dyes such as fluorescein, and for emergency use only, miotics;

(c) the application or prescription of ophthalmic lenses, contact lenses, prisms, orthoptics, visual training, and any physical, mechanical, or physiological therapy and the furnishing or application of any prosthetic or therapeutic devices for the correction or relief of visual anomalies;

(d) the administration, dispensation, and prescription of the oral analgesics codeine, propoxyphene, hydrocodone, and dihydrocodeine, alone or in combination with nonscheduled or nonregulated drugs; and

(e) the administration, dispensation, and prescription of those drugs approved by the board for use in ocular treatment limited to the anterior segment of the eye and adnexa. Glaucoma may be treated.

(2) Subsection (1) does not prohibit an optometrist from removing from the eye or adnexa a foreign body that is not intraocular.

(3) Subsection (1) does not allow an optometrist to perform surgery or laser surgery for any purpose.

(4) Unless the context requires otherwise, in this chapter:

(a) "board" means the board of optometry provided for in 2-15-1846; and

(b) "department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17."

Section 122. Section 37-11-101, MCA, is amended to read:

"37-11-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of physical therapy examiners provided for in 2-15-1858.

(2) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(3) "Hearing" means the adjudicative proceeding concerning the issuance, denial, suspension, or revocation of a license, after which the appropriate action toward an applicant or licensee is to be determined by the board.

(4) "Physical therapist" or "physiotherapist" means a person who practices physical therapy.

(5) "Physical therapist assistant" or "assistant" means a person who:

(a) is a graduate of an accredited physical therapist assistant curriculum approved by the board;

(b) assists a physical therapist in the practice of physical therapy but who may not make evaluations or design treatment plans; and

(c) is supervised by a licensed physical therapist as described in 37-11-105.

(6) "Physical therapist assistant student" means a person who is enrolled in an accredited physical therapist assistant curriculum and who as part of the clinical and educational training is practicing under the supervision of a licensed physical therapist as described in 37-11-105.

(7) "Physical therapy" means the evaluation, treatment, and instruction of human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain, injury, and any bodily or mental conditions by the use of therapeutic exercise, prescribed topical medications, and rehabilitative procedures for the purpose of preventing, correcting, or alleviating a physical or mental disability.

(8) "Physical therapy aide" or "aide" means a person who aids in the practice of physical therapy, whose activities require on-the-job training, and who is supervised by a licensed physical therapist or a licensed physical therapist assistant as described in 37-11-105.

(9) "Physical therapy practitioner", "physical therapy specialist", "physiotherapy practitioner", or "manual therapists" are equivalent terms, and any derivation of the ~~above~~ phrases or any letters implying the ~~above~~

phrases are equivalent terms. Any reference to any one of the terms in this chapter includes the others but does not include certified corrective therapists or massage therapists.

(10) "Physical therapy student" or "physical therapy intern" means an individual who is enrolled in an accredited physical therapy curriculum, who, as part of the individual's professional, educational, and clinical training, is practicing in a physical therapy setting, and who is supervised by a licensed physical therapist as described in 37-11-105.

(11) "Topical medications" means medications applied locally to the skin and includes only medications listed in 37-11-106(2) for which a prescription is required under state or federal law."

Section 123. Section 37-12-101, MCA, is amended to read:

"37-12-101. Definitions -- practice of chiropractic. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of chiropractors provided for in 2-15-1847.

(2) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(3) "Chiropractic" is the system of specific adjustment or manipulation of the articulations and tissues of the body, particularly of the spinal column, for the correction of nerve interference and includes the use of recognized diagnostic and treatment methods as taught in chiropractic colleges but does not include surgery or the prescription or use of drugs."

Section 124. Section 37-14-102, MCA, is amended to read:

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

(1) "Board" means the board of radiologic technologists provided for in 2-15-1848.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 125. Section 37-14-322, MCA, is amended to read:

"37-14-322. Inspections. Inspections for compliance with the provisions of this chapter may be performed by:

(1) the board of radiologic technologists;

(2) the department of ~~commerce~~ labor and industry;

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

Section 126. 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) "Association" means the Montana speech-language and hearing association.

(3) "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) "Audiology aide" 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) "Board" means the board of speech-language pathologists and audiologists provided for in 2-15-1849.

(6) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(7) "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. 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) "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. 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) "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) "Speech-language pathology aide" means a person meeting the minimum requirements established by the board who works directly under the supervision of a licensed speech-language pathologist."

Section 127. Section 37-16-102, MCA, is amended to read:

"37-16-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of hearing aid dispensers provided for in 2-15-1850.

(2) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(3) "Hearing aid" means an instrument or device designed for or represented as aiding or improving defective human hearing and parts, attachments, or accessories of the instrument or device.

(4) "License" means a regular or trainee license.

(5) "Practice of selling, dispensing, and fitting hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer and a visual examination of the ear and canal or by any other means devised and the consequent selection, adaption, sale, dispensing, or fitting of hearing aids intended to compensate for hearing loss, including eyeglass hearing aids and their fittings, and the making of an impression of the ear and the subsequent selection of a proper ear mold, but does not include batteries, cords, or accessories."

Section 128. Section 37-17-102, MCA, is amended to read:

"37-17-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by the regional accrediting association for institutions of higher learning, such as the northwest association of schools and colleges.

(2) "Board" means the board of psychologists provided for in 2-15-1851.

(3) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(4) (a) "Practice of psychology" means the observation, description, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of eliminating symptomatic, maladaptive, or undesired behavior and improving interpersonal relations, work and life adjustment, personal effectiveness, and mental health.

(b) The practice of psychology includes but is not limited to psychological testing and evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy; diagnosis and treatment of mental and emotional disorders or disabilities, chemical dependency, substance abuse, and the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation.

(5) A person represents to the public that the person is a "psychologist" when the person uses a title or description of services incorporating the words "psychologist", "psychological", "psychologic", or "psychology" and offers to render or renders psychological services defined in subsection (4) to individuals, groups,

corporations, or the public, whether or not the person does so for compensation or fee."

Section 129. Section 37-18-101, MCA, is amended to read:

"37-18-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of veterinary medicine provided for in 2-15-1852.

(2) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17."

Section 130. 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 2-15-1853.

(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 ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 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 gasses ordinarily intended for that use by introducing the chemical substances, fluids, or gasses 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 131. Section 37-22-102, MCA, is amended to read:

"37-22-102. Definitions. As used in this chapter:

(1) "Board" means the board of social work examiners and professional counselors established under

2-15-1854.

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

(3) "Licensee" means a person licensed under this chapter.

(4) "Psychotherapy" means the use of psychosocial methods within a professional relationship to assist a person to achieve a better psychosocial adaptation and to modify internal and external conditions that affect individuals, groups, or families in respect to behavior, emotions, and thinking concerning their interpersonal processes.

(5) "Social work" means the professional practice directed toward helping people achieve more adequate, satisfying, and productive social adjustments. The practice of social work involves special knowledge of social resources, human capabilities, and the roles that individual motivation and social influences play in determining behavior and involves the application of social work techniques, including:

(a) counseling and using psychotherapy with individuals, families, or groups;

(b) providing information and referral services;

(c) providing, arranging, or supervising the provision of social services;

(d) explaining and interpreting the psychosocial aspects in the situations of individuals, families, or groups;

(e) helping communities to organize to provide or improve social and health services; and

(f) research or teaching related to social work."

Section 132. Section 37-23-201, MCA, is amended to read:

"37-23-201. Representation or practice as licensed clinical professional counselor -- license required. (1) Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed clinical professional counselor" or "professional counselor".

(2) Except as provided in subsection (3), a person may not represent that the person is a licensed professional counselor or licensed clinical professional counselor by adding the letters "LPC" or "LCPC" after the person's name or by any other means, engage in the practice of professional counseling, or represent that the person is engaged in the practice of professional counseling, unless licensed under this chapter.

(3) Individuals licensed in accordance with this chapter before October 1, 1993, who use the title "licensed professional counselor" or "LPC" may use the title "licensed clinical professional counselor" or "LCPC".

(4) Subsection (2) does not prohibit:

(a) a qualified member of another profession, such as a physician, lawyer, pastoral counselor, probation

officer, court employee, nurse, school counselor, educator, chemical dependency counselor accredited by a federal agency, or chemical dependency counselor certified pursuant to Title 37, chapter 35, from performing duties and services consistent with the person's licensure or certification and the code of ethics of the person's profession or, in the case of a qualified member of another profession who is not licensed or certified or for whom there is no applicable code of ethics, from performing duties and services consistent with the person's training, as long as the person does not represent by title that the person is engaging in the practice of professional counseling;

(b) an activity or service or use of an official title by a person employed by or acting as a volunteer for a federal, state, county, or municipal agency or an educational, research, or charitable institution that is a part of the duties of the office or position;

(c) an activity or service of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) an activity or service of a student, intern, or resident in mental health counseling pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activity or service constitutes a part of the supervised course of study;

(e) an activity or service of a person who is not a resident of this state, which activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year, if the person is authorized under the law of the state or country of residence to perform the activity or service. However, the person shall report to the department of ~~commerce~~ labor and industry the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(f) pending disposition of the application for a license, the activity or service by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform the activity or service in the state of the person's former residence;

(g) an activity or service of a person who is working to satisfactorily complete the 3,000 hours of counseling practice required for licensure by 37-23-202(1)(b) if the person has already completed a planned graduate program as required by 37-23-202(1)(a) or is working to complete the 3,000 hours of social work experience as required by 37-22-301; or

(h) an activity or service performed by a licensed social worker, licensed psychiatrist, or licensed psychologist when performing the activity or service in a manner consistent with the person's license and the code of ethics of the person's profession."

Section 133. Section 37-24-103, MCA, is amended to read:

"37-24-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of occupational therapy practice established by 2-15-1859.

(2) "Certified occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under this chapter, who works under the general supervision of an occupational therapist in accordance with the provisions of the Essentials for an Approved Educational Program for the Occupational Therapy Assistant, published by the American occupational therapy association and adopted by the board.

(3) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(4) "Occupational therapist" means a person licensed to practice occupational therapy under this chapter.

(5) "Occupational therapy" means the use of purposeful activity and interventions to achieve functional outcomes to maximize the independence and the maintenance of health of an individual who is limited by physical injury or illness, psychosocial dysfunction, mental illness, developmental or learning disability, the aging process, cognitive impairment, or an adverse environmental condition. The practice encompasses assessment, treatment, and consultation. Occupational therapy services may be provided individually, in groups, or through social systems. Occupational therapy interventions include but are not limited to:

(a) teaching daily living skills;

(b) developing perceptual-motor skills and sensory integrative functioning;

(c) developing play skills and leisure capacities and enhancing educational performance skills;

(d) designing, fabricating, or applying splints or selective adaptive equipment and training in the use of upper extremity prosthetics or upper extremity orthotic devices;

(e) providing for the development of emotional, motivational, cognitive, psychosocial, or physical components of performance;

(f) providing assessment and evaluation, including the use of skilled observation or the administration and interpretation of standardized or nonstandardized tests and measurements to identify areas for occupational therapy services;

(g) adapting environments for the disabled, including assistive technology, such as environmental controls, wheelchair modifications, and positioning;

(h) developing feeding and swallowing skills;

(i) enhancing and assessing work performance and work readiness through occupational therapy intervention, including education and instruction, activities to increase and improve general work behavior and skill, job site evaluation, on-the-job training and evaluation, development of work-related activities, and supported employment placement;

(j) providing neuromuscular facilitation and inhibition, including the activation, facilitation, and inhibition of muscle action, both voluntary and involuntary, through the use of appropriate sensory stimulation, including vibration or brushing, to evoke a desired muscular response;

(k) employing physical agent modalities as defined in this section; and

(l) promoting health and wellness.

(6) "Occupational therapy aide" means a person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant and whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.

(7) "Physical agent modalities" means those modalities that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity. Physical agent modalities are characterized as adjunctive methods used in conjunction with or in immediate preparation for patient involvement in purposeful activity. Superficial physical agent modalities include hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling devices. Use of superficial physical agent modalities is limited to the shoulder, arm, elbow, forearm, wrist, and hand and is subject to the provisions of 37-24-105. Use of sound and electrical physical agent modality devices is limited to the elbow, forearm, wrist, and hand and is subject to the provisions of 37-24-106.

