

HOUSE BILL NO. 92

INTRODUCED BY E. FRANKLIN

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT MODERNIZING PUBLIC HEALTH STATUTES; PROVIDING A PUBLIC HEALTH POLICY STATEMENT; REVISING THE POWERS AND DUTIES OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, LOCAL BOARDS OF HEALTH, AND LOCAL HEALTH OFFICERS; ENCOURAGING GREATER COLLABORATION AMONG AND BETWEEN ENTITIES IN THE PUBLIC HEALTH SYSTEM; AMENDING SECTIONS 50-1-101, 50-1-202, 50-2-116, 50-2-118, 50-2-130, 50-48-102, 50-53-102, 75-5-305, 76-4-125, AND 76-4-133, MCA; AND REPEALING SECTION 50-2-101, MCA."

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

NEW SECTION. **Section 1. Policy -- purpose.** (1) It is the policy of the state of Montana that the health of the public be protected and promoted to the greatest extent practicable through the public health system while respecting individual rights to dignity, privacy, and nondiscrimination.

(2) The purpose of Montana's public health system is to provide leadership and to protect and promote the public's health by:

- (a) promoting conditions in which people can be healthy;
 - (b) providing or promoting the provision of public health services and functions, including:
 - (i) monitoring health status to identify and solve community health problems;
 - (ii) investigating and diagnosing health problems and health hazards in the community;
 - (iii) informing, educating, and empowering individuals about health issues;
 - (iv) mobilizing public and private sector collaboration and action to identify and solve health problems;
 - (v) developing policies, plans, and programs that support individual and community health efforts;
 - (vi) enforcing laws and regulations that protect health and ensure safety;
 - (vii) linking individuals to needed personal health services and ensuring the provision of health care when otherwise unavailable;
 - (viii) ensuring a competent public health workforce;
 - (ix) evaluating effectiveness, accessibility, and quality of personal and population-based health services;
- and

- (x) conducting research for new insights on and innovative solutions to health problems;
 - (c) encouraging collaboration among public and private sector partners in the public health system;
 - (d) seeking adequate funding and other resources to provide public health services and functions or accomplish public health system goals through public or private sources;
 - (e) striving to ensure that public health services and functions are provided and public health powers are used based upon the best available scientific evidence; and
 - (f) advancing the role of public health services and functions, health promotion, and preventive health services within the state health care system.
- (3) Title 50, chapter 2, and this chapter may not be construed to require an individual or agency within the public health system to provide specific health services or to mandate state public health agencies and local public health agencies to implement unfunded programs.

NEW SECTION. Section 2. Collaboration and relationships -- partners within public health system. (1) In general, the department and local public health agencies shall seek to establish strong, working relationships with federal, tribal, other state or local public health agencies, and other public sector partners engaged in the provision of public health services and functions within the public health system, including the department of environmental quality.

(2) The department may enter an agreement with any federal agency to coordinate the provision of public health services and functions.

(3) The department may enter an agreement with any other state or any agencies in any other state to coordinate the provision of public health services and functions among the states that are parties to the agreement.

(4) Any local public health agency may enter agreements with other local public health agencies in the state to coordinate the provision of public health services and functions consistent with Title 50, chapter 2, and this chapter. The local public health agency shall submit any agreement entered into pursuant to this section to the department.

(5) A local public health agency whose jurisdiction extends to a state border may form an agreement with an adjoining state or a municipality in the other state to coordinate the provision of public health services and functions. The local public health agency shall submit any agreement entered into pursuant to this section to the department for prior approval.

(6) The department or local public health agencies may form agreements with tribes and tribal public

health agencies in the state to coordinate the provision of public health services and functions or to promote cooperation in addressing specific public health needs of persons living on Indian reservations or Indians who reside outside the boundaries of Indian reservations.

(7) (a) Public health districts, consisting of two or more local public health agencies, may be created by interlocal agreement, as provided in Title 7, chapter 11, part 1, or as a district board of health under 50-2-107 for the purpose of improving the provision of public health services and functions for the affected population. A public health district created under this subsection (7) may include tribal health agencies.

