

**SENATE JOURNAL
58TH LEGISLATURE
TWENTY-SECOND LEGISLATIVE DAY**

Helena, Montana
February 1, 2003

Senate Chambers
State Capitol

Senate convened at 9:00 a.m. President Keenan presiding. Invocation by Pastor Keith Johnson. Pledge of Allegiance to the Flag.

Roll Call. All members present except Senator Pease, excused. Quorum present.

The presiding officer has authenticated the daily journal for the twenty-first legislative day.

REPORTS OF STANDING COMMITTEES

BILLS REPORT

Correctly printed: **SB 301, SB 302, SB 303, SB 304, SB 305, SB 306, SB 307, SB 308, SB 309, SB 310, SB 311.**

Correctly engrossed: **SB 102, SB 222.**

Correctly enrolled: **SJR 1.**

Examined by the sponsor and found to be correct: **SJR 1.**

Signed by the President at 11:30 a.m., February 1, 2003: **SJR 1.**

Signed by the Speaker at 12 noon, February 1, 2003: **SJR 1.**

Signed by the Secretary of the Senate at 12:10 p.m., February 1, 2003: **SJR 1.**

Delivered to the Secretary of State at 12:15 p.m., February 1, 2003: **SJR 1.**

HIGHWAYS AND TRANSPORTATION (Butcher, Chairman):

1/31/2003

HB 67, be amended as follows:

1. Title, line 13.

Strike: "ON CERTAIN HIGHWAYS"

2. Page 6, line 18.

Strike: "WITHIN" through "TOWN"

And, as amended, be concurred in. Report adopted.

HB 68, be concurred in. Report adopted.

JUDICIARY (Grimes, Chairman):

1/31/2003

SB 25, introduced bill, be amended as follows:

1. Title, line 5.

Following: "WITH"

Strike: "A"

Insert: "CERTAIN"

2. Title, line 6.

Strike: "DISORDER"

Insert: "DISORDERS"

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3. Title, line 7 through line 9.

Following: "FACILITY;" on line 7

Strike: remainder of line 7 through "ILLNESS;" on line 9

Following: "41-5-1504"

Insert: ", 41-5-1512,"

4. Page 1, line 16 through line 17.

Following: "from a" on line 16

Strike: remainder of line 16 through "53-21-126(1)" on line 17

Insert: "disorder in thought or mood so substantial that it impairs judgment, behavior, perceptions of reality, and the ability to cope with the ordinary demands of life, including but not limited to major depression, schizophrenia, or bipolar disorder,

5. Page 1, line 20.

Following: "from a"

Strike: "mental disorder, as defined in 53-21-102"

Insert: "disorder in thought or mood so substantial that it impairs judgment, behavior, perceptions of reality, and the ability to cope with the ordinary demands of life"

6. Page 1, line 21.

Following: "schizophrenia,"

Insert: "or"

Following: "bipolar"

Strike: ", or borderline personality"

Following: "disorder,"

Strike: "and who meets the criteria in 53-21-126(1)"

7. Page 1, line 22.

Following: "facility"

Insert: "unless the court finds that the youth poses a significant danger to the community"

8. Page 1, line 27.

Following: line 26

Insert: "(3) A youth who, after placement in or sentencing to a state youth correctional facility, develops a disorder in thought or mood so substantial that it impairs judgment, behavior, perceptions of reality, and the ability to cope with the ordinary demands of life, including but not limited to major depression, schizophrenia, or bipolar disorder, must be moved to a more appropriate placement in response to the youth's mental health needs."

9. Page 1, line 28.

Insert: "**Section 2.** Section 41-5-1512, MCA, is amended to read:

"41-5-1512. Disposition of youth in need of intervention or youth who violate consent adjustments. (1)

If a youth is found to be a youth in need of intervention or to have violated a consent adjustment, the youth court may enter its judgment making one or more of the following dispositions:

(a) place the youth on probation. The youth court shall retain jurisdiction in a disposition under this subsection.

(b) place the youth in a residence that ensures that the youth is accountable, that provides for rehabilitation, and that protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee.

(c) commit the youth to the department in jurisdictions that do not participate in the juvenile delinquency intervention program or to the youth court in jurisdictions that participate in the juvenile delinquency intervention

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program for the purposes of funding a private, out-of-home, residential placement subject to the conditions in 41-5-1522. In an order committing a youth to the department or to the youth court, the court shall determine whether continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home.