(8) "Purposeful activity" means an activity in which the individual is an active, voluntary participant and is directed toward a goal that the individual considers meaningful. Purposeful activities are used to evaluate, facilitate, restore, or maintain individuals' abilities to function within their daily occupations."

Section 134. Section 37-26-103, MCA, is amended to read:

"37-26-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Approved naturopathic medical college" means a college and program granting the degree of doctor of naturopathy or naturopathic medicine that:

(a) is accredited by the council on naturopathic medical education or another accrediting agency recognized by the United States department of education;

(b) has the status of candidate for accreditation with the accrediting agency; or

(c) has been approved by the board after an investigation that determines that the college or program meets education standards equivalent to those established by the accrediting agency and complies with the board's rules, which must require as a minimum a 4-year, full-time resident program of academic and clinical study.

(2) "Board" means the alternative health care board established in 2-15-1840.

(3) "Department" means the department of ~~commerce~~ labor and industry provided for in ~~2-15-1801~~ 2-15-1701.

(4) "Homeopathic preparations" means substances and drugs prepared according to the official Homeopathic Pharmacopoeia of the United States, which is the standard homeopathic text recognized by the United States food and drug administration.

(5) (a) "Minor surgery" means the use of:

(i) operative, electrical, or other methods for the surgical repair and care incidental to superficial lacerations and abrasions, superficial lesions, and the removal of foreign bodies located in the superficial tissues; and

(ii) antiseptics and local anesthetics in connection with the methods.

(b) Minor surgery does not include general or spinal anesthetics, major surgery, surgery of the body cavities, or specialized surgeries, such as plastic surgery, surgery involving the eyes, or surgery involving tendons, ligaments, nerves, or blood vessels.

(6) (a) "Naturopathic childbirth attendance" means the specialty practice of natural childbirth by naturopathic physicians that includes the use of natural therapeutic substances, ophthalmic antibiotics, oxytocin (pitocin), and minor surgery, as set by board rules.

(b) The term does not include a forceps delivery, general or spinal anesthesia, or a cesarean section.

(7) "Naturopathic medicine", "naturopathic health care", or "naturopathy" means a system of primary health care practiced by naturopathic physicians for the prevention, diagnosis, and treatment of human health conditions, injury, and disease. Its purpose is to promote or restore health by the support and stimulation of the individual's inherent self-healing processes. This is accomplished through education of the patient by a naturopathic physician and through the use of natural therapies and therapeutic substances.

(8) "Naturopathic physical applications" means the therapeutic use by naturopathic physicians of the actions or devices of electrical muscle stimulation, galvanic, diathermy, ultrasound, ultraviolet light, constitutional hydrotherapy, and naturopathic manipulative therapy.

(9) "Naturopathic physician" means a person authorized and licensed to practice naturopathic health care under this chapter.

(10) "Topical drugs" means topical analgesics, anesthetics, antiseptics, scabicides, antifungals, and antibacterials."

Section 135. Section 37-27-205, MCA, is amended to read:

"37-27-205. Provisional license -- apprentice license. (1) Upon payment of a $200 fee to the department of ~~commerce~~ labor and industry, the board may grant an apprentice direct-entry midwife license to a person who:

(a) is working under the personal supervision of a licensed direct-entry midwife, a certified nurse-midwife, a licensed physician, or a licensed naturopathic physician who is certified for the specialty practice of naturopathic childbirth attendance; and

(b) is seeking licensure as a direct-entry midwife under this chapter.

(2) An apprentice direct-entry midwife license is valid for a period prescribed by department of ~~commerce~~ labor and industry rule and must be renewed at an interval established by the department of ~~commerce~~ labor and industry, with a limit of four renewals."

Section 136. Section 37-29-102, MCA, is amended to read:

"37-29-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the state board of dentistry provided for in 2-15-1842.

(2) "Denture" means any removable full or partial upper or lower prosthetic dental appliance to be worn in the mouth.

(3) "Denturist" means a person licensed under this chapter to engage in the practice of denturitry.

(4) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(5) "Immediate denture" means a denture constructed prior to and inserted immediately after extraction of teeth.

(6) "Practice of denturitry" means:

(a) the making, fitting, constructing, altering, reproducing, or repairing of a denture and furnishing or supplying of a denture directly to a person or advising the use of a denture; or

(b) the taking or making or the giving of advice, assistance, or facilities respecting the taking or making of any impression, bite, cast, or design preparatory to or for the purpose of making, constructing, fitting, furnishing, supplying, altering, repairing, or reproducing a denture."

Section 137. Section 37-30-101, MCA, is amended to read:

"37-30-101. Definitions -- practice of barbering. (1) Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(a) "Barbershop" means a place where a person carries on, engages in, practices, or causes to be carried on, engaged in, or practiced the business of barbering.

(b) "Board" means the board of barbers provided for in 2-15-1856.

(c) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(2) Any one or any combination of the following practices, when done upon the human body for tonsorial purposes and not for the treatment of disease or physical or mental ailments and when done for payment, either directly or indirectly, constitutes the practice of barbering:

(a) shaving or trimming the beard;

(b) cutting, styling, coloring, or waving the hair;

(c) straightening of the hair by using chemicals;

(d) giving facial or scalp massage or treatment with oils, creams, lotions, or other preparations, either by hand or mechanical appliances;

(e) singeing or shampooing the hair or applying hair tonic or bleaching or highlighting the hair of male persons;

(f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to scalp, face, hands, or neck.

(3) The practice of cosmetology by a licensed cosmetologist, including cutting the hair of any person, does not constitute the practice of barbering."

Section 138. Section 37-30-412, MCA, is amended to read:

"37-30-412. Barbershop owner's duty to monitor employees. An owner or manager of a barbershop licensed under this chapter shall make certain that each barber employed holds a certificate to practice barbering in this state and that employees observe the sanitary rules of the department of public health and human services

and the department ~~of commerce~~ and shall report to the department ~~of commerce~~ the name of a person practicing barbering in the barbershop who has a communicable disease."

Section 139. Section 37-31-101, MCA, is amended to read:

"37-31-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of cosmetologists provided for in 2-15-1857.

(2) "Booth" means any part of a cosmetology, manicuring, or esthetics salon that is rented or leased for the performance of cosmetologist, manicuring, or esthetics services, as specified in 39-51-204(1)(e).

(3) "Cosmetology salon" means the premises, a building, or a part of a building in which a branch or combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or cosmetologist is practiced by a person licensed under the provisions of this chapter.

(4) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(5) "Esthetician" means a person licensed under this chapter to engage in the practice of esthetics.

(6) "Esthetics" means skin care of the face, neck, and hands, including but not limited to hot compresses or the use of approved electrical appliances or chemical compounds formulated for professional application only and the temporary removal of superfluous hair by means of lotions, creams, or mechanical or electrical apparatus or appliances on another person.

(7) "Esthetics salon" means the premises, a building, or a part of a building in which the art of esthetics is practiced.

(8) "Manicuring" includes nail care of the hands and feet and the application and maintenance of artificial nails.

(9) "Manicuring salon" means the premises, a building, or a part of a building in which the art of manicuring is practiced.

(10) (a) "Practice and teaching of cosmetology" means work included in the terms "hairdressing", "manicuring", "esthetics", and "beauty culture" and performed in cosmetology salons, in booths, or by itinerant cosmetologists~~, which~~ when the work is done for the embellishment, cleanliness, and beautification of the hair, scalp, face, arms, feet, or hands.

(b) The practice and teaching of cosmetology may not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established store

or place of business holding a license from the state of Montana as a store or place of business."

Section 140. Section 37-32-102, MCA, is amended to read:

"37-32-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Approved school" means a school ~~which~~ that the board has approved as having a course of instruction or education and training in electrology ~~which~~ that meets the criteria established by the board.

(2) "Board" means the board of cosmetologists.

(3) "Department" means the department of ~~commerce~~ labor and industry.

(4) (a) "Electrology" means the study and professional practice of permanently removing superfluous hair by destroying the hair roots by passage of an electric current with an electrified needle. Electrology ~~as defined in this chapter shall include~~ includes electrolysis ~~and/or~~ and thermolysis.

(b) Electrology does not include the practice of pilethermology, which is the study and professional practice of removing superfluous hair by passage of radio frequency energy with electronic tweezers and similar devices."

Section 141. Section 37-34-103, MCA, is amended to read:

"37-34-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of clinical laboratory science practitioners established in 2-15-1863.

(2) "Clinical laboratory" or "laboratory" means any facility or office in which clinical laboratory tests are performed.

(3) (a) "Clinical laboratory science practitioner" means a health care professional who performs clinical laboratory tests or who is engaged in management, education, consulting, or research in clinical laboratory science.

(b) The term includes laboratory directors, managers, supervisors, clinical laboratory scientists, clinical laboratory specialists, and clinical laboratory technicians who work in a laboratory.

(c) The term does not include:

(i) persons employed by a clinical laboratory to perform supportive functions not related to direct performance of laboratory tests; or

(ii) clinical laboratory trainees.

(4) "Clinical laboratory scientist" means a person who:

(a) performs clinical laboratory tests pursuant to established and approved protocols requiring the

exercise of independent judgment and responsibility;

(b) maintains equipment and records;

(c) performs quality assurance activities related to test performance; and

(d) may supervise and teach within a clinical laboratory setting.

(5) "Clinical laboratory specialist" means a person who:

(a) performs laboratory testing in a specialized testing area, such as microbiology, chemistry, immunology, or hematology, according to approved protocols requiring the exercise of independent judgment and responsibility;

(b) maintains equipment and records;

(c) performs quality assurance activities related to test performance; and

(d) may supervise and teach within the specific area of the clinical laboratory.

(6) "Clinical laboratory technician" means a person who performs laboratory tests pursuant to established and approved protocols that require limited exercise of independent judgment and that are performed under the supervision of a clinical laboratory scientist, laboratory supervisor, or laboratory director.

(7) "Clinical laboratory test" or "laboratory test" means:

(a) a microbiological, serological, chemical, hematological, radiobioassay, cytological, biophysical, immunological, cytogenetical, or other examination that is performed on material derived from the human body; or

(b) any other test or procedure conducted by a laboratory or facility that provides information for the assessment of a medical condition or for the diagnosis, prevention, or treatment of a disease.

(8) "Department" means the department of ~~commerce~~ labor and industry provided for in ~~2-15-1801~~ 2-15-1701.

(9) "License" means the clinical laboratory science license issued under this chapter.

(10) "Practice of clinical laboratory science" means the performance and interpretation of microbiological, serological, chemical, hematological, radiobioassay, cytological, biophysical, immunological, cytogenetical, or other examination on material that is derived from the human body and that provides information for the assessment of a medical condition or for the diagnosis, prevention, or treatment of a disease."

Section 142. Section 37-35-102, MCA, is amended to read:

"37-35-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by a regional accrediting

association for institutions of higher learning.

(2) "Certified chemical dependency counselor" means a person who has the knowledge and skill necessary to provide the therapeutic process of chemical dependency counseling and who is certified under the provisions of this chapter.

(3) "Chemical dependency" means the use of any chemical substance, legal or illegal, that creates behavior or health problems, or both, resulting in operational impairment. This term includes alcoholism, drug dependency, or both, that endanger the health, interpersonal relationships, or economic functions of an individual or the public health, safety, or welfare.

(4) "Department" means the department of ~~commerce~~ labor and industry provided for in ~~2-15-1801~~ 2-15-1701."

Section 143. Section 37-40-101, MCA, is amended to read:

"37-40-101. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Board" means the board of sanitarians provided for in 2-15-1861.

(2) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(3) "Practice the profession of sanitarian" means:

(a) giving advice on or enforcing compliance with state and local regulations applicable to local government jurisdictions and programs concerning food service, food processing, public accommodations, trailer courts, campgrounds, day-care centers, schools, swimming pools and spas, air pollution, solid and hazardous waste collection and disposal, sewage treatment and disposal, vector control, underground storage tanks, drinking water, land subdivision, and milk sanitation;

(b) cooperating with government agencies on matters of public and environmental health, including epidemiological investigations and emergency response to investigations; and

(c) providing educational and training programs in environmental standards and public health.

(4) "Registered sanitarian" means a sanitarian licensed under this chapter.