(b) A public health district created under this subsection (7) must consist of the entire area of the combined local public health agencies and tribal health agencies and must be governed in accordance with state law.

Section 3. Section 50-1-101, MCA, is amended to read:

"50-1-101. Definitions. Unless the context indicates otherwise, in chapter 2 and this chapter, the following definitions apply:

(1) "Communicable disease" means an illness because of a specific infectious agent or its toxic products that arises through transmission of that agent or its products from an infected person, animal, or inanimate reservoir to a susceptible host. The transmission may occur either directly or indirectly through an intermediate plant or animal host, a transmitting entity, or the inanimate environment.

(2) "Condition of public health importance" means a disease, syndrome, symptom, injury, or other threat to health that is identifiable on an individual or community level and that can reasonably be expected to lead to adverse health effects in the community.

~~(2)~~(3) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(3)~~(4) "Inanimate reservoir" means soil, a substance, or a combination of soil and a substance:

(a) in which an infectious agent normally lives and multiplies;

(b) on which an infectious agent depends primarily for survival; and

(c) where an infectious agent reproduces in a manner that allows the infectious agent to be transmitted to a susceptible host.

(5) "Institutional controls" means legal or regulatory mechanisms designed to protect public health and safety or the environment that:

(a) limit access to or limit or condition the use of environmentally contaminated property or media;

(b) provide for the protection or preservation of environmental cleanup measures; or

(c) inform the public that property or media is or may be environmentally contaminated.

~~(4)~~(6) "Isolation" means the physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected with a communicable disease or possibly communicable disease from nonisolated individuals to prevent or limit the transmission of the communicable disease to nonisolated individuals.

(7) "Local board of health" or "local board" means a county, city, city-county, or district board of health.

(8) "Local health officer" means a county, city, city-county, or district health officer appointed by a local board of health. With regard to the exercise of the duties and authorities of a local health officer, the term may include an authorized representative of the local health officer.

(9) "Local public health agency" means an organization operated by a local government in the state, including local boards of health or local health officers, that principally acts to protect or preserve the public health.

(10) "Physician" has the meaning provided in 37-3-102.

(11) "Public health services and functions" means those services and functions necessary to ensure the conditions in which the population can be healthy and safe, including:

(a) population-based or individual efforts primarily aimed at the prevention of injury, disease, or premature mortality; or

(b) the promotion of health in the community, such as assessing the health needs and status of the community through public health surveillance and epidemiological research, developing public health policy, and responding to public health needs and emergencies.

(12) "Public health system" means state and local public health agencies and their public and private sector partners.

~~(5)~~(13) "Quarantine" means the physical separation and confinement of an individual or groups of individuals who are or may have been exposed to a communicable disease or possibly communicable disease and who do not show signs or symptoms of a communicable disease from nonquarantined individuals to prevent or limit the transmission of the communicable disease to nonquarantined individuals.

(14) "Screening" means diagnostic or investigative analysis or medical procedures that determine the presence or absence of or exposure to a condition of public health importance or the condition's precursor in an individual.

(15) "Testing" has the same meaning as screening."

Section 4. Section 50-1-202, MCA, is amended to read:

"50-1-202. General powers and duties. ~~(1) The~~ In order to carry out the purposes of the public health system, the department, in collaboration with federal, state, and local partners, shall:

(a) use a broad range of powers to protect and promote the public health;

(b) make inspections for conditions of public health importance and issue written orders for correction, destruction, or removal of the condition;

~~(1) shall study conditions affecting the citizens of the state by making use of birth, death, and sickness records;~~

~~(2)(c) shall make investigations, disseminate information, and make recommendations for control of diseases and improvement~~ other conditions of public health ~~to persons, groups, or the public importance;~~

~~(3)(d)~~ at the request of the governor, shall accept funds for and administer any federal health program for which responsibilities are delegated to states;