(d) order restitution for damages that result from the offense for which the youth is disposed by the youth or by the person that contributed to the delinquency of the youth;

(e) require the performance of community service;

(f) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community;

(j) subject to the provisions of 41-5-1504, commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is found to be suffering from a ~~mental disorder, as defined in 53-21-102, and meets the criteria in 53-21-126(1)~~ disorder in thought or mood so substantial that it impairs judgment, behavior, perceptions of reality, and the ability to cope with the ordinary demands of life, including but not limited to major depression, schizophrenia, or bipolar disorder;

(k) place the youth under home arrest as provided in Title 46, chapter 18, part 10;

(l) order confiscation of the youth's driver's license, if the youth has one, by the probation officer for a specified period of time, not to exceed 90 days. The probation officer shall notify the department of justice of the confiscation and its duration. The department of justice may not enter the confiscation on the youth's driving record. The probation officer shall notify the department of justice when the confiscated driver's license has been returned to the youth. A youth's driver's license may be confiscated under this subsection more than once. The probation officer may, in the probation officer's discretion and with the concurrence of a parent or guardian, return a youth's confiscated driver's license before the termination of the time period for which it had been confiscated. The confiscation may not be used by an insurer as a factor in determining the premium or part of a premium to be paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth, nor may it be used as grounds for denying coverage for an accident or other occurrence under an existing policy.

(m) order the youth to pay a contribution covering all or a part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth, including the costs of counseling;

(n) order the youth to pay a contribution covering all or a part of the costs of a victim's counseling;

(o) defer imposition of sentence for up to 45 days for a placement evaluation at a suitable program or facility with the following conditions:

(i) The court may not order placement for evaluation at a youth correctional facility of a youth who has committed an offense that would not be a criminal offense if committed by an adult or a youth who has violated a consent adjustment.

(ii) The placement for evaluation must be on a space-available basis at the county's expense, which is not reimbursable under part 19 of this chapter.

(iii) The court may require the youth's parents or guardians to pay a contribution covering all or a part of the costs of the evaluation if the court determines after an examination of financial ability that the parents or guardians are able to pay the contribution. Any remaining unpaid costs of evaluation are the financial responsibility of the judicial district of the court that ordered the evaluation.

(p) order placement of a youth in a youth assessment center for up to 10 days;

(q) order the youth to participate in mediation that is appropriate for the offense committed.

(2) The court may not order a local government entity to pay for care, treatment, intervention, or placement.

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A court may order a local government entity to pay for evaluation and in-state transportation of a youth.

(3) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the account established for that district under 41-5-130 without approval from the cost containment review panel."

Renumber: subsequent sections

10. Page 2, line 6.

Following: "schizophrenia."

Insert: "or"

Following: "bipolar"

Strike: ", or borderline personality"

And, as amended, do pass. Report adopted.

SB 226, introduced bill, be amended as follows:

1. Title, line 4.

Following: ""AN ACT"

Strike: "PROTECTING LANDLORDS AND TENANTS FROM"

Insert: "PROVIDING THAT"

2. Title, line 5 through line 6.

Following: "ACTIVITY" on line 5

Strike: remainder of line 5 through "GANGS" on line 6

Insert: "CONSTITUTES NONCOMPLIANCE WITH A TENANT'S DUTY TO MAINTAIN A DWELLING UNIT AND A LANDLORD'S DUTY TO MAINTAIN PREMISES; REVISING THE TIME PERIOD FOR NOTIFICATION OF INTENDED TERMINATION BASED ON THE NONCOMPLIANCE; REVISING HEARING TIME REQUIREMENTS FOR REPOSSESSION ACTIONS BASED ON THE NONCOMPLIANCE"

3. Title, line 7.

Following: "SECTIONS"

Insert: "70-24-303, 70-24-321,"

Following: "70-24-422"

Insert: ", "

4. Page 1, line 11.

Following: line 10

Insert: "**Section 1.** Section 70-24-303, MCA, is amended to read:

"70-24-303. Landlord to maintain premises -- agreement that tenant perform duties -- limitation of landlord's liability for failure of smoke detector. (1) A landlord ~~shall~~:

(a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) may not knowingly allow any tenant or other person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured, including but not limited to:

(i) criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;