(5) "Sanitarian", within the meaning and intent of this chapter, shall mean a person who, by reason of ~~his~~ the person's special knowledge of the physical, biological, and chemical sciences and the principles and methods of public health acquired by professional education and practical experience through inspectional, educational, ~~and/or~~ or enforcement duties, is qualified to practice the profession of sanitarian.

(6) "Sanitarian-in-training" means a person who meets the minimum educational qualifications required for a sanitarian's license and who works under the supervision of a licensed sanitarian. Sanitarians-in-training may, with board approval, work in a public health agency for a period not to exceed 1 year and be considered exempt from the licensing and registration requirements of 37-40-301."

Section 144. Section 37-47-101, MCA, is amended to read:

"37-47-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Accompany" means to go with or be together with a participant as an escort, companion, or other service provider, with an actual physical presence in the area where the activity is being conducted and within sight or sound of the participant at some time during the furnishing of service.

(2) "Base of operations" means the primary physical location where an outfitter receives mail and telephone calls, conducts regular daily business, and bases livestock, equipment, and staff during the hunting season.

(3) "Board" means the board of outfitters provided for in 2-15-1883.

(4) "Camp" means each individual facility or group of facilities that an outfitter uses to lodge a client for a client's trip or uses to lodge a client in the operating area designated in the outfitter's operations plan, including a motel, campground, bed and breakfast, lodge, tent camp, cabin, camper, trailer, or house.

(5) "Consideration" means something of value given or done in exchange for something of value given or done by another.

(6) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(7) "Guide" means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

(8) "License year" means that period beginning January 1 and ending December 31 of the same year.

(9) "Net client hunter use" or "NCHU" means the most actual clients served by an outfitter in any NCHU license category in any license year, as documented by verifiable client logs or other documents maintained by the board pursuant to 37-47-201(7).

(10) "Nonresident" means a person other than a resident.

(11) "Outfitter" means any person, except a person providing services on real property that the person

owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal; facilities; camping equipment; vehicle, watercraft, or other conveyance; or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or professional guide in accompanying that person.

(12) "Participant" means a person using the services offered by a licensed outfitter.

(13) "Professional guide" means a guide who has met experience, training, and testing qualifications for designation as a professional guide, as set by board rule.

(14) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102."

Section 145. Section 37-50-101, MCA, is amended to read:

"37-50-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of public accountants provided for in 2-15-1866.

(2) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(3) "Practice of public accounting" means performing or offering to perform by a person certified under 37-50-302 or licensed under 37-50-303, for a client or potential client, one or more types of services involving the use of accounting or auditing skills, including:

(a) the issuance of reports or financial statements on which the public may rely;

(b) one or more types of management advisory or consulting services;

(c) the preparation of tax returns; or

(d) furnishing advice on tax matters."

Section 146. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property

and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

(3) "Board" means the board of realty regulation provided for in 2-15-1867.

(4) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a prospective buyer or seller of real property; or

(g) advertises or represents to the public that the individual is engaged in any of the activities referred to in subsections (4)(a) through (4)(f).

(5) "Broker associate" means a broker who associates, as an employee or independent contractor, with a broker owner and does not own an interest in a real estate firm.

(6) "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

(7) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who

has entered into an agreement to acquire an interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

(8) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

(9) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

(10) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

(11) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(12) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written authorization as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a dual agent.

(13) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(14) "In-house buyer agent designate" means a broker associate or salesperson employed by or associated as an independent contractor with a broker owner and designated by the broker owner as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

(15) "In-house seller agent designate" means a broker associate or salesperson employed by or associated as an independent contractor with a broker owner and designated by the broker owner as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.

(16) "Listing agreement" means a written agreement between a seller and broker for the sale of real

estate, with the terms and conditions set out in the agreement.

(17) "Negotiations" means:

(a) efforts to act as an intermediary between parties to a real estate transaction;

(b) facilitating and participating in contract discussions;

(c) completing forms for offers, counteroffers, addendums, and other writings; and

(d) presenting offers and counteroffers.

(18) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(19) "Property manager" includes a person who for a salary, commission, or compensation of any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

(20) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(21) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

(22) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(23) "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

(24) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

(25) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

(26) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker."

Section 147. Section 37-51-209, MCA, is amended to read:

"37-51-209. Executive secretary -- hiring, duties, and qualifications. (1) The department ~~of commerce~~ may hire an executive secretary to carry out duties prescribed by the board pursuant to the board's responsibilities and duties established by law.

(2) The person hired to be executive secretary:

(a) ~~shall~~ must possess at least a bachelor's degree from an accredited college or university;

(b) may not be an officer or paid employee of a real estate association or group of real estate dealers or brokers;

(c) must be a citizen of the United States of America; and

(d) must be of good moral character."

Section 148. Section 37-54-102, MCA, is amended to read:

"37-54-102. Definitions. Terms commonly used in appraisal practice and as used in this chapter must be defined according to the Uniform Standards of Appraisal Practice, as issued by the appraisal foundation. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Appraisal foundation" means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987, pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3310, et seq. The purposes of the appraisal foundation are to:

(a) establish and improve uniform appraisal standards by defining, issuing, and promoting those standards;

(b) establish appropriate criteria for the licensure and certification of qualified appraisers by defining, issuing, and promoting qualification criteria and disseminate the qualification criteria to states and other governmental entities; and

(c) develop or assist in the development of appropriate examinations for qualified appraisers.

(2) "Board" means the board of real estate appraisers provided for in 2-15-1868.

(3) "Certified real estate appraiser" means a person who develops and communicates real estate appraisals and who has a valid real estate appraisal certificate issued under 37-54-305.

(4) "Department" means the department of ~~commerce~~ labor and industry provided for in ~~2-15-1801~~ 2-15-1701.

(5) "Licensed real estate appraiser" means a person who holds a current valid real estate appraiser license issued under 37-54-201."

Section 149. Section 37-60-101, MCA, is amended to read:

"37-60-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means any individual employed by a contract security company or a proprietary security organization to respond to security alarm system signals.

(2) "Armed carrier service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

(3) "Armed private investigator" means a private investigator who at any time wears, carries, possesses, or has access to a firearm in the performance of ~~his~~ the individual's duties.

(4) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, carrier service guard, or alarm response runner and who at any time wears or carries a firearm in the performance of ~~his~~ the individual's duties.

(5) "Armored car service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

(6) "Board" means the board of private security patrol officers and investigators provided for in 2-15-1891.

(7) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

(8) "Contract security company" means any person who installs or maintains a security alarm system, undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.

(9) "Department" means the department of ~~commerce~~ labor and industry provided for in ~~2-15-1801~~ 2-15-1701.

(10) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration whatsoever conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes or wrongs committed or threatened against the United States or any state or territory ~~thereof~~ of the United States.

(11) "Licensee" means a person licensed under this chapter.

(12) "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.

(13) "Person" includes any individual, firm, company, association, organization, partnership, and corporation.

(14) "Private investigator" means a person other than an insurance adjuster who for any consideration whatsoever makes or agrees to make any investigation with reference to:

(a) crimes or wrongs done or threatened against the United States or any state or territory ~~thereof~~ of the United States;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for fires, libels, losses, accidents, or injury to persons or property; or

(e) securing evidence to be used before any court, board, officer, or investigating committee.

(15) "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property~~,~~ or the direction of the movements of the public in public areas.

(16) "Proprietary security organization" means any person who employs a private security guard, ~~an~~ alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

(17) "Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable.

(18) "Resident manager" means the person appointed to exercise direct supervision, control, charge,

management, or operation of each branch office located in this state where the business of the licensee is conducted.

(19) (a) "Security alarm system" means an assembly of equipment and devices or a single device, such as a solid state unit ~~which~~ that plugs directly into a 110-volt AC line, designed to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a protected premises~~,~~ and to which signals police, private security guards, or alarm response runners are expected to respond.

(b) ~~Fire~~ The term does not include alarm systems and alarm systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a premises ~~are not included within the meaning of this definition~~.

(20) "Street patrol service" means any contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares.

(21) "Unarmed private investigator" means a private investigator who does not wear, carry, possess, or have access to a firearm in the performance of ~~his~~ the individual's duties.

(22) "Unarmed private security guard" means an individual who is employed by a contract security company or a proprietary security organization, whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, and who does not wear or carry a firearm in the performance of those duties."

Section 150. Section 37-65-102, MCA, is amended to read:

"37-65-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Architect" means an individual technically and legally qualified to practice architecture and who is authorized under this chapter to practice architecture.

(2) "Board" means the board of architects provided for in 2-15-1871.

(3) "Building" means a structure intended primarily for human occupancy or use.

(4) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(5) "Practice of architecture" means any professional service or creative work requiring the application of advanced knowledge of architectural design, building construction, and standards and involving the constant exercise of discretion and judgment in ~~such~~ those activities, in which the safeguarding of life, health, or property

is concerned, as consultation, investigation, evaluation, planning, design, or inspection of construction for any public or private building.

(6) "Public building" means any building ~~which~~ that the state or any political subdivision ~~thereof~~ of the state maintains for the use of the public."

Section 151. Section 37-66-103, MCA, is amended to read:

"37-66-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of landscape architects provided for in 2-15-1872.

(2) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(3) "Landscape architect" means a person who holds a certificate to practice landscape architecture in the state of Montana under the provisions of this chapter.

(4) "Landscape architecture" means performing services in conjunction with all aspects of the planning and design of the exterior environment for human use and environmental protection. It includes regional planning of natural resources, urban and rural planning and design, institutional design, park and recreation planning and design, and the preparation of project master plans. It is the design discipline specifically oriented to addressing the problems involved in adapting man's uses of land to the characteristics of the exterior environment both functionally and aesthetically. It includes the preparation of contract documents, construction specifications, construction cost estimates, and project contracts. It includes contract negotiations, project management, and construction management. The term does not include the design of structures or facilities with separate and self-contained purposes that are ordinarily included in the practice of engineering or architecture and does not include the making of land surveys or final land plats for official approval or recording."

Section 152. Section 37-67-101, MCA, is amended to read:

"37-67-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of professional engineers and professional land surveyors provided for in 2-15-1873.

(2) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(3) "Engineer intern" means a person who complies with the requirements for education, experience, and character and has passed an examination in the fundamental engineering subjects, as provided in this

chapter.

(4) "Land surveyor intern" means a person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this chapter.

(5) (a) "Practice of engineering" means:

(i) any service or creative work the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to the services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of water, teaching of advanced engineering subjects, engineering surveys, and the inspection of construction for the purpose of ensuring compliance with drawings and specifications;

(ii) any of the functions described in subsection (5)(a)(i) that embrace the services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of mechanical, electrical, hydraulic, pneumatic, or thermal nature insofar as they involve safeguarding life, health, or property.

(b) The term includes other professional services necessary to the planning, progress, and completion of any engineering services.

(c) The term does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, communication lines, signal circuits, electric powerlines, or pipelines.

(6) "Practice of land surveying" means any service or work, the performance of which requires the application of special knowledge of the principles of mathematics, physical sciences, applied sciences, and:

(a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;

(b) teaching of land surveying subjects;

(c) measurement and allocation of lines, angles, elevations, and coordinate systems;

(d) location of natural and constructed features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, including work for the determination of areas and volumes;

(e) monumenting of property boundaries;

(f) platting and layout of lands and the subdivisions of land, including the alignment and grades of streets and roads in subdivisions; and

(g) preparation and perpetuation of maps, plats, field note records, and property descriptions.

(7) "Professional engineer" means a person who, by reason of special knowledge and use of the

mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and engineering experience, is qualified to practice engineering and who has been registered and licensed as a professional engineer by the board.

(8) "Professional land surveyor" means a person who:

(a) has been registered and licensed as a land surveyor by the board;

(b) is a professional specialist in the technique, analysis, and application of measuring land;

(c) is skilled and educated in the principles of mathematically related physical and applied sciences, relevant requirements of law for adequate evidence, and all requisites to the surveying of real property; and

(d) is engaged in the practice of land surveying as defined in this section.

(9) "Responsible charge" means direct charge and control and personal supervision either of engineering work or of land surveying. Only a professional engineer or a professional land surveyor may legally assume responsible charge under this chapter."

Section 153. Section 37-68-102, MCA, is amended to read:

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

(1) "Board" means the state electrical board provided for in 2-15-1874.