~~(4) shall inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;~~

~~———(5) after each inspection made under subsection (4), shall submit a written report on sanitary conditions to the governor and to the director of the department of corrections or the commissioner of higher education and include recommendations for improvement in conditions if necessary;~~

~~———(6) shall advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;~~

~~———(7) shall develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;~~

~~———(8) shall develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, which rules may include programs for nutrition, family planning services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act;~~

~~———(9) shall conduct health education programs;~~

~~———(10) shall provide consultation to school and local community health nurses in the performance of their duties;~~

~~———(11) shall consult with the superintendent of public instruction on health measures for schools;~~

~~———(12) shall develop, adopt, and administer rules setting standards for a program to provide services to children with disabilities, including standards for:~~

- ~~_____ (a) diagnosis;~~
- ~~_____ (b) medical, surgical, and corrective treatment;~~
- ~~_____ (c) aftercare and related services; and~~
- ~~_____ (d) eligibility;~~
- ~~_____ (13) shall provide consultation to local boards of health;~~
- ~~_____ (14) shall bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;~~
- ~~_____ (15) shall accept and expend federal funds available for public health services;~~
 - (e) identify, assess, prevent, and mitigate conditions of public health importance through:
 - (i) surveillance;
 - (ii) epidemiological tracking;
 - (iii) screening and testing programs;
 - (iv) isolation and quarantine measures;
 - (v) treatment;
 - (vi) abatement of public health nuisances;
 - (vii) inspections;
 - (viii) collecting and maintaining health information; or
 - (ix) other techniques;
 - (f) promote efforts among public and private sector partners to develop and fund programs or initiatives that identify and ameliorate health problems;
 - (g) develop and promote training for members of the public health workforce;
 - (h) bring actions necessary to abate, restrain, or prosecute the violation of public health laws and rules;
 - (i) advise state agencies on the following as they relate to public buildings and facilities:
 - (i) location, drainage, water supply, water quality, heating, plumbing, sewer systems, and ventilation; and
 - (ii) the disposal of infectious or hazardous wastes;
 - (j) develop and administer activities for the protection and improvement of oral health;
 - (k) develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, including programs for nutrition, family planning services, improved pregnancy outcome, and programs authorized by Title X of the federal Public Health Service Act, 42 U.S.C. 300a, et seq., and Title V of the federal Social Security Act, 42 U.S.C. 501 through 510;
 - (l) conduct health education programs;

(m) provide consultation to school and local public health personnel and consult with the superintendent of public instruction on conditions of public health importance for schools;

(n) develop, adopt, and administer rules setting standards for a program to provide services to children with special health care needs, including standards for:

(i) diagnosis;

(ii) medical, surgical, and corrective treatment;

(iii) aftercare and related services; and

(iv) eligibility;

(o) provide consultation to local boards of health;

~~(16) must have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;~~

~~(17) shall adopt rules imposing fees for the tests and services performed by the department's laboratory. Fees should reflect the actual costs of the tests or services provided. The department may not establish fees exceeding the costs incurred in performing tests and services. All fees must be deposited in the state special revenue fund for the use of the department in performing tests and services.~~

(p) promote cooperation and formal collaborative agreements between the state and tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting, information and data sharing, reporting, resource allocation, funding, service delivery, jurisdiction, and other public health matters addressed in this title;

~~(18)(g) shall adopt and enforce rules regarding:~~

~~(i) the reporting and control of communicable diseases and other conditions of public health importance;~~

~~(ii) the imposition of fees for testing, screening, and other services performed by the state laboratory;~~

~~(19)(iii) shall adopt and enforce rules regarding the transportation of dead human bodies;~~

~~(20)(iv) shall adopt and enforce rules and standards concerning the issuance of licenses to laboratories that conduct analysis of public water supply systems; and~~

(v) public health requirements for school sites, including water supply and quality, sewage and waste disposal, and any other matters pertinent to the health and physical well-being of pupils, teachers, and others;
and

~~(24)(r) shall enact or take measures to prevent and alleviate injury threats to the public health from the release of biological, chemical, or radiological agents capable of causing imminent infection, disability, or death.~~

(2) The department:

(a) has the power to use personnel of local public health agencies to assist in the administration of laws relating to public health services and functions; and

(b) may provide, implement, facilitate, or encourage other public health services and functions as considered reasonable and necessary."