(ii) operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or

(iii) gang-related activities, as prohibited by Title 45, chapter 8, part 4;

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~~(b)~~(c) shall make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

~~(c)~~(d) shall keep all common areas of the premises in a clean and safe condition;

~~(d)~~(e) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

~~(e)~~(f) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

~~(f)~~(g) shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

~~(g)~~(h) shall install, in accordance with rules adopted by the department of justice, an approved smoke detector in each dwelling unit under the landlord's control. Upon commencement of a rental agreement, the landlord shall verify that the smoke detector in the dwelling unit is in good working order. The tenant shall maintain the smoke detector in good working order during the tenant's rental period. For purposes of this subsection, an approved smoke detector is a device that is capable of detecting visible or invisible particles of combustion and that bears a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through ~~(1)(g)~~ (1)(h), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections ~~(1)(c)~~ (1)(f) and ~~(1)(d)~~ (1)(g) ~~of this section~~ and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the smoke detector required under subsection ~~(1)(g)~~ (1)(h)."

Insert: "Section 2. Section 70-24-321, MCA, is amended to read:

"70-24-321. Tenant to maintain dwelling unit. (1) A tenant shall:

(a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(b) keep that part of the premises that the tenant occupies and uses as reasonably clean and safe as the condition of the premises permits;

(c) dispose from the dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;

(d) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(e) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;

(f) conduct oneself and require other persons on the premises with the tenant's consent to conduct themselves in a manner₂ that will not disturb the tenant's neighbors' peaceful enjoyment of the premises; and

(g) use the parts of the premises₂ including the living room, bedroom, kitchen, bathroom, and dining room₂ in a reasonable manner₂ considering the purposes for which they were designed and intended. This section does not preclude

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the right of the tenant to operate a limited business or cottage industry on the premises, subject to state and local laws, ~~provided if~~ the landlord has consented in writing. The landlord may not unreasonably withhold consent, ~~provided that if~~ the limited business or cottage industry is operated within reasonable rules of the landlord.

(2) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so.

(3) A tenant may not engage or knowingly allow any person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured, including but not limited to:

(a) criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;

(b) operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or

(c) gang-related activities, as prohibited by Title 45, chapter 8, part 4."

Renumber: subsequent sections

5. Page 1, line 12.

Following: "right"

Strike: "or duty"

6. Page 1, line 13.

Strike: "(a)"

7. Page 1, line 19.

Strike: "(i)"

Insert: "(a)"

8. Page 1, line 22.

Strike: "(ii)"

Insert: "(b)"

9. Page 1, line 23.

Strike: "(iii)"

Insert: "(c)"

10. Page 1, line 25 through line 26.

Strike: subsection (iv) in its entirety

11. Page 1, line 27 through line 28.

Strike: "(v)"

Insert: "(d)"

Strike: "subsections (1)(a)(i) through (1)(a)(iv)"

Insert: "subsection (1)(b) or (1)(c)"

12. Page 1, line 29.

Strike: "(vi)"

Insert: "(e)"

13. Page 2, line 2 through line 4.

Strike: subsection (b) in its entirety

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14. Page 2, line 5.

Strike: "(c)"

Insert: "(f)"

15. Page 2, line 14.

Following: line 13

Insert: "(4) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured, the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the violation and noncompliance under the provisions of 70-24-321(3)."

Renumber: subsequent subsections

16. Page 2, line 16 (new amendment per clerical dated 2/1/03)

Strike: "(5)"

Insert: "(6)"

17. Page 2, line 18.

Strike: "(5)"

Insert: "(6)"

18. Page 3, line 1.

Following: "because of"

Strike: "a violation of Title 45, chapter 8, part 4, or Title 45, chapter 9"

Insert: "noncompliance under 70-24-321(3)"

19. Page 3, line 4 through line 5.

Following: "because of" on line 4

Strike: remainder of line 4 through "chapter 9" on line 5

Insert: "noncompliance under 70-24-321(3)"

And, as amended, do pass. Report adopted.

SB 238, introduced bill, be amended as follows:

1. Page 5, line 26.

Following: "and who"

Insert: ":

(a)"

2. Page 5, line 29.

Strike: "(a)"

Insert: "(i)"

Following: ";

Insert: "or"

3. Page 5, line 30.

Strike: "(b)"

Insert: "(ii)"

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4. Page 6, line 4.