(2) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(3) "Electrical contractor" means a person, firm, partnership, corporation, association, or combination of these ~~who~~ that undertakes or offers to undertake for another the planning, laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power. A registered electrical engineer who plans or designs electrical installations is not an electrical contractor.

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

(5) "Master electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and supervise the installation and repair of wiring apparatus and equipment for electric light, heat, power, and other purposes under the rules governing this work.

(6) "Residential electrician" means a person having the necessary qualifications, training, experience,

and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes in residential construction consisting of less than five living units in a single structure under the rules governing this work."

Section 154. Section 37-69-101, MCA, is amended to read:

"37-69-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of plumbers provided for in 2-15-1875.

(2) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(3) "Drainage system" means all the piping inside the walls of a building that conveys sewage or other liquid wastes outside the building to the building sewer but that does not extend more than 2 feet outside the building way.

(4) "Field of plumbing" means the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts ~~thereof~~ of plumbing and drainage systems.

(5) "Journeyman plumber" means a person who is authorized to make installation of all sanitary plumbing and potable water supply piping and appliances connected ~~thereto~~ to the plumbing and piping.

(6) "Master plumber" means a person who is authorized by this chapter to plan, estimate, bid, contract for, and supervise plumbing work and who may do the work of a journeyman plumber.

(7) (a) ~~Except as provided in subsection (7)(b), plumbing system~~ "Plumbing system" means all potable water supply and distribution pipes, plumbing fixtures and traps, drainage and vent pipes, and building drains, including their respective joints and connections, devices, receptacles, and appurtenances within the property lines of any premises, up to 20 feet beyond the building foundation line, and includes potable water piping, water heaters, and vents for the premises.

(b) ~~As defined in subsection (7)(a), "plumbing system"~~ The term does not include water services installed and maintained by water districts or water user associations in which water service is installed by any qualified person appointed or hired by the administrative authority of the water system.

(8) "Public sewer system" means any common sewer carrying liquid wastes from two or more dwellings or any other facility that serves the public.

(9) "Public water supply" means any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves 10 or more families or 25 or more persons on a regular and

continuous basis."

Section 155. Section 37-69-310, MCA, is amended to read:

"37-69-310. Citation and fine for failure to display license. (1) A citation for failure to display a plumber's license or proof of licensure issued by an employee of the department ~~of commerce~~ must include:

(a) the time and date on which the citation is issued;

(b) the name, address, mailing address, and signature of the person to whom the citation is issued;

(c) reference to the statutory authority to issue the citation;

(d) the name, title, affiliation, and signature of the person issuing the citation;

(e) information explaining the procedure for the person to follow in order to pay the fine or to demonstrate proof of licensure; and

(f) the amount of the applicable fine.

(2) The applicable civil fines for failing to display a license or proof of licensure are as follows:

(a) $100 for the first offense;

(b) $250 for the second offense; and

(c) $500 for the third and any subsequent offense.

(3) Each day of violation constitutes a separate offense. The person issuing the citation is responsible for determining, by means of an up-to-date list or through telephone or other communication with the board office, whether the citation being issued is for a first, second, or subsequent offense.

(4) The person who issues the citation is authorized to collect the fine, but the person who is issued a citation may pay the fine to the board within 5 business days of the date of issuance. The board may, upon finding that the person has demonstrated acceptable proof of licensure, waive or refund the fine.

(5) A person who refuses to sign and accept a citation commits a misdemeanor, punishable in the same manner as provided in 37-1-318."

Section 156. Section 37-72-101, MCA, is amended to read:

"37-72-101. Construction blasting restrictions -- license required -- definitions -- exemptions. (1) A person may not engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the department.

(2) For the purposes of this chapter:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) "department" means the department of ~~commerce~~ labor and industry;

(d) "explosive" has the meaning ~~given~~ provided in 61-1-506.

(3) ~~Nothing in this~~ This chapter ~~applies~~ does not apply to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection shall comply with rules adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under 82-4-231(10)(e)."

Section 157. Section 46-18-111, MCA, is amended to read:

"46-18-111. Presentence investigation -- when required. (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, or 45-5-627, the investigation must include a psychosexual evaluation of the defendant and a recommendation as to treatment of the offender in the least restrictive environment, considering the risk the offender presents to the community and offender needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to ~~the professional and occupational licensing bureau of~~ the department of ~~commerce~~ labor and industry. The psychosexual evaluation must be made available to the county attorney's office, the defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(2) The court shall order a presentence report unless the court makes a finding that a report is

unnecessary. Unless the court makes ~~such a~~ that finding, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation officer is presented to and considered by the district court. The district court may, in its discretion, order a presentence investigation for a defendant convicted of a misdemeanor."

Section 158. Section 50-3-103, MCA, is amended to read:

"50-3-103. Rules promulgated by department. (1) Rules promulgated by the department by authority of 50-3-102 must be reasonable and calculated to effect the purposes of this chapter. ~~They~~ The rules must include but are not limited to requirements for:

(a) design, construction, installation, operation, storage, handling, maintenance, or use of structural requirements for various types of construction;

(b) building restrictions within congested districts;

(c) exit facilities from structures;

(d) fire extinguishers, fire alarm systems, and fire extinguishing systems;

(e) fire emergency drills;

(f) flue and chimney construction;

(g) heating devices;

(h) electrical wiring and equipment;

(i) air conditioning, ventilating, and other duct systems;

(j) refrigeration systems;

(k) flammable liquids;

(l) oil and gas wells;

(m) application of flammable finishes;

(n) explosives, acetylene, liquefied petroleum gas, and similar products;

(o) calcium carbide and acetylene generators;

(p) flammable motion picture film;

(q) combustible fibers;

(r) hazardous chemicals or materials;

(s) rubbish;

(t) open-flame devices;

(u) parking of vehicles;

(v) dust explosions;

(w) lightning protection;

(x) storage of smokeless powder and small arms primers; and

(y) other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state or a municipal building code, the rules are effective upon approval of the department of ~~commerce~~ labor and industry and filing with the secretary of state.

(3) Federal or other nationally recognized standards for fire protection may be adopted in whole or in part by reference.

(4) Rules must be adopted as prescribed in the Montana Administrative Procedure Act.

(5) Rules promulgated by the department may not prevent the installation of an aboveground storage tank in a community, city, or town with a population of 1,500 or less if the tank is installed in conformance with all other applicable laws and regulations.

(6) Rules promulgated by the department may not require diked areas or heat-actuated or other shutoff devices for storage tanks containing class I or class II liquids, as defined in the uniform fire code, intended only for private use on farms and ranches.

(7) A person violating any rule made under the provisions of this part is guilty of a misdemeanor."

Section 159. Section 50-6-202, MCA, is amended to read:

"50-6-202. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the Montana state board of medical examiners~~, department of commerce~~ provided for in 2-15-1841.

(2) "Emergency medical technician" means a person who has been specially trained in emergency care in a training program approved by the ~~state~~ board ~~of medical examiners~~ and certified by the board as having demonstrated a level of competence suitable to treat victims of injury or other emergent condition."

Section 160. Section 50-32-101, MCA, is amended to read:

"50-32-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or other means, to the body of a patient or research subject by:

(a) a practitioner or by the practitioner's authorized agent; or

(b) the patient or research subject at the direction and in the presence of the practitioner.

(2) (a) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser.

(b) The term does not include a common or contract carrier, public warehouse operator, or employee of the carrier or warehouse operator.

(3) "Board" means the board of pharmacy provided for in 2-15-1843.

(4) "Bureau" means the drug enforcement administration, United States department of justice, or its successor agency.

(5) "Counterfeit substance" means a dangerous drug that or the container or labeling of a dangerous drug without authorization that bears the trademark, trade name, or other identifying mark, imprint, number, or device or a likeness of an identifying mark, imprint, number, or device of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.

(6) "Dangerous drug" means a drug, substance, or immediate precursor in Schedules I through V set forth in part 2.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

(8) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(9) "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

(10) "Dispenser" means a practitioner who dispenses.

(11) "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

(12) "Distributor" means a person who distributes.

(13) (a) "Drug" means:

(i) a substance recognized as a drug in the official United States Pharmacopoeia/National Formulary or any supplement to it;

(ii) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(iii) a substance, other than food, intended to affect the structure or a function of the body of humans or

animals; and

(iv) a substance intended for use as a component of an article specified in subsection (13)(a)(i), (13)(a)(ii), or (13)(a)(iii).

(b) Drug does not include a device or its components, parts, or accessories.

(14) "Hashish", as distinguished from marijuana, means the mechanically processed or extracted plant material that contains tetrahydrocannabinol (THC) and is composed of resin from the cannabis plant.

(15) "Immediate precursor" means a substance that the board finds and by rule designates as being the principal compound commonly used or produced primarily for use and that is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture.

(16) (a) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a dangerous drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes the packaging or repackaging of the drug or labeling or relabeling of its container.

(b) Manufacture does not include the preparation or compounding of a dangerous drug by an individual for personal use or the preparation, compounding, packaging, or labeling of a dangerous drug:

(i) by a practitioner as an incident to the administering or dispensing of a dangerous drug in the course of a professional practice; or

(ii) by a practitioner or the practitioner's authorized agent under the practitioner's supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

(17) "Marijuana (marihuana)" means all plant material from the genus cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(18) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate and a salt, compound, derivative, or preparation of opium or opiate;

(b) a salt, compound, isomer, derivative, or preparation of a salt, compound, isomer, or derivative that is chemically equivalent or identical with any of the drugs referred to in subsection (18)(a), but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw; or

(d) coca leaves and a salt, compound, derivative, or preparation of coca leaves and a salt, compound,

isomer, derivative, or preparation of a salt, compound, isomer, or derivative that is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine.

(19) "Opiate" means a drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term does not include, unless specifically designated as a dangerous drug under 50-32-202, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term does include its racemic and levorotatory forms.

(20) "Opium poppy" means the plant of the species papaver somniferum L., except its seeds.

(21) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(22) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(23) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state;

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state; and

(c) a physician licensed to practice medicine or a dentist licensed to practice dentistry in another state.

(24) "Prescription" has the meaning that it has in 37-7-101.

(25) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this chapter.

(26) "State", when applied to a part of the United States, includes a state, district, commonwealth, territory, insular possession of the United States, and any area subject to the legal authority of the United States of America.

(27) "Ultimate user" means a person who lawfully possesses a dangerous drug for personal use or for the use of a member of the person's household or for administering to an animal owned by the person or by a member of the person's household."

Section 161. Section 50-37-104, MCA, is amended to read:

"50-37-104. Lawful sales or uses of fireworks -- "no smoking" sign -- wholesaler's permit. (1) Subject to subsection (2), it is lawful for an individual, firm, partnership, corporation, or association to possess for sale, sell or offer for sale at retail, or use within the state the permissible fireworks enumerated in 50-37-105. At any place where permissible fireworks are sold or displayed, a sign reading "NO SMOKING" must be posted in letters at least 4 inches in height where customers are most likely to read it.

(2) Before a fireworks wholesaler may lawfully possess for sale, offer for sale, or sell within the state the permissible fireworks enumerated in 50-37-105, the wholesaler ~~must~~ shall obtain a fireworks wholesaler permit from the department of ~~commerce~~ labor and industry.

(3) A person making application for a fireworks wholesaler permit shall:

(a) pay an application fee to the department of ~~commerce~~ labor and industry, which must be set by the department of ~~commerce~~ labor and industry commensurate with costs; and

(b) furnish proof under oath, on a form provided by the department, that ~~he~~ person:

(i) is at least 18 years of age;

(ii) is of good moral character; and

(iii) has not been convicted of a crime involving the use, possession, or sale of fireworks.

(4) The department of ~~commerce~~ labor and industry shall adopt rules implementing this section."

Section 162. Section 50-39-101, MCA, is amended to read:

"50-39-101. License and endorsements required. (1) A person or entity shall obtain a license from the department of ~~commerce~~ labor and industry before engaging in the business of servicing fire extinguishers or before engaging in the business of selling, servicing, or installing fire alarm systems, special agent fire suppression systems, or fire extinguishing systems. Each individual, except an apprentice, employed by the licensee to perform services under the license shall obtain from the department an endorsement to sell, service, or install:

(a) fire alarm systems;

(b) special agent fire suppression systems; or

(c) fire extinguishing systems.