Section 5. Section 50-2-116, MCA, is amended to read:

"50-2-116. Powers and duties of local boards of health. (1) ~~Local boards~~ In order to carry out the purposes of the public health system, in collaboration with federal, state, and local partners, each local board of health shall:

(a) appoint and fix the salary of a local health officer who is:

(i) a physician; or

(ii) a person with a master's degree in public health; or

(iii) ~~the~~ a person with equivalent education and with appropriate experience, as determined by the department, and shall fix the health officer's salary;

(b) elect a presiding officer and other necessary officers;

(c) employ necessary qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings at least quarterly and hold special meetings as necessary;

(f) ~~supervise destruction and removal of all sources of filth that cause disease; identify, assess, prevent, and ameliorate conditions of public health importance through:~~

(i) surveillance;

(ii) epidemiological tracking;

(iii) screening and testing;

(iv) isolation and quarantine measures;

(v) diagnosis, treatment, and case management;

(vi) abatement of public health nuisances;

(vii) administrative inspections;

(viii) collecting and maintaining health information;

(ix) education and training of health professionals; or

(x) other techniques;

(g) ~~guard against~~ protect the public from the introduction and spread of communicable disease or other

conditions of public health importance, including through actions to ensure the removal of filth or other contaminants that might cause disease or adversely affect public health;

(h) supervise or make inspections of public establishments for sanitary for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the conditions;

(i) bring actions and issue orders necessary to abate, restrain, or prosecute the violation of public health laws, rules, and local regulations;

(j) identify to the department an administrative liaison for public health. The liaison must be the local health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-time local health officer, the liaison must be the highest ranking public health professional employed by the jurisdiction.

~~(k)~~ (k) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings and facilities that ~~is~~ are not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of environmental review and must provide for appeal of variance decisions to the department as required by 75-5-305.

(2) Local boards of health may:

~~(a) adopt and enforce isolation and quarantine measures to prevent the spread of communicable diseases;~~

~~_____ (b) furnish treatment for persons who have communicable diseases;~~

~~_____ (c) prohibit the use of places that are infected with communicable diseases;~~

~~_____ (d) require and provide means for disinfecting places that are infected with communicable diseases;~~

~~(e)~~ (a) accept and spend funds received from a federal agency, the state, a school district, or other persons or entities;

~~(f) contract with another local board for all or a part of local health services;~~

~~_____ (g) reimburse local health officers for necessary expenses incurred in official duties;~~

~~_____ (h) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;~~

~~(i)~~ (b) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings: and facilities; ~~The fees must be deposited with the county treasurer.~~

~~(j)~~ (c) adopt rules regulations that do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of 50-2-130, on for sanitation in public and private buildings and facilities that affects public health and for the maintenance of sewage treatment systems that do not discharge effluent directly into state water and that are not required to have an operating permit as required by rules adopted under 75-5-401;

~~(iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might endanger human lives; and~~

~~— (v) subject to the provisions of 50-2-130, for the maintenance of sewage treatment systems that do not discharge an effluent directly into state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401;~~

~~(k)(iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, adopt necessary regulations for tattooing and body-piercing establishments and that are not less stringent than state standards for tattooing and body-piercing establishments; and~~

~~(†)(v) adopt regulations for the establishment of institutional controls that have been selected or approved by the:~~

~~(†)(A) United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or~~

~~(†)(B) department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and~~

~~(vi) to implement the public health laws; and~~

~~(d) promote cooperation and formal collaborative agreements between the local board of health and tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting, information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters addressed in this title.~~

~~(3) A local board of health may provide, implement, facilitate, or encourage other public health services and functions as considered reasonable and necessary.~~

Section 6. Section 50-2-118, MCA, is amended to read:

"50-2-118. Powers and duties of local health officers. ~~(1) Local~~ In order to carry out the purpose of the public health system, in collaboration with federal, state, and local partners, local health officers or their

authorized representatives shall:

~~(a)~~(1) make inspections for ~~sanitary~~ conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the condition;

~~(b) as directed by the local board, issue written orders for the destruction and removal of filth that might cause disease;~~

~~(c)~~(2) with written approval of the department, order take steps to limit contact between people in order to protect the public health from imminent threats, including but not limited to ordering the closure of buildings or facilities where people congregate closed during epidemics and canceling events;

~~(d)~~(3) on forms provided by the department, report communicable diseases to the department ~~each week~~ as required by rule; and

~~(e) before the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of activities, on forms and containing information required by the department;~~

~~———(f) before the 10th day after the report is given to the local board, send a copy of the report required by subsection (1)(e) to the department;~~

~~(g)~~(4) establish and maintain quarantine and isolation measures as enacted by the local board of health;

~~(h) as prescribed by rules adopted by the department, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;~~

~~———(i) notify the department of the local health officer's appointment and changes in membership of the local board;~~

~~(j)~~(5) file a complaint with the appropriate court if this chapter or rules adopted by the local board or state department under this chapter are violated;

~~(k) validate state licenses issued by the department in accordance with chapters 50 through 53 and 57 of this title.~~

~~(2) With approval of the department, local health officers may forbid persons to assemble in a place if the assembly endangers public health.~~

~~———(3) A local health officer who is a physician may be placed in charge of a communicable disease hospital, but a local health officer who is a physician is not required to act as a physician to the indigent.~~

~~———(4) A local health officer who is not a physician may not act as a physician to anyone."~~

Section 7. Section 50-2-130, MCA, is amended to read:

"50-2-130. Local regulations no more stringent than state regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (4) or unless required by state law, the local board may not adopt a rule under ~~50-2-116(1)(i), (2)(j)(iii), (2)(j)(v), or (2)(k)~~ 50-2-116(1)(k), (2)(c)(iii), or (2)(c)(iv) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The local board may incorporate by reference comparable state regulations or guidelines.

(2) The local board may adopt a rule to implement ~~50-2-116(1)(i), (2)(j)(iii), (2)(j)(v), or (2)(k)~~ 50-2-116(1)(k), (2)(c)(iii), or (2)(c)(iv) that is more stringent than comparable state regulations or guidelines only if the local board makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and
 (b) the local board standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the local board's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the local board adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the local board to review the rule. If the local board determines that the rule is more stringent than comparable state regulations or guidelines, the local board shall comply with this section by either revising the rule to conform to the state regulations or guidelines or making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The local board may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the local board for a rule review under subsection (4)(a) if the local board adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted local board rule."

Section 8. Section 50-48-102, MCA, is amended to read:

"50-48-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the

following definitions apply:

(1) "Body piercing" means penetrating the skin to make a hole, mark, or scar that is generally permanent in nature.

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

(3) "Establishment" means either a body-piercing operation, a tattooing operation, or a combination of both operations in a multiple-type establishment.

(4) "Local board of health" means a county, city, city-county, or district board of health provided for in Title 50, chapter 2.

(5) "Local health officer" has the meaning provided in ~~50-2-104~~ 50-1-101.

(6) "Multiple-type establishment" means an operation encompassing both body piercing and tattooing on the same premises and under the same management.

(7) "Person" means an individual, partnership, corporation, association, or other entity engaged in the business of operating, owning, or offering the services of body piercing or tattooing.

(8) "Regulatory authority" means the department of public health and human services, the local board of health, the local health officer, or the local sanitarian.

(9) (a) "Tattooing" means making permanent marks on the skin of a live human being by puncturing the skin and inserting indelible colors. The term includes imparting permanent makeup on the skin such as permanent lip coloring and permanent eyeliner.