Strike: "(c)"

Insert: "(b)"

And, as amended, do pass. Report adopted.

HB 29, be amended as follows:

1. Page 2, line 8.

Following: "THE"

Insert: "written"

And, as amended, be concurred in. Report adopted.

HB 48, be concurred in. Report adopted.

HB 84, be concurred in. Report adopted.

HB 149, be amended as follows:

1. Title, line 5 through line 6.

Following: "IN" on line 5

Strike: remainder of line 5 through "OTHER" on line 6

Insert: "VARIOUS"

2. Page 1, line 22.

Following: "year"

Strike: "or more"

3. Page 1, line 23 through line 24.

Following: "at" on line 23

Strike: remainder of line 23 through "other" on line 24

And, as amended, be concurred in. Report adopted.

TAXATION (DePratu, Chairman):

1/31/2003

SB 65, introduced bill, be amended as follows:

1. Title, page 1, line 6.

Strike: "WAIVER"

Insert: "EXEMPTION"

2. Title, page 1, line 7.

Strike: "ELIMINATING"

Insert: "REVISING"

3. Title, page 1, line 8.

Strike: "WAIVER"

Insert: "EXEMPTION"

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4. Page 3, line 11 through line 12.

Strike: "eligible" on line 11 through "disability" on line 12

Insert: "currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability "

5. Page 4, line 20 through line 21.

Strike: "entitled" on line 20 through "disability" on line 21

Insert: "who is currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability"

6. Page 4, line 22 through line 23.

Strike: ", even" on line 22 through "affairs" on line 23

7. Page 13, line 2.

Strike: "fees collected pursuant to"

Insert: "\$10 for each veteran's license plate subject to the fee in"

8. Page 13, line 28 through line 30.

Strike: "entitled" on line 28 through "disability" on line 30

Insert: "currently rated 100% disabled or is paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability"

9. Page 14, line 1 through line 2.

Strike: ", even" on line 1 through "affairs" on line 2

10. Page 14.

Following: line 4

Insert: "(2) Property qualifying under subsection (1) is taxed at the rate provided in 15-6-134(2)(a) multiplied by a percentage figure based on income and determined from the following table:

<u>Income</u> <u>Single Person</u>	<u>Income</u> <u>Married Couple</u>	<u>Percentage</u> <u>Multiplier</u>
0 - 30,000	0 - 36,000	0%
30,001 - 33,000	36,001 - 39,000	20%
33,001 - 36,000	39,001 - 42,000	30%
36,001 - 39,000	42,001 - 45,000	50%"

Renumber: subsequent subsection

11. Page 14, line 13 through line 15.

Strike: "entitled" on line 13 through "affairs," on line 15

Insert: "rated 100% disabled or was paid at the 100% disabled rate by the U.S. department of veterans affairs for a service-connected disability at the time of death"

12. Page 14, line 17.

Following: line 16

Insert: "(4) Property qualifying under subsection (3) is taxed at the rate provided in 15-6-134(2)(a) multiplied by a percentage figure based on income and determined from the following table:

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<u>Income</u> <u>Surviving Spouse</u>	<u>Percentage</u> <u>Multiplier</u>
0 - 25,000	0%
25,001 - 28,000	20%
28,001 - 31,000	30%
31,001 - 34,000	50%

(5) (a) The income levels contained in the tables in subsections (2) and (4) must be adjusted for inflation annually by the department. The adjustment to the income levels is determined by:

(i) multiplying the appropriate dollar amount from the table by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 2002; and

(ii) rounding the product obtained in subsection (5)(a)(i) to the nearest dollar amount.

(b) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce."

And, as amended, do pass. Report adopted.

SB 121, introduced bill, be amended as follows:

1. Title, page 1, line 8.

Following: "TO"

Insert: "FOREIGN"

Following: the second "AND"

Insert: "TO"

2. Title, page 1, line 11.

Following: "COMPACT;"

Insert: "PROVIDING A DEFINITION OF "FOREIGN C. CORPORATION";"

3. Title, page 1, line 12.

Following: "SECTIONS"

Insert: "15-30-101,"

4. Page 1.

Following: line 15

Insert: "**Section 1.** Section 15-30-101, MCA, is amended to read:

"15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect on June 30 of the taxable year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

(a) that is treated as an association for federal income tax purposes;

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(b) for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is not in effect;
and

(c) that is not a disregarded entity.