(2) The license and endorsement or endorsements must be prominently displayed at the business premises, and copies must be carried by the person conducting each installation or servicing and must be shown to anyone ~~requesting~~ who requests to see them.

(3) It is a misdemeanor to knowingly or purposely service a fire extinguisher or sell, service, or install a

fire alarm system, special agent fire suppression system, or fire extinguishing system without the required license and endorsement.

(4) ~~Nothing in this~~ This chapter may not be construed to prohibit a licensed electrician, practicing within the scope of practice of electricians, as provided in Title 37, chapter 68, from installing components of fire protection equipment if the installation is inspected and approved by an individual endorsed to sell, service, or install fire protection equipment."

Section 163. Section 50-39-102, MCA, is amended to read:

"50-39-102. Application for license and endorsements. (1) An application for a license and any endorsements must be made on a form prescribed by the department of ~~commerce~~ labor and industry.

(2) The department shall issue a license and endorsement to an applicant who:

(a) submits satisfactory proof that the applicant is properly equipped and staffed to provide the sales or services to be licensed and endorsed; and

(b) submits satisfactory proof that the applicant is insured to engage in the business covered by the license and endorsement or endorsements.

(3) The department shall:

(a) issue an endorsement to an applicant who scores a passing grade on an examination devised or approved by the department;

(b) issue an endorsement to an applicant who has been issued a letter of certification, specific to the endorsement being sought, from any national testing agency approved by the department; and

(c) renew the endorsement at the time intervals prescribed by the department and upon payment of the endorsement fee and submission of satisfactory proof that the endorsee has completed continuing education, training, or testing required by the department."

Section 164. Section 50-39-103, MCA, is amended to read:

"50-39-103. Inspections, examinations, and hearings authorized. When requested by the department of ~~commerce~~ labor and industry, the department of justice shall conduct inspections of the applicant's business facilities and shall report to the department of ~~commerce~~ labor and industry the results of its inspection. The department of ~~commerce~~ labor and industry may consider the inspection report and conduct examinations or hearings to determine an applicant's qualifications."

Section 165. Section 50-39-106, MCA, is amended to read:

"50-39-106. Deposit of fees. The fees collected under 50-39-105 must be deposited in an account in the state special revenue fund to the credit of the department of ~~commerce~~ labor and industry and must be appropriated to the department of ~~commerce~~ labor and industry and the department of justice to administer this part."

Section 166. Section 50-39-107, MCA, is amended to read:

"50-39-107. Rulemaking authority. The department of ~~commerce~~ labor and industry may adopt rules to implement this part."

Section 167. Section 50-39-108, MCA, is amended to read:

"50-39-108. Definitions. As used in this chapter, the following definitions apply:

(1) "Apprentice" means a person who is working in a training capacity to service or install fire alarm systems, special agent fire suppression systems, or fire extinguishing systems and who is studying in accordance with a program approved by the department of ~~commerce~~ labor and industry.

(2) "Endorsement" means a document, issued by the department of ~~commerce~~ labor and industry to an individual who has met qualifications, that authorizes the individual to sell, service, and install fire alarm systems, special agent fire suppression systems, or fire extinguishing systems.

(3) "Entity" means any business, partnership, sole proprietorship, organization, association, corporation, firm, governmental organization, fire agency, or any other business association.

(4) (a) "Fire alarm system" means a combination of approved compatible devices with the necessary electrical interconnection and energy to produce an alarm signaling the event of fire or system activation.

(b) The term does not include single station smoke or heat detectors.

(5) "Fire extinguisher" means a portable device containing an extinguishing agent that can be expelled under pressure for the purpose of suppressing or extinguishing a fire.

(6) "Fire extinguishing system" means a fire sprinkler system designed in accordance with nationally recognized standards that consists of an assembly of piping or conduits that conveys water, foam, or air with or without other agents to dispersal openings or devices to extinguish, control, or contain fire and to provide protection from exposure to fire or the products of combustion. ~~Included are~~ The term includes underground and overhead piping, ponds, tanks, pumps, extra or special hazard applications, and other related components or devices necessary for water supplies.

(7) "Inspection" means the periodic examination of premises, equipment, or procedures or of a licensed or endorsed person or entity to determine whether the person's or entity's business or profession is being conducted in a manner consistent with the public health, safety, and welfare. The term includes the inquiry, analysis, audit, or other pursuit of information, with respect to a written complaint or other information before the department of commerce, that is carried out for the purpose of assisting the department of commerce in determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) whether a license should be granted or denied; or

(c) whether the department of commerce should seek an injunction against unlicensed practice.

(8) (a) "Install" means the technical work that may be performed only by an endorsed individual or an apprentice in the assembly of a fire alarm system, special agent fire suppression system, or fire extinguishing system.

(b) The term does not include the delivery of supplies or the offsite cutting or threading of pipe.

(c) The term does include the following tasks:

(i) inspection of jobsites to determine the presence of obstructions and to ascertain that holes will not cause structural weaknesses;

(ii) determination of the course or plan of installation;

(iii) any jobsite bending of pipe or electrical conduit as part of the installation;

(iv) jobsite assembly and installation of metal or nonmetal pipe fittings, including but not limited to those made of brass, copper, lead, glass, and plastic;

(v) jobsite assembly and installation of wiring systems;

(vi) joining of piping by any means, including pipes joined by threaded, caulked, wiped, soldered, brazed, fused, or cemented joints;

(vii) securing of pipe, wire, or electrical conduit to the structure by any means, including but not limited to clamps, brackets, hangers, and welds; and

(viii) testing the installed system for electrical or mechanical malfunctions.

(9) "License" means the document issued by the department of ~~commerce~~ labor and industry that authorizes a person or entity to engage in the business of servicing fire extinguishers or to engage in the business of selling, servicing, or installing fire alarm systems, special agent fire suppression systems, or fire extinguishing systems.

(10) "Sell", "sale", and associated words mean offering or contracting to transfer, lease, or rent any

merchandise, equipment, or service at retail to the public or any member of the public for an agreed sum of money or other consideration.

(11) (a) "Service", when referring to portable fire extinguishers and fire extinguisher cylinders, means maintenance and includes breakdown for replacement of parts or for agent, repair, recharging, or hydrostatic testing.

(b) When referring to alarm systems, fire extinguishing systems, and fire suppression systems, the term means maintenance and testing required to keep the protective signaling, extinguishing, and suppression system and its component parts in an operative condition at all times, together with replacement of the system or its component parts with listed or approved parts when for any reason they become undependable, defective, or inoperative.

(c) The term does not include resetting manual alarm systems that may be reset by a properly trained building owner or the owner's designated representative.

(12) "Special agent fire suppression system" means an approved system and components that require individual engineering in accordance with manufacturer specifications and includes dry chemical, carbon dioxide, halogenated, gaseous agent, foam, and wet chemical systems. The term includes a preengineered system but does not include a fire extinguishing system."

Section 168. Section 50-53-103, MCA, is amended to read:

"50-53-103. Department rules. (1) The department shall adopt rules relating to the operation of public swimming pools and public bathing places, including rules:

(a) setting standards to ensure sanitation and safety in public swimming pools and public bathing places to protect public health and safety;

(b) relating to the licensing of operators of public swimming pools and public bathing places;

(c) providing procedures for the enforcement of the laws and rules relating to public swimming pools and public bathing places;

(d) relating to cooperative agreements between the department and local boards of health; and

(e) setting performance standards for local boards of health, local health officers, and sanitarians to meet as a condition to receipt of funds provided by the department pursuant to 50-53-218.

(2) Any rule relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings or installation of equipment in buildings is effective only when it has been adopted by the department of ~~commerce~~ labor and industry as part of the state building code and filed with the secretary of state

pursuant to 50-60-204."

Section 169. Section 50-60-101, MCA, is amended to read:

"50-60-101. Definitions. As used in parts 1 through 4 and part 7 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Alteration" means any change, addition, or modification in construction or occupancy.

(2) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The term must be construed as though followed by the words "or part or parts ~~thereof~~ of a building".

(3) (a) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation ~~thereof~~ of laws, rules, resolutions, regulations, ordinances, or codes enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings.

(b) The term does not include zoning ordinances.

(4) "Code enforcement program" means the plan for enforcement of the building regulations adopted by a municipality or county and includes the local building department and the staff associated with executing any aspect of the program's purposes or functions.

(5) "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

(6) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(7) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(8) (a) "Factory-built building" means a factory-assembled structure or structures equipped with the necessary service connections but not made so as to be readily movable as a unit or units and designed to be used with a permanent foundation.

(b) The term does not include manufactured housing constructed after June 15, 1976, under the National Mobile Home Construction and Safety Standards Act of 1974 ~~(~~,42 U.S.C. 5401, et seq.~~)~~.

(9) "Local building department" means the agency or agencies of a municipality charged with the administration, supervision, or enforcement of building regulations, the approval of plans, the inspection of

buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

(10) "Local legislative body" means the council or commission charged with governing the municipality.

(11) (a) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality.

(b) Upon request of a municipality with the written consent of the county in which the municipality is located, the department may approve extension of the jurisdictional area to include:

(i) all or part of the area within 4 1/2 miles of the corporate limits of a municipality;

(ii) all of any platted subdivision that is partially within 4 1/2 miles of the corporate limits of a municipality; and

(iii) all of any zoning district adopted pursuant to Title 76, chapter 2, part 1 or 2, that is partially within 4 1/2 miles of the corporate limits of a municipality.

(c) Distances must be measured in a straight line on a horizontal plane.

(d) The initial written consent by a county to an extended municipal jurisdiction area must disclose the scope of the building codes to be enforced, the type of structures to be subject to the building codes, and the schedule of fees to be charged for permits. If after the county's initial written consent, the municipality wishes to change either the scope of the building codes enforced or the type of structures covered, the changes must first be approved in writing by the county. Unapproved changes result in the rescission of the county approval of the extended municipal jurisdiction area.

(12) "Municipality" means any incorporated city or town and its jurisdictional area as defined in this section.

(13) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

(14) "Primary function area" means an area of a building or facility in which a major activity for which the building or facility is designed is carried out. Primary function areas include but are not limited to a customer service lobby of a savings institution, a cafeteria dining area, and meeting rooms of a conference center. Areas that are not primary function areas include but are not limited to boiler rooms, storage rooms, employee lounges, janitorial closets, entrances, corridors, and restrooms.

(15) "Public building" means a building or facility owned or operated by a governmental entity or a private sector building or facility that is open to members of the public.

(16) "Public sidewalk" means a sidewalk located in a public right-of-way.

(17) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own mode of power or is mounted on or towed by another vehicle, including but not limited to a:

(a) travel trailer;

(b) camping trailer;

(c) truck camper; or

(d) motor home.

(18) "Site" means a parcel of land bounded by property lines or a designated portion of a public right-of-way.

(19) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(20) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments."

Section 170. Section 50-60-504, MCA, is amended to read:

"50-60-504. Department to prescribe minimum standards. The department of ~~commerce~~ labor and industry shall by rule prescribe minimum standards ~~which~~ that are uniform ~~and which are thereafter effective~~ for all plumbing installations or maintenance, except ~~where~~ those that are exempt ~~by~~ under 50-60-503."

Section 171. Section 50-60-505, MCA, is amended to read:

"50-60-505. Permit required. (1) It is unlawful for any person to engage in the business, trade, or work ~~having to do with the installation, removal, alteration, or repair of~~ of installing, removing, altering, or repairing plumbing and drainage systems or parts ~~thereof~~ of plumbing and drainage systems without first obtaining a permit from the department of ~~commerce~~ labor and industry.

(2) A separate permit ~~shall~~ must be obtained for each building or structure.

(3) ~~No~~ A person may not allow any other person to do or cause to be done any work under a permit secured by the permittee except persons in ~~his~~ the permittee's employ.

(4) When a permit has been obtained to connect an existing building or existing work to the public sewer or to connect to a new private disposal facility, backfilling of private sewage disposal facilities abandoned consequent to the connection is included in the permit."