(b) The term does not include:

(i) the practice of electrology as defined in 37-31-101; or

(ii) the use by a physician or medical professional who is licensed to practice in the state of Montana of colors, dyes, or pigments for the purpose of obscuring scar tissue or imparting color to the skin for cosmetic, medical, or figurative purposes."

Section 9. Section 50-53-102, MCA, is amended to read:

"50-53-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

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

(2) "Local board of health" or "board" means a local board as defined in 50-2-101.

(3) "Local health officer" or "officer" means a local health officer as defined in ~~50-2-104~~ 50-1-101.

(4) "Person" means a person, firm, partnership, corporation, organization, the state, or any political

subdivision of the state.

(5) "Public bathing place" means a body of water with bathhouses and related appurtenances operated for the public.

(6) "Public swimming pool" means an artificial pool and bathhouses and related appurtenances for swimming, bathing, or wading, including natural hot water pools and spas. The term does not include:

(a) swimming pools located on private property used for swimming or bathing only by the owner, members of the owner's family, or their invited guests; or

(b) medicinal hot water baths for individual use.

(7) "Spa" means an artificial pool designed for recreational bathing or therapeutic use and that is not drained, cleaned, or refilled for individual use. A spa includes but is not limited to a therapeutic pool, hydrotherapy pool, whirlpool, hot tub, or Jacuzzi-type whirlpool bath.

(8) "Tourist home" means a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis."

Section 10. Section 75-5-305, MCA, is amended to read:

"75-5-305. Adoption of requirements for treatment of wastes -- variance procedure -- appeals. (1)

The board may establish minimum requirements for the treatment of wastes. For cases in which the federal government has adopted technology-based treatment requirements for a particular industry or activity in 40 CFR, chapter I, subchapter N, the board shall adopt those requirements by reference. To the extent that the federal government has not adopted minimum treatment requirements for a particular industry or activity, the board may do so, through rulemaking, for parameters likely to affect beneficial uses, ensuring that the requirements are cost-effective and economically, environmentally, and technologically feasible. Except for the technology-based treatment requirements set forth in 40 CFR, chapter I, subchapter N, minimum treatment may not be required to address the discharge of a parameter when the discharge is considered nonsignificant under rules adopted pursuant to 75-5-301.

(2) The board shall establish minimum requirements for the control and disposal of sewage from private and public buildings, including standards and procedures for variances from the requirements.

(3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant to 50-2-116(4)(i) may appeal the local board of health's final decision to the department by submitting a written request for a hearing within 30 days after the decision. The written request must describe the activity for which the variance is requested, include copies of all documents submitted to the local board of health in support of the

variance, and specify the reasons for the appeal of the local board of health's final decision.

(4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department shall base its decision on the board's standards for a variance.

(5) A decision of the department pursuant to subsection (4) is appealable to district court under the provisions of Title 2, chapter 4, part 7."

Section 11. Section 76-4-125, MCA, is amended to read:

"76-4-125. Review of subdivision application -- land divisions excluded from review. (1) Except as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing authority. The review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must include preliminary plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review, any public comments or summaries of public comments collected as provided in 76-3-604(6), and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(b) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision on the proposed subdivision within 60 days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may be increased to 120 days. The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final decision on the proposed subdivision. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and

(e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system that was constructed prior to April 29, 1993, and, if required when installed, was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116~~(1)(i)~~, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."

Section 12. Section 76-4-133, MCA, is amended to read:

"76-4-133. Installation inspection. A person who owns or controls a parcel of land that has been approved under this chapter for the installation of an individual or multiple-user sewage system shall:

(1) have the system inspected during installation by the local health officer, as defined in ~~50-2-101~~ 50-1-101, or by the installer or other person designated by the local health officer; and

(2) file with the local board of health a certification by the inspector that the system has been installed in compliance with the certificate of subdivision approval and any conditions of approval."

NEW SECTION. **Section 13. Repealer.** Section 50-2-101, MCA, is repealed.

NEW SECTION. **Section 14. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 50, chapter 1, and the provisions of Title 50, chapter 1, apply to [sections 1 and 2].

NEW SECTION. **Section 15. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

- END -