(4) "Department" means the department of revenue.

(5) "Disregarded entity" means a business entity:

(a) that is disregarded as an entity separate from its owner for federal tax purposes, as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as those regulations may be labeled or amended; or

(b) that is a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided in section 1361(b)(3) of the Internal Revenue Code (26 U.S.C. 1361(b)(3)).

(6) "Dividend" means:

(a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

(b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

(7) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(8) "Foreign C. corporation" means a corporation that is not engaged in or doing business in Montana, as provided in 15-31-101.

~~(8)~~(9) "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

~~(9)~~(10) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code (26 U.S.C. 61) or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code (26 U.S.C. 85) as amended.

~~(10)~~(11) "Inflation factor" means a number determined for each tax year by dividing the consumer price index for June of the tax year by the consumer price index for June 1980.

~~(11)~~(12) "Information agents" includes all individuals and entities acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

~~(12)~~(13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be labeled or further amended. References to specific provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.

~~(13)~~(14) "Knowingly" is as defined in 45-2-101.

~~(14)~~(15) "Limited liability company" means a limited liability company, domestic limited liability company, or a foreign limited liability company as defined in 35-8-102.

~~(15)~~(16) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

~~(16)~~(17) "Lottery winnings" means income paid either in lump sum or in periodic payments to:

(a) a resident taxpayer on a lottery ticket; or

(b) a nonresident taxpayer on a lottery ticket purchased in Montana.

~~(17)~~(18) (a) "Montana source income" means:

(i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;

(ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise transferred while a resident of the state, or used or held in connection with a trade, business, or occupation carried on in the state;

(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;

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(iv) interest received or accrued while a resident of the state or from an installment sale of real property or tangible commercial or business personal property located in the state;

(v) dividends received or accrued while a resident of the state;

(vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;

(vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;

(viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;

(ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.

(x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;

(xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;

(xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiv) social security benefits received or accrued while a resident of the state;

(xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state; and

(xvi) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

(ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

~~(18)~~(19) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

~~(19)~~(20) "Nonresident" means a natural person who is not a resident.

~~(20)~~(21) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid

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or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(21)~~(22) "Partner" means a member of a partnership or a manager or member of any other entity, if treated as a partner for federal income tax purposes.

~~(22)~~(23) "Partnership" means a general or limited partnership, limited liability partnership, limited liability company, or other entity, if treated as a partnership for federal income tax purposes.

~~(23)~~(24) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

~~(24)~~(25) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code (26 U.S.C. 401), or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code (26 U.S.C. 401 through 408) to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

~~(25)~~(26) "Purposely" is as defined in 45-2-101.

~~(26)~~(27) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(27)~~(28) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

~~(28)~~(29) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is in effect.

~~(29)~~(30) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

~~(30)~~(31) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

~~(31)~~(32) "Taxable year" or "tax year" means the taxpayer's taxable year for federal income tax purposes.

~~(32)~~(33) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by this chapter and unless otherwise specifically provided does not include a C. corporation.""

Renumber: subsequent sections

5. Page 1, line 24.

Following: "(1)(c)"

Insert: ", the first-tier pass-through entity,"

6. Page 1, line 26.

Following: "is"

Insert: "itself"

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7. Page 1, line 27.

Following: "which"

Insert: "the first-tier pass-through entity's"

8. Page 1, line 28.

Following: "which"

Insert: "the first-tier pass-through entity's"

9. Page 3, line 19.

Following: "a"

Insert: "foreign"

10. Page 4, line 16.

Following: "15-30-144"

Insert: ", a corporation license tax return required under 15-31-111, and a corporation income tax return required under 15-31-403"

11. Page 4, line 26.

Following: the first "a"

Insert: "foreign"

Following: "that"

Insert: "itself"

12. Page 4, line 27.

Following: "individual,"

Insert: "foreign"

13. Page 5, line 9.

Following: "a"

Insert: "foreign"

14. Page 5, line 11.

Following: "the"

Insert: "foreign"

15. Page 5, line 17.

Following: the second "the"

Insert: "foreign"

16. Page 5, line 24.

Strike: "is"

Insert: "will be"

17. Page 6, line 4.

Following: the second "a"

Insert: "foreign"

18. Page 6, line 5.

Following: the second "the"

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Insert: "foreign"

19. Page 6, line 6.

Following: the first "the"

Insert: "foreign"

20. Page 6, line 7.

Following: the first "the"

Insert: "foreign"

21. Page 6, line 9.

Following: line 8

Insert: "foreign"

22. Page 6, line 20.

Following: "or"

Insert: "foreign"

23. Page 6, line 22.

Following: "or"

Insert: "foreign"

24. Page 6, line 24.

Following: the second "the"

Insert: "foreign"

And, as amended, do pass. Report adopted.