Section 172. Section 50-60-507, MCA, is amended to read:

"50-60-507. Application for and issuance of permit. (1) A person required to apply for a permit shall ~~make application~~ apply on ~~forms~~ a form provided by the department of ~~commerce~~ labor and industry or its authorized representative. ~~He~~ The applicant shall give a description of the character of the work proposed to be done and the location, ownership, occupancy, and use of the premises in connection ~~therewith~~ with the work.

(2) The department or its authorized representative may require sketches, specifications, or drawings and ~~such~~ other information it ~~deems~~ considers necessary in order to determine the scope of the work contemplated.

(3) If the department determines that the sketches, specifications, drawings, descriptions, and information furnished by the applicant are in compliance with the state plumbing code, it shall issue the permit applied for upon payment of the required fee as established by the department."

Section 173. Section 50-60-508, MCA, is amended to read:

"50-60-508. Permit fees. (1) The department of ~~commerce~~ labor and industry shall establish permit fees in accordance with the Montana Administrative Procedure Act, and the fees must be deposited to the state special revenue fund of the department for use in the administration and enforcement of this part and the Montana state plumbing code and for other purposes as established by law.

(2) For the purpose of 50-60-505 through 50-60-513, a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached must be construed to be a fixture. Fees for reconnection and retest of plumbing systems in relocated buildings must be based on the number of plumbing fixtures, gas systems, water heaters, and the like involved. The fees established pursuant to this section must be commensurate with the costs of the administration and enforcement of this part and with appropriations for other purposes."

Section 174. Section 50-60-509, MCA, is amended to read:

"50-60-509. Person commencing work without a permit to pay double the permit fee -- exception. ~~Any~~ A person who commences any work for which a permit is required without first obtaining a permit shall, if subsequently ~~permitted~~ allowed to obtain a permit, pay double the permit fee for the work, except that this provision does not apply to emergency work when it is proved to the satisfaction of the department of ~~commerce~~ labor and industry or its authorized representative that the work was urgently necessary and that it was not practical to obtain a permit before the commencement of the work. In all ~~such~~ emergency cases, a permit ~~shall~~

must be obtained as soon as it is practical to do so, and if there is unreasonable delay in applying for the permit, a double fee ~~shall~~ must be charged."

Section 175. Section 50-60-510, MCA, is amended to read:

"50-60-510. Inspections to ensure compliance. All plumbing and drainage systems may be inspected by the department of ~~commerce~~ labor and industry or an authorized representative or a municipality or county certified to perform an inspection pursuant to 50-60-302 in order to ensure compliance with the requirements of the state plumbing code. As part of any inspection, the inspector shall request proof of licensure from any person who is required to be licensed who is involved with or, in the inspector's judgment, appears to be involved with plumbing activities if the person is on the site. The inspector shall report any instance of license violation to the inspector's employing agency, and the employing agency shall in turn report the violation to the board of plumbers."

Section 176. Section 50-60-511, MCA, is amended to read:

"50-60-511. Duty of permittee regarding inspection and compliance. (1) It is the duty of the person doing work authorized by the permit to notify the department of ~~commerce~~ labor and industry, orally or in writing, that the work is ready for inspection. The notification ~~shall~~ must be given not less than 24 hours before the work is to be inspected.

(2) It is the duty of the person doing the work authorized by the permit to ensure that the work performed before notification and after notification pending inspection complies with the state plumbing code."

Section 177. Section 50-60-512, MCA, is amended to read:

"50-60-512. Department authorized to order work stopped for noncompliance. Whenever any work is being done contrary to the provisions of the state plumbing code, the department of ~~commerce~~ labor and industry or its authorized representative may, after a hearing conducted under the provisions of the Montana Administrative Procedure Act, order work stopped by notice in writing served on any person engaged in the work."

Section 178. Section 50-60-513, MCA, is amended to read:

"50-60-513. Suspension or revocation of permit. The department of ~~commerce~~ labor and industry may suspend or revoke a permit whenever it is issued in error or on the basis of incorrect information supplied or whenever work performed ~~thereunder~~ under the permit is in violation of any of the provisions of ~~this part or~~ Title

37, chapter 69 or this part."

Section 179. Section 50-60-514, MCA, is amended to read:

"50-60-514. District court -- jurisdiction -- restraining orders. The district court of any county has jurisdiction in equity, on application of the department of ~~commerce~~ labor and industry, to restrain from connection any new plumbing installations on finding, after a hearing, that the plumbing is inferior to the standards of the state plumbing code."

Section 180. Section 50-60-603, MCA, is amended to read:

"50-60-603. Electrical installations to comply with building codes adopted by department. (1) All installations in this state of wires and equipment to convey electric current and installations of apparatus to be operated by current, except as provided in 50-60-602, ~~shall~~ must be made substantially in accord with building codes adopted by the department of ~~commerce~~ labor and industry.

(2) Rules and standards relating to buildings and equipment ~~shall~~ must be ~~promulgated~~ adopted by the department."

Section 181. Section 50-60-604, MCA, is amended to read:

"50-60-604. Inspections -- electrical permits -- fees. The department of ~~commerce~~ labor and industry or an authorized representative or a municipality or county certified to perform an inspection pursuant to 50-60-302 shall inspect electrical installations, issue electrical permits for these installations, and establish and charge a reasonable and uniform fee for the inspections. The fee must be commensurate with the expense of providing the inspection and with appropriations for other purposes. As part of any inspection, the inspector shall require proof of licensure from any person who is required to be licensed who is involved with or, in the inspector's judgment, appears to be involved with electrical installations if the person is on the site. The inspector shall report any instance of license violation to the inspector's employing agency, and the employing agency shall in turn report the violation to the board of electricians."

Section 182. Section 50-60-605, MCA, is amended to read:

"50-60-605. Power supplier not to energize installation without inspection tag. Individuals, firms, cooperatives, corporations, or municipalities selling electricity are power suppliers. Except for temporary connections which the department may authorize by rule for a period not exceeding 14 days without a

preconnection inspection, power suppliers may not connect with or energize an electrical installation under this part unless the owner or a licensed electrical contractor has delivered to the power supplier an inspection tag covering the installation, issued by the department of ~~commerce~~ labor and industry."

Section 183. Section 50-60-606, MCA, is amended to read:

"50-60-606. Power supplier to deliver inspection tag to department after installation energized. Immediately after an installation has been energized, the power supplier shall deliver to the department of ~~commerce~~ labor and industry the inspection tag covering the installation."

Section 184. Section 50-60-607, MCA, is amended to read:

"50-60-607. Unlawful acts. It is unlawful for a person, partnership, company, firm, association, or corporation other than a power supplier to energize an electrical installation under this part unless an application for an inspection tag covering the installation, together with the inspection fee, has been forwarded to the department of ~~commerce~~ labor and industry."

Section 185. Section 50-60-803, MCA, is amended to read:

"50-60-803. Energy labeling sticker. (1) The department of ~~commerce~~ labor and industry, in consultation with the department of environmental quality, shall prescribe by rule requirements for a labeling sticker to be affixed to a new residential building that describes the energy efficiency components of the home, including but not limited to heating appliance efficiencies and R-value or U-value of ceilings, walls, floors, windows, and doors in new residential buildings.

(2) A person constructing a new residential building shall affix to that residential building in a manner prescribed by the department of ~~commerce~~ labor and industry a labeling sticker as described in subsection (1)."

Section 186. Section 50-64-102, MCA, is amended to read:

"50-64-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of ~~commerce~~ labor and industry.

(2) "Fibrated product" means a substance used in construction for whatever purpose ~~which~~ that contains asbestos fibers ~~which~~ that tend to disperse into ambient air during application or upon destruction or removal.

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

Section 187. Section 50-74-101, MCA, is amended to read:

"50-74-101. Definition -- department to formulate rules. (1) As used in this chapter, the term "department" means the department of ~~commerce~~ labor and industry.

(2) The department shall adopt definitions and rules for the safe construction, installation, operation, inspection, and repair of equipment covered by this chapter. The definitions and rules must follow generally accepted nationwide engineering standards as published by the American society of mechanical engineers."

Section 188. Section 50-74-312, MCA, is amended to read:

"50-74-312. Review of license rejection. (1) An applicant for a license under the provisions of this chapter whose application has been rejected may, within 45 days after the date of the rejection, set forth in writing any arguments opposing the rejection and request a review by the department. The request must be addressed to the department and must be signed by the applicant.

(2) Within 2 days after receiving the request, the department shall notify the applicant in writing that on a certain day, not less than 5 days or more than 30 days after receipt of the written request, the department shall review and evaluate the application and any arguments opposing the rejection of the license application.

(3) The applicant may appear in person at the review. At least 2 days before the day set for the review, the applicant may designate in writing to the department of ~~commerce~~ labor and industry the name of an engineer holding a valid license of equal or higher grade than the one applied for, and the engineer may testify on behalf of the applicant at the review.

(4) After the review, if the department of ~~commerce~~ labor and industry determines that the applicant is entitled to the license, the department shall issue the license. If the department affirms the decision to not issue the license, the applicant is required to reapply to take the license examination, as provided in 50-74-309 through 50-74-311, and may not take the examination within 45 days of the final decision to not issue the license."

Section 189. Section 50-76-102, MCA, is amended to read:

"50-76-102. Hoisting engine license required. (1) (a) It is unlawful for a person to operate any hoisting engine driven by any power when used in lowering or hoisting personnel or material in industrial operations or on construction projects without first obtaining a license from the department ~~of commerce~~.

(b) In emergencies under 50-74-317 relating to the employment of unlicensed engineers, the provisions of that section apply to the operation of the engines and machinery named in this section.

(2) First-class hoisting engineers must be licensed to operate hoisting engines driven by any power and

unlimited horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.

(3) Second-class hoisting engineers must be licensed to operate hoisting engines driven by any power and not in excess of 100 brake horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.

(4) The provisions of this section do not apply to hoists and cranes defined in 50-76-103."

Section 190. 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 rating of more than 6 tons and a boom length of more than 25 feet without first obtaining a license from the department ~~of commerce~~. This equipment includes overhead trolley and gantry cranes used 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 crane and hoist engineers are licensed to 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 18 years of age or older and:

(A) must have no less than 3 years' 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 pass a written test prescribed by the department ~~of commerce~~.

(ii) A biennial physical exam is required of all licensees.

(c) Second-class crane and hoist engineers are licensed to operate crane and hoist equipment with a manufacturer's rating of 6 tons and a boom length of 25 feet up to equipment with a rating of 15 tons and a boom length of 60 feet.

(d) (i) An applicant for a second-class crane and hoist engineer's license must be 18 years of age or older and:

(A) must have no less than 2 years' 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 pass a written examination prescribed by the department ~~of commerce~~.

(ii) A biennial physical exam is required of all licensees.

(e) Third-class crane and hoist engineers are licensed to move all truck cranes driven by any power and of any capacity. This license requirement 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 ~~of commerce~~ and must be 18 years of age or older before receiving a license.

(3) The department ~~of commerce~~ shall reexamine each licensed engineer or operator 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 191. Section 50-76-104, MCA, is amended to read:

"50-76-104. Application and fee for license. Application for licenses must be made to the department ~~of commerce~~ and submitted with the appropriate fee that is set commensurate with the cost of administering this program, to be deposited in the state special revenue fund for use by the department."

Section 192. Section 50-76-105, MCA, is amended to read:

"50-76-105. Renewal and period of validity of license. The license is valid for a period established by the department ~~of commerce~~ by rule and may be renewed in the same manner provided by law for the renewal of a license to operate steam engines, boilers, or steam-driven machinery under chapter 74 of this title."

Section 193. Section 50-76-110, MCA, is amended to read:

"50-76-110. Crane inspector. The department ~~of commerce~~ shall employ at least one crane inspector. The 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' experience operating cranes."

Section 194. Section 50-76-111, MCA, is amended to read:

"50-76-111. Definitions. As used in this part, the following definitions apply:

(1) "Crane" means a machine with a hoisting mechanism that is integral to the machine and that is used for lifting and lowering a load and for moving it horizontally.

(2) "Department" means the department of ~~commerce~~ labor and industry provided for in ~~2-15-1801~~ 2-15-1701.

(3) "Gantry crane" and "trolley crane" are synonymous and mean a crane similar to an overhead crane except that the bridge for carrying the trolley or trolleys is rigidly supported on two or more legs running on fixed rails or another type of runway.