HB 59, be amended as follows:

1. Title, page 1, line 8.

Strike: "AND"

2. Title, page 1, line 9.

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 1.

Following: line 23

Insert: "NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval."

And, as amended, be concurred in. Report adopted.

HB 106, be amended as follows:

1. Page 1, line 29.

Strike: "shall"

Insert: "may"

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And, as amended, be concurred in. Report adopted.

MESSAGES FROM THE OTHER HOUSE

House bills passed and transmitted to the Senate for concurrence:

1/31/2003

HB 18, introduced by Shockley
HB 40, introduced by Newman
HB 47, introduced by P. Clark
HB 66, introduced by Harris
HB 130, introduced by Lewis
HB 166, introduced by Wanzenried
HB 199, introduced by Harris
HB 215, introduced by Brueggeman
HB 224, introduced by Shockley
HB 256, introduced by Shockley

MOTIONS

SB 89 - Senator Tash moved **SB 89** be taken from second reading and rereferred to the committee on Finance and Claims. Motion carried.

SB 255 - Senator DePratu moved that Senators Black, Curtiss, McGee and Perry and Representative Brueggeman be added as sponsors to **SB 255**. Motion carried.

SB 260 - Senator DePratu moved that Senators Black, Curtiss, McGee and Perry and Representatives Dowell, Jackson, Lawson and Olson be added as sponsors to **SB 260**. Motion carried.

FIRST READING AND COMMITMENT OF BILLS

The following Senate bills were introduced, read first time, and referred to committees:

SB 312, introduced by Story, referred to Highways and Transportation.
SB 313, introduced by Kitzenberg, referred to Education and Cultural Resources.
SB 314, introduced by McCarthy, Bohlinger, Cooney, Harrington, Johnson, Lindeen, Tester, Wanzenried, referred to Finance and Claims.
SB 315, introduced by Schmidt, Black, Callahan, Dickenson, Franklin, Galvin-Halcro, Golie, Hansen, Harrington, Hedges, Laslovich, McKenney, Nelson, Parker, Roush, D. Ryan, Tash, Tester, Tropila, Witt, referred to Highways and Transportation.
SB 316, introduced by Grimes, referred to Energy and Telecommunications.
SB 317, introduced by Wheat, referred to Judiciary.
SB 318, introduced by Wheat, referred to Judiciary.

THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

SB 1, requiring 2/3 of entire Legislature received the following vote:

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Yeas: Bales, Black, Bohlinger, Cobb, Cocchiarella, Cromley, DePratu, Ellingson, Esp, Glaser, Hansen, Harrington, Kitzenberg, Mahlum, Mangan, McCarthy, McNutt, Nelson, Roush, Ryan, Shea, Squires, Story, Tash, Toole, Tropila, Zook.

Total 27

Nays: Anderson, Barkus, Butcher, Cooney, Curtiss, Elliott, Gebhardt, Grimes, Johnson, Laible, McGee, O'Neil, Perry, Schmidt, Sprague, Stapleton, Stonington, Taylor, Tester, Thomas, Wheat, Mr. President.

Total 22

Absent or not voting: None.

Total 0

Excused: Pease.

Total 1

SB 216 passed as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cocchiarella, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, O'Neil, Perry, Roush, Ryan, Schmidt, Shea, Sprague, Squires, Stapleton, Stonington, Story, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.

Total 49

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: Pease.

Total 1

HB 188 concurred in as follows:

Yeas: Anderson, Barkus, Black, Bohlinger, Butcher, Cobb, Cocchiarella, Cooney, Cromley, DePratu, Ellingson, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McNutt, Nelson, Perry, Roush, Ryan, Schmidt, Shea, Sprague, Squires, Stapleton, Stonington, Story, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.

Total 44

Nays: Bales, Curtiss, Elliott, McGee, O'Neil.

Total 5

Absent or not voting: None.

Total 0

Excused: Pease.