(4) "Hoist" means a power-driven apparatus capable of lifting and lowering loads and not designed to facilitate horizontal movements."

Section 195. Section 52-3-813, MCA, is amended to read:

"52-3-813. Confidentiality. (1) The case records of the department, its local affiliate, the county attorney, and the court concerning actions taken under this part and all reports made pursuant to 52-3-811 must be kept confidential except as provided by this section. For the purposes of this section, the term "case records" includes records of an investigation of a report of abuse, sexual abuse, neglect, or exploitation.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a physician who is caring for an older person or a person with a developmental disability who the physician reasonably believes was abused, sexually abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person or the person with a developmental disability if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, sexually abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, sexual abuse, neglect, or exploitation is later convicted of an offense constituting abuse, sexual abuse, neglect, or exploitation and if the identity of the older person or the person with a developmental disability who is the subject of the report is not disclosed to the researcher;

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(f) an authorized representative of a provider of services to a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability if:

(i) the department and the provider are parties to a contested case proceeding under Title 2, chapter 4, part 6, resulting from action by the department adverse to the license of the provider and if information contained in the records or reports of the department is relevant to the case;

(ii) disclosure to the provider is determined by the department to be necessary to protect an interest of a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability; or

(iii) the person is carrying out background screening or employment- or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with an older person or a person with a developmental disability through employment or volunteer activities if the disclosure is limited to information that indicates a risk to an older person or a person with a developmental disability posed by the employee or volunteer, as determined by the department. A request for information under this subsection must be made in writing.

(g) an employee of the department if disclosure of the record or report is necessary for administration of a program designed to benefit a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability;

(h) an authorized representative of a guardianship program approved by the department if the department determines that disclosure to the program or to a person designated by the program is necessary for the proper provision of guardianship services to a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability;

(i) protection and advocacy systems authorized under the provisions of 29 U.S.C. 794e, 42 U.S.C. 6042, and 42 U.S.C. 10805;

(j) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and does not violate the privacy rights of the older person, person with a developmental disability, or alleged perpetrator of abuse, sexual abuse, neglect, or exploitation, as determined by the department;

(k) a coroner or medical examiner who is determining the cause of death of an older person or a person with a developmental disability;

(l) a person about whom a report has been made and that person's attorney with respect to relevant records pertaining to that person only without disclosing the identity of the person who made the report or any other person whose safety might be endangered through disclosure;

(m) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of abuse, sexual abuse, neglect, or exploitation of an older person or a person with a developmental disability; and

(n) a department, agency, or organization, including a federal agency, military reservation, or tribal organization, that is legally authorized to receive, inspect, or investigate reports of abuse, sexual abuse, neglect,

or exploitation of an older person or a person with a developmental disability and that meets the disclosure criteria contained in this section.

(3) The records and reports required to be kept confidential by subsection (1) must be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court that has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, sexually abused, neglected, or exploited an older person or a person with a developmental disability is the holder of a license, permit, or certificate issued by the department of ~~commerce~~ labor and industry under the provisions of Title 37 or issued by any other entity of state government, the report may be submitted to the entity that issued the license, permit, or certificate."

Section 196. Section 61-2-208, MCA, is amended to read:

"61-2-208. Equipment safety commission funds. (1) Pursuant to Article VI(1) of the compact, the vehicle equipment safety commission shall submit its budgets to the state budget director.

(2) Pursuant to Article VI(5) of the compact, the department of ~~commerce is hereby empowered and authorized to~~ administration may inspect the accounts of the vehicle equipment safety commission."

Section 197. 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 commerce~~ 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 198. 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 commerce~~. The department ~~of commerce~~ shall issue a certificate of approval to a manufacturer whose procedure complies in all respects with ~~such~~ the federal regulations and subsection (2). ~~The department of commerce shall report to the department of justice all manufacturer's procedures certified.~~ The department ~~of commerce~~ may issue subpoenas requiring the attendance of witnesses and the production of records, documents, or other evidence necessary to it 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 ~~his~~ 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 199. 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 commerce~~ 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 commerce~~ may require, including the number of refunds and replacements made by the manufacturer during the period audited.

(2) The department ~~of commerce~~ 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 commerce shall notify the department of justice of any revocation or suspension of a certification.~~ The department ~~of justice~~ may consider

the revocation or suspension in licensing manufacturers under Title 61, chapter 4, part 2."

Section 200. Section 61-4-515, MCA, is amended to read:

"61-4-515. Arbitration procedure. (1) The department ~~of commerce~~ 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 ~~shall~~ 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 only if the manufacturer of the motor vehicle has not established an informal dispute settlement procedure ~~which~~ that has been certified by the department ~~of commerce~~ under 61-4-511."

Section 201. Section 61-4-516, MCA, is amended to read:

"61-4-516. Composition of arbitration panel. An arbitration panel hearing a grievance under this part must consist of three members. One member must be chosen by the consumer, one member must be chosen by the manufacturer, and one member must be chosen by mutual agreement of the parties. The department ~~of commerce~~ may maintain a list of persons willing to serve on panels from which the third member may be chosen."

Section 202. 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 commerce~~. The consumer shall file, on a form prescribed by the department ~~of commerce~~, 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 complaint form must offer the consumer the choice of presenting any subsequent testimony orally or in writing, but not both.

(2) The department ~~of commerce~~ shall determine whether the complaint alleges the violation of any applicable warranty under this part. If the department ~~of commerce~~ determines that a complaint does not allege a warranty violation, it ~~must~~ shall refund the filing fee.

(3) Upon acceptance of a complaint, the department ~~of commerce~~ 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 commerce~~, any information considered relevant to the resolution of the dispute. The manufacturer ~~must~~ shall

return the form within 15 days of receipt, with a filing fee of $250.

(4) Fees collected under this section ~~shall~~ must be deposited in a special revenue fund for the use of the department ~~of commerce~~ in administering this part.

(5) The manufacturer's fee provided in subsection (3) is due only if the department ~~of commerce~~ arbitration procedures are ~~utilized~~ used."

Section 203. Section 61-4-518, MCA, is amended to read:

"61-4-518. Arbitration -- role of department ~~of commerce~~ -- expert. (1) The department ~~of commerce~~ shall investigate, gather, and organize all information necessary for a fair and timely decision in each dispute. The department ~~of commerce~~ may, on behalf of the arbitration panel, issue subpoenas to compel the attendance of witnesses and the production of documents, papers, and records relevant to the dispute.

(2) If requested by the panel, the department ~~of commerce~~ may forward a copy of all written testimony and documentary evidence to an independent technical expert certified by the national institute of automotive excellence. The expert may review the material and be available to advise and consult with the panel. The expert may sit as a nonvoting member of the panel whenever oral testimony is presented. ~~The department of justice may suggest an expert at the request of the department of commerce.~~"

Section 204. Section 61-4-519, MCA, is amended to read:

"61-4-519. Action by arbitration panel -- decision. (1) The arbitration panel shall, as expeditiously as possible, but not later than 60 days after the department ~~of commerce~~ has accepted a complaint, render a fair decision based on the information gathered and disclose its findings and its reasoning to the parties.

(2) The decision ~~shall~~ 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 ~~shall~~ must specify a date for performance and completion of all awarded remedies. The department ~~of commerce~~ shall contact the prevailing party within 10 working days after the date for performance

to determine whether performance has occurred. The parties shall act in good faith in abiding by any decision. In addition, if the decision is not accepted, the parties shall follow the provisions of Title 27, chapter 5. If it is determined by the court that the appellant has acted without good cause in bringing an appeal of an award, the court, in its discretion, may grant to the respondent ~~his~~ costs and reasonable attorney fees."

Section 205. 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 ~~such a~~ the procedure by requesting arbitration de novo of the dispute by a department ~~of commerce~~ panel. 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 commerce~~ arbitration panel hearing and in any civil action arising out of any warranty obligation or matter related to the dispute."

Section 206. Section 61-4-526, MCA, is amended to read:

"61-4-526. Records of disputes. The department ~~of commerce~~ shall maintain records of each dispute as it determines, including an index of disputes by brand name and model. The department ~~of commerce~~ 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. ~~A copy of the~~ The statistical summary must be considered ~~filed with~~ by the department ~~of justice and must be considered by it~~ in determining the issuance of any manufacturer license required under Title 61, chapter 4, part 2."

Section 207. Section 61-4-532, MCA, is amended to read:

"61-4-532. Rulemaking. The department ~~of commerce~~ may adopt rules to implement the provisions of this part."

Section 208. Section 75-10-913, MCA, is amended to read:

"75-10-913. Annual long-range plan submitted -- contents -- available to public. (1) A person may not file an application for a certificate of site acceptability required by 75-10-916 unless the megalandfill has been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department.

(2) The annual long-range plan must be submitted by July 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the person for which construction is projected during the ensuing 2 years, as well as those facilities to be closed during the planning period;

(b) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(c) projections of the demand for the service rendered by the person and an explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(d) additional information that the department by rule, on its own initiative, or upon the advice of interested state agencies requests in order to carry out the purposes of 75-10-901 through 75-10-945.

(3) The plan must be furnished to the governing body of each county in which any facility included in the plan under subsection (2)(a) is proposed to be located and must be made available to the public by the department. The applicant shall give public notice throughout the state by publishing at least once a week for 2 consecutive weeks a summary of the proposed plan in newspapers of general circulation. The plan must also be filed with the environmental quality council, the department of transportation, the department of fish, wildlife, and parks, ~~the department of commerce~~ administration, and the department of natural resources and conservation. Interested persons may obtain a copy of the plan by written request and payment to the department of the costs of copying the plan."

Section 209. Section 75-10-918, MCA, is amended to read:

"75-10-918. Application -- filing and contents -- proof of service and notice. (1) (a) An applicant shall file with the department an application for a certificate under 75-10-916 in a form that the board requires, containing the following information:

(i) a description of the proposed location and of the facility to be built;

(ii) a summary of any studies that have been made of the environmental, social, and economic impacts of the facility;

(iii) a description of at least three reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

(iv) baseline data for the primary and reasonable alternate locations;

(v) at the applicant's option, an environmental study plan to satisfy the requirements of 75-10-901 through 75-10-945; and

(vi) other information that the applicant considers relevant or that the board by order or rule may require or that the department by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) must be filed with the department, if ordered, and must be available for public inspection.

(2) An application must be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, each county commissioner, city or county planning board, and solid waste district, and each federal agency charged with the duty of protecting the environment or of planning land use located in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:

(a) environmental quality council;

(b) department of fish, wildlife, and parks;

~~(c) department of commerce~~ administration;

~~(d)~~(C) department of transportation; and

~~(e)~~(D) department of natural resources and conservation.

(3) An application must be accompanied by proof that public notice was given to persons residing in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located by publication of a summary of the application in newspapers of general circulation that will substantially inform those persons of the application."

Section 210. Section 75-20-211, MCA, is amended to read:

"75-20-211. Application -- filing and contents -- proof of service and notice. (1) (a) An applicant shall file with the department an application for a certificate under this chapter and for the permits required under the laws administered by the department in the form that is required under applicable rules, containing the following information:

(i) a description of the proposed location and of the facility to be built;

(ii) a summary of any studies that have been made of the environmental impact of the facility;

(iii) for facilities defined in 75-20-104(8)(c) and (8)(d), a statement explaining the need for the facility, a description of reasonable alternate locations for the facility, a general description of the comparative merits and

detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

(iv) (A) for facilities as defined in 75-20-104(8)(c) and (8)(d), baseline data for the primary and reasonable alternate locations; or

(B) for facilities as defined in 75-20-104(8)(a), (8)(b), (8)(e), and (8)(f), baseline data for the proposed location and, at the applicant's option, any alternative locations acceptable to the applicant for siting the facility;

(v) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

(vi) other information that the applicant considers relevant or that the department by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) must be filed with the department, if ordered, and must be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination that are physically and directly attached to each other and are operationally a single operating entity.

(3) An application must be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, county commissioner, city or county planning boards, and federal agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:

(a) environmental quality council;

(b) department of public service regulation;

(c) department of fish, wildlife, and parks;

(d) department of natural resources and conservation;

~~(e) department of commerce;~~

~~(f)~~(e) department of transportation.

(4) The copy of the application must be accompanied by a notice specifying the date on or about which the application is to be filed.