Total 1

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Senator Ryan excused at this time.

SPECIAL ORDERS OF THE DAY

Senator Tropila introduced the Trinitas Chapel Choir from the University of Great Falls, which included former Senator Chris Christiaens, who performed musical selections for the Senate.

**SECOND READING OF BILLS
(COMMITTEE OF THE WHOLE)**

Senator Thomas moved the Senate resolve itself into a Committee of the Whole for consideration of business on second reading. Motion carried. Senator Esp in the chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

SB 151 - Senator Mahlum moved **SB 151** do pass. Motion carried unanimously.

HB 31 - Senator Bales moved **HB 31** be concurred in. Motion carried unanimously.

HB 58 - Senator Harrington moved **HB 58** be concurred in. Motion carried unanimously.

HB 70 - Senator Mangan moved **HB 70** be concurred in. Motion carried unanimously.

HB 83 - Senator McGee moved **HB 83** be concurred in. Motion carried unanimously.

SB 28 - Senator Mangan moved **SB 28** do pass. Motion carried unanimously.

SR 2 - Senator Barkus moved **SR 2** be adopted. Motion carried as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Curtiss, DePratu, Esp, Gebhardt, Glaser, Grimes, Johnson, Kitzenberg, Laible, Mahlum, McGee, McNutt, O'Neil, Perry, Sprague, Stapleton, Story, Tash, Taylor, Thomas, Zook, Mr. President.

Total 29

Nays: Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Hansen, Harrington, Mangan, McCarthy, Nelson, Roush, Schmidt, Shea, Squires, Stonington, Tester, Toole, Tropila, Wheat.

Total 19

Absent or not voting: None.

Total 0

Excused: Pease, Ryan.

Total 2

HB 309 - Senator F. Thomas moved **HB 309** be concurred in. Motion carried as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Curtiss, DePratu, Esp, Gebhardt, Glaser, Grimes, Johnson,

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Laible, Mahlum, McGee, McNutt, O'Neil, Perry, Sprague, Stapleton, Story, Tash, Taylor, Thomas, Zook, Mr. President.
Total 27

Nays: Cobb, Cocchiarella, Cooney, Cromley, Ellingson, Elliott, Hansen, Harrington, Kitzenberg, Mangan, McCarthy, Nelson, Roush, Schmidt, Shea, Squires, Stonington, Tester, Toole, Tropila, Wheat.
Total 21

Absent or not voting: None.
Total 0

Excused: Pease, Ryan.
Total 2

Senator Cobb excused at this time.

SB 197 - Senator Perry moved **SB 197** do pass. Motion carried with Senators Bohlinger and Johnson voting nay.

SB 211 - Senator Hansen moved **SB 211** do pass. Motion carried unanimously.

SB 229 - Senator F. Thomas moved **SB 229** do pass. Motion carried unanimously.

Senators Butcher and Sprague excused at this time.

SB 230 - Senator Cromley moved **SB 230** do pass. Motion carried as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Cocchiarella, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McNutt, Nelson, O'Neil, Perry, Roush, Schmidt, Shea, Squires, Stapleton, Stonington, Story, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.
Total 43

Nays: McGee, Tash.
Total 2

Absent or not voting: None.
Total 0

Excused: Butcher, Cobb, Pease, Ryan, Sprague.
Total 5

Senator Sprague present at this time.

HB 62 - Senator Nelson moved **HB 62** be concurred in. Motion carried unanimously.

Senator Shea excused at this time.

HB 153 - Senator Black moved **HB 153** be concurred in. Motion carried unanimously.

Senator Thomas moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President

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Keenan in the chair. Chairman Esp moved the Committee of the Whole report be adopted. Report adopted.

SPECIAL ORDERS OF THE DAY

Senator Stapleton introduced the Senate pages, gave a brief overview of their activities and future plans and thanked them for their work through the week.

Majority Leader Thomas thanked the Senators for their contributions to the Senator Dale Berry Memorial, which will be a mural at the Hamilton High School gymnasium.

ANNOUNCEMENTS

Committee meetings were announced by committee chairs.

Majority Leader Thomas moved that the Senate adjourn until 1:00 p.m., Monday, February 3, 2003. Motion carried.

Senate adjourned at 12:00 noon.

ROSANA SKELTON
Secretary of the Senate

BOB KEENAN
President of the Senate