(5) An application must also be accompanied by proof that public notice of the application was given to persons residing in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application."

Section 211. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies. (1) After receipt of an application, the department shall within 60 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and shall list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department shall use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Except as provided for in 75-20-231, the department shall issue within 1 year following the date of acceptance of an application any decision, opinion, order, certification, or permit required under the laws, other than those contained in this part, administered by the department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a preliminary decision by the department and pursuant to rules adopted by the department, the department shall provide an opportunity for public review and comment.

(4) Except as provided in 75-20-231, within 1 year following acceptance of an application for a facility, the department shall issue a report that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall issue its report within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) For projects subject to joint review by the department and a federal land management agency, the department's certification decision may be timed to correspond to the record of decision issued by the participating federal agency.

(6) The departments of transportation; ~~commerce;~~ fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation shall report to the department information relating to the

impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report."

Section 212. Section 75-20-226, MCA, is amended to read:

"75-20-226. Renewal study -- renewal hearing -- decision. (1) Upon receipt of a completed application for renewal of a certificate, the department shall evaluate the updated information and any significant changes in alternatives, technology, baseline environment, and the environmental impacts of a facility that have taken place since the original study performed in granting the certificate, considering the applicable criteria listed in 75-20-301 and the original department findings and certificate conditions.

(2) The department, within 10 months of acceptance of a complete renewal application, shall complete the statutory duties established in 75-20-216(3). Any air or water quality decision, opinion, order, certification, or permit must be used as part of its decisionmaking process under subsections (3), (5), and (6) of this section.

(3) Within 12 months following acceptance of a complete application for renewal of a certificate, the department shall issue a report. This report must contain the department's studies, evaluations, recommendations, and other pertinent documents resulting from its study and evaluation and an updated environmental impact statement or analysis pursuant to the Montana Environmental Policy Act. The department's report must be directed to the question of whether the original department findings and conditions have been or need to be altered as a result of any significant changes in alternatives, technology, baseline environment, or environmental impact since issuance of the certificate, considering the applicable criteria listed in 75-20-301.

(4) The departments of transportation; ~~commerce;~~ fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of responsibility. The report may include opinions as to the advisability of renewing the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the cost of compiling information and issuing the required reports.

(5) Within 45 days after completion of the report pursuant to 75-20-226, the department shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the renewal application or renewing the certificate with such changes in the terms and conditions as the board considers appropriate.

(6) The department may not renew a certificate either as proposed by the applicant or as modified by the department unless it finds and determines that the criteria in 75-20-301, considering any significant changes in need, alternatives, technology, baseline environment, and environmental impact, have been met."

Section 213. Section 76-3-403, MCA, is amended to read:

"76-3-403. Monumentation. (1) The department of ~~commerce~~ labor and industry shall, in conformance with the Montana Administrative Procedure Act, prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(2) It ~~shall be~~ is the responsibility of the governing body to require the replacement of all monuments removed in the course of construction."

Section 214. Section 80-8-204, MCA, is amended to read:

"80-8-204. Application for applicator's license. (1) Application for a pesticide applicator's license provided for in 80-8-203 ~~shall~~ must be made annually to the department before applying pesticides in any calendar year, ~~provided that pesticide applicators~~ and a pesticide applicator who is applying for renewal of a license shall do so on or before March 1 of that calendar year. ~~Any~~ A pesticide applicator ~~applying~~ who applies for renewal of a license after March 1 ~~shall~~ must be assessed a $25 late licensing fee.

(2) An individual applying for a license to engage in aerial application of pesticides shall certify on the application that ~~he~~ the individual has met all the federal aviation administration and the department of ~~commerce~~ transportation requirements for aerial pesticide applicators."

Section 215. Section 82-15-101, MCA, is amended to read:

"82-15-101. Definitions. As used in this part, the following definitions apply:

(1) "Dealer" means any person engaged in the petroleum business and includes petroleum dealers and liquefied petroleum dealers.

(2) "Department" means the department of ~~commerce~~ labor and industry provided for in Title 2, chapter 15, part ~~18~~ 17.

(3) "Liquefied petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or of selling or offering or advertising for sale or refining or manufacturing or keeping for sale in this state any petroleum product composed predominately of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, butanes (normal butane or isobutane), and

butylenes but excluding prepackaged liquefied petroleum products.

(4) "Liquefied petroleum product" means a product composed predominately of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, butanes (normal butane or isobutane), and butylenes.

(5) "Liquefied petroleum product container" means ~~an~~ a container approved by the American society of mechanical ~~engineers-approved container~~ engineers that can hold 110 gallons or more of a liquefied petroleum product.

(6) "Mislabeled" means a package label or dispensing device of a product that bears any statement, design, or device regarding the product or regarding ingredients or substances in the product or regarding the properties, quality, or kind of products that is false or misleading in any manner.

(7) "Owner" means a person:

(a) who is listed with the American society of mechanical engineers or with the manufacturer as owner by the serial number of the liquefied petroleum product container;

(b) who holds a written bill of sale or other instrument under which title to a liquefied petroleum product container was transferred; or

(c) who holds a paid invoice showing purchase of and payment for a liquefied petroleum product container.

(8) "Person" means an individual, trust, estate, partnership, corporation, joint-stock company, firm, agency, association, or any receiver appointed by law.

(9) "Petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or offering or advertising for sale, refining, manufacturing, or keeping for sale in this state any gasoline, kerosene, distillate, road oil, fuel oil, lubricating oil, or greases or any oil or gas or oil and gas product except prepackaged petroleum products and except as otherwise defined as a liquefied petroleum dealer in subsection (3).

(10) "Sell" and "sale" includes barter and exchange."

Section 216. Section 85-7-1616, MCA, is amended to read:

"85-7-1616. Required records and audits. (1) The board of control shall keep or cause to be kept, in the form prescribed by the department of ~~commerce~~ administration, a full and complete book and record of the accounts, records, contracts, securities, minutes of meetings, and other matters of every kind pertaining to or belonging to the joint operation of the irrigation districts.

(2) The department of ~~commerce~~ administration shall prescribe forms for the use of the board of control.

(3) The accounting records of all boards of control must be audited in accordance with 2-7-503."

Section 217. Section 85-7-1913, MCA, is amended to read:

"85-7-1913. Board to maintain records. (1) The board of commissioners shall keep a complete book and record of the accounts, records, contracts, securities, minutes of meetings, and other matters of every kind pertaining to or belonging to the irrigation district in the form prescribed by the department of ~~commerce~~ administration. The department of ~~commerce~~ administration shall prescribe forms for the use of irrigation districts. The books and records must be open to the inspection of any landowner of the district the same as other public records.

(2) The books and records of irrigation districts are subject to audit in accordance with 2-7-503.

(3) If a district is appointed fiscal agent of the United States or is authorized by the United States to make collections for or on behalf of the United States in connection with a federal irrigation project, the board of commissioners or its secretary shall at any time allow any officer or employee of the United States, when acting under the orders of the secretary of the interior, to have access to all books, records, and vouchers of the district that are in possession or control of the secretary or board.

(4) The failure of the board of commissioners to comply with ~~this section or~~ 85-7-1914 or this section is grounds for removal from office, and the county attorney of any county in which the irrigation district is situated shall prosecute ouster proceedings against any commissioner or commissioners. The cost of the proceedings is a charge against the irrigation district and must be paid as are other bills against the districts."

~~**Section 222.** Section 90-8-313, MCA, is amended to read:~~

~~**"90-8-313. Examination.** (1) At least once a year the department of administration shall examine the books and affairs of each Montana capital company and of each qualified Montana small business investment capital company. The examination must address the methods of operation and conduct of the business of the Montana capital company or of the Montana small business investment capital company to determine if the company is abiding by the purposes of this chapter and that the funds received by the company have been invested within the time limits required for a qualified Montana capital company or for a qualified Montana small business investment capital company in 90-8-301.~~

~~(2) The department of administration may examine under oath any of the officers, directors, agents, employees, or investors of a Montana capital company regarding the affairs and business of the company. The~~

~~department of administration may issue subpoenas and administer oaths. Refusal to obey such a subpoena may at once be reported to the district court of the district in which the company is located, and the court shall enforce obedience to the subpoena in the manner provided by law.~~

~~(3) The cost of the annual review must be paid by each Montana capital company or by each Montana small business investment capital company in accordance with reasonable fees assessed by the department of administration."~~

~~**Section 223.** Section 90-8-321, MCA, is amended to read:~~

~~**"90-8-321. Decertification.** (1) (a) If the examination conducted pursuant to 90-8-313 discloses that a Montana capital company or a Montana small business investment capital company is not in compliance with the provisions of this chapter, the department of administration may exercise any of the powers with regard to banks granted in Title 32, chapter 1, part 5, and may seize the assets of the company and liquidate it. In the event of liquidation of the assets, any penalty imposed pursuant to 90-8-301 must be included in the claims to be paid.~~

~~(b) If a company has any fixed or contingent obligations to the United States small business administration or its designee:~~

~~(i) the department of administration may not exercise the powers granted in Title 32, chapter 1, part 5, without the prior written consent of the United States small business administration; and~~

~~(ii) the proceeds from any liquidation, including the collection of any unfunded commitments, must be applied first toward the payment of all sums that may be due the United States small business administration as holder or guarantor of any security issued by the company.~~

~~(2) If in the discretion of the department of administration the action allowed under subsection (1) is not required to protect the company's investors, the department of administration may place the company on notice that it will lose its certification as a Montana capital company or as a Montana small business investment capital company within a specified period of time if the company does not come into compliance with the provisions of this chapter. The department of administration shall automatically decertify a Montana capital company or a Montana small business investment capital company that is assessed a penalty under 90-8-301(4).~~

~~(3) As long as the department of administration acts in good faith, the department of administration and its employees and agents may not be held civilly or criminally liable or liable upon their official bonds for action taken under this section or for any failure to act under it.~~

~~(4) A Montana capital company or a Montana small business investment capital company may apply to the department of administration for decertification.~~

~~(5) The department of administration has the power to decertify any capital company not in compliance with this chapter.~~

~~(6) The department of administration shall decertify a capital company once the capital company has met the investment schedule outlined in 90-8-301 and over 70% of the capital base of the capital company has been invested in qualified investments and after at least 5 years have elapsed since the date the capital company was qualified."~~

NEW SECTION. **Section 218. Repealer.** Sections 2-15-1804, 2-15-1811, 7-5-2402, and 7-5-2403, MCA, are repealed.

NEW SECTION. **Section 219. Transition.** The provisions of 2-15-131 through 2-15-137 apply to [this act].

NEW SECTION. **Section 220. Codification instruction.** (1) [Sections 1, 4, and 5] are intended to be codified as an integral part of Title 90, chapter 1, and the provisions of Title 90, chapter 1, apply to [sections 1, 4, and 5].

(2) [Sections 2 and 3] are intended to be codified as an integral part of Title 2, chapter 15, part 2, and the provisions of Title 2, chapter 15, part 2, apply to [sections 2 and 3].

NEW SECTION. **Section 221. Code commissioner instructions.** (1) Whenever legislation enacted by the 57th legislature refers to the "department of commerce", the code commissioner shall change the reference to conform to [this act].

(2) The code commissioner shall renumber 2-15-1840, 2-15-1841, 2-15-1842, 2-15-1843, 2-15-1844, 2-15-1845, 2-15-1846, 2-15-1847, 2-15-1848, 2-15-1849, 2-15-1850, 2-15-1851, 2-15-1852, 2-15-1853, 2-15-1854, 2-15-1856, 2-15-1857, 2-15-1858, 2-15-1859, 2-15-1860, 2-15-1861, 2-15-1863, 2-15-1866, 2-15-1867, 2-15-1868, 2-15-1871, 2-15-1872, 2-15-1873, 2-15-1874, 2-15-1875, 2-15-1882, 2-15-1883, and 2-15-1891 as part of Title 2, chapter 15, part 17.

(3) The code commissioner shall renumber 2-15-1803 as part of Title 2, chapter 15, part 10.

(4) The code commissioner shall renumber 2-15-1881 as part of Title 2, chapter 15, part 20.

(5) The code commissioner shall change all references to sections renumbered pursuant to subsections (2) through (4).

NEW SECTION. **Section 222. Effective date.** [This act] is effective July 1, 2001.

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